



**CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY
REGULAR MEETING AGENDA
JULY 09, 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
Randal Bressette, Council Member**

**Melody Carruth, Council Member
Dore J. Gilbert, M.D., Council Member**

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

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

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

GENERAL BUSINESS - CONVENING 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: MAYOR PRO TEMPORE BLOUNT

ROLL CALL OF CITY COUNCIL MEMBERS

1. PRESENTATIONS AND PROCLAMATIONS

1.1 RECOGNITION OF ANNIE PANKOWSKI, U.S. WOMEN'S HOCKEY NATIONAL TEAM

RECOMMENDATION: THAT MAYOR KOGERMAN PRESENT A CERTIFICATE TO ANNIE PANKOWSKI RECOGNIZING HER ACCOMPLISHMENT OF BEING SELECTED FOR THE U.S. WOMEN'S HOCKEY NATIONAL TEAM.

1.2 ORANGE COUNTY TRANSPORTATION AUTHORITY PRESENTATION ON THE I-5 WIDENING FROM SR-73 TO EL TORO ROAD

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE A PRESENTATION FROM HAMID TORKAMANHA, PROJECT MANAGER, HIGHWAY PROJECT DELIVERY FROM THE ORANGE COUNTY TRANSPORTATION AUTHORITY ON THE I-5 WIDENING FROM SR-73 TO EL TORO ROAD.

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. MINUTES

3.1 REGULAR MEETING, JUNE 25, 2013

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MINUTES OF THE JUNE 25, 2013, REGULAR MEETING.

4. 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.

4.1 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.

4.2 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED JULY 09, 2013

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF \$410,141.64.

4.3 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AS SET FORTH IN SECTION 414(H)(2) OF THE INTERNAL REVENUE CODE (IRC) AND RESCINDING RESOLUTION NO. 2008-12-09-5

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AS SET FORTH IN SECTION 414(H)(2) OF THE INTERNAL REVENUE CODE (IRC) AND RESCINDING RESOLUTION NO. 2008-12-09-5."

4.4 AUTHORIZATION TO LEASE CITY VEHICLE

RECOMMENDATION: THAT THE CITY COUNCIL AUTHORIZE THE COMMENCEMENT OF THE PROCUREMENT PROCESS FOR A LEASED CITY VEHICLE.

4.5 ADOPTION OF THE 2013-14 CIVIC CENTER BUDGET

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE AND ADOPT THE 2013-14 CIVIC CENTER BUDGET.

4.6 APPROVE PROPOSED LEASE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 260, LAGUNA HILLS, CALIFORNIA, WITH THE LAW OFFICES OF RICK J. FINELLI, LLP

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED LEASE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 260, LAGUNA HILLS, CALIFORNIA, WITH THE LAW OFFICES OF RICK J. FINELLI, LLP, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE PROPOSED LEASE AGREEMENT.

4.7 SOLID WASTE AND RECYCLING CONSULTING SERVICES AGREEMENT WITH ECONOMICS, INC., FOR THE TWO YEAR BUDGET CYCLE

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE RECYCLING CONSULTING SERVICES AGREEMENT BETWEEN ECONOMICS, INC., AND THE CITY OF LAGUNA HILLS AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT.

4.8 CONTRACT CHANGE ORDER NO. 1 AND PROGRESS PAYMENT NO. 2, FINAL, FOR CIVIC CENTER SUITE 100B IMPROVEMENTS

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE CONTRACT CHANGE ORDER NO. 1 AND PROGRESS PAYMENT NO. 2, FINAL, IN THE NET AMOUNT OF \$17,740.56, TO INNOVATIVE BUILDERS & DESIGN, FOR THE CIVIC CENTER SUITE 100B IMPROVEMENTS, AND AUTHORIZE THE FILING OF THE NOTICE OF COMPLETION AND SUBSEQUENT RELEASE OF RETENTION IN 35 DAYS IF NO LIENS HAVE BEEN FILED.

4.9 APPLICATION FOR THE CYCLE 6 HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP), SAFE ROUTES TO SCHOOL

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE GRANT APPLICATION FOR THE CYCLE 6 HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP).

4.10 CONTRACT CHANGE ORDER NO. 1 FOR CIVIC CENTER IMPROVEMENTS - CARPETING & FLOORING

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE CONTRACT CHANGE ORDER NO. 1 FOR CIVIC CENTER IMPROVEMENTS - CARPETING & FLOORING

4.11 FY 2013-2014 TRAUMA INTERVENTION PROGRAM AGREEMENT

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED VICTIM SUPPORT SERVICES AGREEMENT WITH TIP FOR FY 2013-2014 AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND TRAUMA INTERVENTION PROGRAMS, INC.

4.12 FY 2013-2014 SCHOOL CROSSING GUARD AGREEMENT

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED CROSSING GUARD SERVICES AGREEMENT FOR FY 2013-2014 AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND ALL CITY MANAGEMENT SERVICES.

4.13 APPROVE ACCOMMODATION LICENSE AGREEMENT FOR THE USE OF 24031 EL TORO ROAD, SUITE 220, LAGUNA HILLS, CALIFORNIA, WITH VILMA M. AARONS AND GENEVIEVE WALLS

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED ACCOMMODATION LICENSE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 220, LAGUNA HILLS, CALIFORNIA, WITH VILMA M. AARONS AND GENEVIEVE WALLS AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE ACCOMMODATION LICENSE AGREEMENT.

ITEMS REMOVED FROM THE CONSENT CALENDAR**5. PLANNING AGENCY****5.1 ROLL CALL OF PLANNING AGENCY MEMBERS****5.2 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.

5.3 MINUTES**5.3.1 REGULAR MEETING, JUNE 25, 2013**

RECOMMENDATION: THAT THE PLANNING AGENCY APPROVE THE MINUTES OF THE JUNE 25, 2013, REGULAR MEETING.

5.4 ADMINISTRATIVE REPORTS**5.5 PLANNING AGENCY PUBLIC HEARINGS****5.5.1 TENTATIVE PARCEL MAP & VARIANCE NO. 11-12-2428, A REQUEST TO SUBDIVIDE THE CABOT TOWN CENTER PROPERTY INTO FOUR PARCELS AT 25214-25272 CABOT ROAD IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT.**

RECOMMENDATION: THAT THE PLANNING AGENCY: (1) CONDUCT A PUBLIC HEARING FOR TENTATIVE PARCEL MAP/VARIANCE NO. 11-12-2428; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP/VARIANCE NO. 11-12-2428, A REQUEST TO SUBDIVIDE THE CABOT TOWN CENTER PROPERTY INTO FOUR PARCELS AT 25214-25272 CABOT ROAD IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT AND A REQUEST FOR A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT FOR THE EXISTING BUILDING ON PROPOSED PARCEL 2".

PLANNING AGENCY ADJOURNMENT

6. CITY COUNCIL PUBLIC HEARINGS

6.1 PUBLIC HEARING AND RECEIPT OF 2013 WEED ABATEMENT COST REPORT

RECOMMENDATION: THAT THE CITY COUNCIL: (1) CONDUCT A PUBLIC HEARING; AND (2) RECEIVE AND FILE THE 2013 WEED ABATEMENT COST REPORT.

7. ADMINISTRATIVE REPORTS

7.1 City Manager

7.1.1 EMPLOYMENT CLASSIFICATIONS, SALARY RANGES AND BENEFITS FOR MANAGEMENT, CONFIDENTIAL AND PART-TIME CLASSES OF EMPLOYMENT WITH THE CITY

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, REGARDING EMPLOYMENT AND ESTABLISHING SALARY RANGES AND BENEFITS FOR MANAGEMENT, CONFIDENTIAL, AND PART-TIME CLASSES OF EMPLOYMENT WITH THE CITY AND RESCINDING RESOLUTION NO. 2011-07-12-2."

7.2 Public Services Director/City Engineer

7.2.1 APPROVAL OF THE PLANS AND SPECIFICATIONS AND AUTHORIZATION TO ADVERTISE FOR BIDS FOR THE LA PAZ OPEN SPACE IMPROVEMENTS, MOULTON PARKWAY TO ALAMEDA AVENUE, CIP NO. 615A

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PLANS AND SPECIFICATIONS ON FILE WITH THE OFFICE OF THE CITY CLERK AND AUTHORIZE THE ADVERTISEMENT FOR BIDS OF THE LA PAZ OPEN SPACE IMPROVEMENTS, MOULTON PARKWAY TO ALAMEDA AVENUE, CIP NO. 615A

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

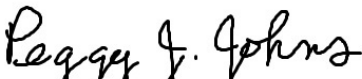
9. CITY COUNCIL MEMBER COMMENTS

ADJOURNMENT

The July 23, 2013, and the August 13, 2013, Regular City Council meetings will not be held. The next Regular Meeting of the City Council will be August 27, 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 July 5, 2013, at 5:00 PM.



PEGGY J. JOHNS, CITY CLERK

July 5, 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: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

**ISSUE: RECOGNITION OF ANNIE PANKOWSKI, U.S. WOMEN'S HOCKEY
NATIONAL TEAM**

**RECOMMENDATION: THAT MAYOR KOGERMAN PRESENT A CERTIFICATE TO
ANNIE PANKOWSKI RECOGNIZING HER ACCOMPLISHMENT OF BEING SELECTED
FOR THE U.S. WOMEN'S HOCKEY NATIONAL TEAM.**

SUMMARY:

Annie Pankowski, a resident of Laguna Hills, was recently named to the U.S. Women's Hockey National Team. The 18-year-old is the only Californian named to the squad, and the second-youngest overall on the 25-woman roster. One of the 13 forwards, the team will be trimmed to 21 players in December in advance of the 2014 Winter Olympics in Sochi, Russia, to be held February 7-23.

Annie Pankowski and her teammates will enter a residency program in early September and will primarily train at The Edge Sports Center in Bedord, Massachusetts. The final 2014 U.S. Olympic Women's Ice Hockey Team will be announced in late December 2013. Anne also won a silver medal at the 2012 World Championships as a member of Team USA.

ATTACHMENT:

- Certificate

CERTIFICATE OF RECOGNITION

ANNIE PANKOWSKI UNITED STATES WOMEN'S HOCKEY NATIONAL TEAM

WHEREAS, *former Lady Ducks winger and Laguna Hills Resident, Annie Pankowski, was recently named to the U.S. Women's Hockey National Team; and*

WHEREAS, *Annie is the only Californian named to the squad, and the second-youngest overall on the 25-woman roster; and*

WHEREAS, *Annie was a member of the Anaheim Ducks Junior Hockey Program and made the national team after a seven-day camp in Lake Placid, New York, with 41 hopefuls angling to fill the 25 roster spots; and*

WHEREAS, *Annie was a two-time member of the U.S. Women's under-18 select squad and represented Team USA at the 2012 World Championships winning a silver medal.*

NOW, THEREFORE, *I, Barbara D. Kogerman, Mayor, on behalf of the City Council of the City of Laguna Hills, California, do hereby recognize Annie Pankowski and commend her on her accomplishment of becoming a member of the U.S. Women's Hockey Roster.*

Dated this 9th day of July 2013.

BARBARA D. KOGERMAN, MAYOR



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

**ISSUE: ORANGE COUNTY TRANSPORTATION AUTHORITY PRESENTATION ON
THE I-5 WIDENING FROM SR-73 TO EL TORO ROAD**

**RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE A PRESENTATION
FROM HAMID TORKAMANHA, PROJECT MANAGER, HIGHWAY PROJECT
DELIVERY FROM THE ORANGE COUNTY TRANSPORTATION AUTHORITY ON THE
I-5 WIDENING FROM SR-73 TO EL TORO ROAD.**

SUMMARY:

Orange County Transportation Authority would like to provide the City Council with an update on the I-5 Improvement Project. Hamid Torkamanha, Project Manager, Highway Project Delivery, will be giving a PowerPoint presentation on the status of this project.

**CITY OF LAGUNA HILLS, CALIFORNIA
CITY COUNCIL/PLANNING AGENCY
REGULAR MEETING
MINUTES
JUNE 25, 2013**

GENERAL BUSINESS - CONVENING AT 7:00 PM

CALL TO ORDER

Mayor Kogerman called the Regular Meeting of the City Council of the City of Laguna Hills, California, to order at 7:00 PM in the Laguna Hills City Council Chamber, 24305 El Toro Road, Laguna Hills, California.

PLEDGE OF ALLEGIANCE: Council Member Bressette

ROLL CALL OF CITY COUNCIL MEMBERS

Present: Mayor Kogerman, Council Member Bressette, Council Member Carruth, and Council Member Gilbert

Absent: Mayor Pro Tempore Blount

1. PRESENTATIONS AND PROCLAMATIONS

There were no Presentations and Proclamations.

2. PUBLIC COMMENTS

LAGUNA HILLS HIGH SCHOOL GRAD NIGHT

Meg Gorham, Laguna Hills, gave an update on the Laguna Hills High School Grad Night event.

3. MINUTES

3.1 REGULAR MEETING, JUNE 11, 2013

MOTION TO APPROVE THE MINUTES OF THE JUNE 11, 2013, REGULAR MEETING, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER GILBERT.

APPROVED BY A VOTE OF 3-0-1-1 (MAYOR PRO TEMPORE BLOUNT ABSENT, COUNCIL MEMBER BRESSETTE ABSTAINED).

4. CONSENT CALENDAR

MOTION TO APPROVE THE CONSENT CALENDAR, WITH COUNCIL MEMBER BRESSETTE REMOVING ITEM NO. 4.3, AND MAYOR KOGERMAN REMOVING ITEM 4.5, BY M/COUNCIL MEMBER BRESSETTE, S/COUNCIL MEMBER CARRUTH.

APPROVED BY A VOTE OF 4-0-1 (MAYOR PRO TEMPORE BLOUNT ABSENT).**4.1 WAIVE READING IN FULL OF ALL ORDINANCES AND RESOLUTIONS ON THE AGENDA**

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

4.2 APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED JUNE 25, 2013

THE CITY COUNCIL APPROVED THE WARRANT REGISTER IN THE AMOUNT OF \$842,659.53.

4.4 CIVIC CENTER MANAGEMENT COMMITTEE MEETING TIME

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2013-06-25-1, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AMENDING RESOLUTION NO. 2005-11-22-7, TO CHANGE THE START TIME OF THE CIVIC CENTER MANAGEMENT COMMITTEE MEETINGS.

4.6 CITY OF LAGUNA HILLS DRAFT 2014-2021 HOUSING ELEMENT

THE CITY COUNCIL DIRECTED STAFF TO SUBMIT THE LAGUNA HILLS DRAFT 2014-2021 HOUSING ELEMENT TO THE STATE OF CALIFORNIA, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT.

4.7 ADOPTION OF ANNUAL APPROPRIATIONS LIMIT FOR FISCAL YEAR 2013/14

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2013-06-25-3, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DETERMINING AND ADOPTING AN APPROPRIATIONS LIMIT FOR FISCAL YEAR 2013/14 IN ACCORDANCE WITH ARTICLE XIII B OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AND SECTION 7910 OF THE GOVERNMENT CODE."

4.8 ADOPTION OF A RESOLUTION GRANTING APPROVAL OF A WAIVER OF A 60-DAY NOTICE PERIOD TO THE CITY, BY THE COUNTY OF ORANGE, REGARDING A PROPOSED LEASE EXTENSION AND CONTINUED OCCUPANCY BY OC PROBATION, OF APPROXIMATELY 5,614 SQUARE FEET OF OFFICE SPACE AT PROPERTY LOCATED AT 23141 MOULTON PARKWAY, BUILDING C, SUITE 110, PURSUANT TO GOVERNMENT CODE SECTION 25351

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2013-06-25-4, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, GRANTING APPROVAL OF A WAIVER OF A 60-DAY NOTICE PERIOD TO THE CITY, BY THE COUNTY OF ORANGE, REGARDING A PROPOSED LEASE EXTENSION AND CONTINUED OCCUPANCY BY OC PROBATION, OF APPROXIMATELY 5,614 SQUARE FEET OF OFFICE SPACE AT PROPERTY LOCATED AT 23141 MOULTON PARKWAY, BUILDING C, SUITE 110, PURSUANT TO GOVERNMENT CODE SECTION 25351.

- 4.9 AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH BUREAU VERITAS NORTH AMERICA, INC., FOR ON-CALL CIVIL ENGINEERING AND MANAGEMENT SERVICES

THE CITY COUNCIL APPROVED AMENDMENT NO. 2 TO THE PROFESSIONAL SERVICES AGREEMENT WITH BUREAU VERITAS NORTH AMERICA, INC., FOR ON-CALL CIVIL ENGINEERING AND MANAGEMENT SERVICES AND AUTHORIZED THE CITY MANAGER TO SIGN THE AMENDMENT AND THE CITY CLERK TO ATTEST THERETO.

- 4.10 AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH WILL DAN GROUP, INC., FOR ON-CALL CIVIL ENGINEERING AND MANAGEMENT SERVICES

THE CITY COUNCIL APPROVED AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH WILL DAN GROUP, INC., AND AUTHORIZED THE CITY MANAGER TO SIGN THE AMENDMENT AND THE CITY CLERK TO ATTEST THERETO.

- 4.11 AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH RICHARD FISHER ASSOCIATES FOR ON-CALL LANDSCAPE ARCHITECTURE SERVICES

THE CITY COUNCIL APPROVED AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH RICHARD FISHER ASSOCIATES FOR ON-CALL LANDSCAPE ARCHITECTURE SERVICES AND AUTHORIZED THE CITY MANAGER TO SIGN THE AMENDMENT AND THE CITY CLERK TO ATTEST THERETO.

- 4.12 AWARD OF CONTRACT FOR EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, AND RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172

THE CITY COUNCIL AWARDED THE CONTRACT FOR EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, AND RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172, TO THE APPARENT LOW BIDDER, ALL AMERICAN ASPHALT, IN THE LOW

BASE BID AMOUNT OF \$953,953.30, AND AUTHORIZED THE MAYOR TO SIGN AND THE CITY CLERK TO ATTEST TO THE CONTRACT DOCUMENTS.

- 4.13 PROGRESS PAYMENT NO. 27 FOR LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159, AND APPROVAL OF CONTRACT CHANGE ORDER NO. 7

THE CITY COUNCIL APPROVED CONTRACT CHANGE ORDER NO. 7 AND PROGRESS PAYMENT NO. 27, IN THE NET AMOUNT OF \$28,679.81, TO SEMA CONSTRUCTION, INC., FOR THE LA PAZ ROAD WIDENING AT I-5 IMPROVEMENT PROJECT, CIP NO. 159.

ITEMS REMOVED FROM THE CONSENT CALENDAR

- 4.3 ADOPTION OF REVISED FINANCIAL POLICIES

Council Member Bressette removed Item 4.3 to discuss the proposed changes to the Revised City Council Policy No. 105 - Financial Policies.

THE CITY COUNCIL ADOPTED THE REVISED CITY COUNCIL POLICY NO. 105 - FINANCIAL POLICIES, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER GILBERT.

APPROVED BY A VOTE OF 3-1-1, (COUNCIL MEMBER BRESSETTE VOTING NO, MAYOR PRO TEMPORE BLOUNT ABSENT).

- 4.5 RENEWED MEASURE M (M2) COMPLIANCE REPORTING TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA), AND ADOPTION OF A RESOLUTION CONFIRMING CIRCULATION ELEMENT CONFORMITY WITH THE ORANGE COUNTY MASTER PLAN OF ARTERIAL HIGHWAYS AND OTHER RELATED VERIFICATIONS

Mayor Kogerman removed Item 4.5 to ask Public Services Director Rosenfield about the widening of Paseo de Valenica.

THE CITY COUNCIL APPROVED THE M2 COMPLIANCE SUBMITTAL TO OCTA; AND ADOPTED RESOLUTION NO. 2013-06-25-2, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DECLARING THE CONSISTENCY OF THE CIRCULATION ELEMENT OF THE GENERAL PLAN WITH THE ORANGE COUNTY MASTER PLAN OF ARTERIAL HIGHWAYS AND CONFIRMING THE CONTINUATION OF A TRAFFIC IMPACT MITIGATION FEE PROGRAM, BY M/MAYOR KOGERMAN, S/COUNCIL MEMBER BRESSETTE.

APPROVED BY A VOTE OF 4-0-1 (MAYOR PRO TEMPORE BLOUNT ABSENT).

5. 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 7:32 PM.

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Kogerman, Agency Member Bressette, Agency Member Carruth, and Agency Member Gilbert

Absent: Vice Chair Blount

5.2 PUBLIC COMMENTS

There were no Public Comments.

5.3 MINUTES

5.3.1 REGULAR MEETING, JUNE 11, 2013

MOTION TO APPROVE THE MINUTES OF THE JUNE 11, 2013, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/AGENCY MEMBER GILBERT.

APPROVED BY A VOTE OF 3-0-1-1 (VICE CHAIR BLOUNT ABSENT, AGENCY MEMBER BRESSETTE ABSTAINED).

5.4 ADMINISTRATIVE REPORTS

5.4.1 FISCAL YEAR 2013/2014 AND FISCAL YEAR 2014/2015 CAPITAL IMPROVEMENT PROGRAM CONFORMANCE WITH THE GENERAL PLAN

THE PLANNING AGENCY ADOPTED RESOLUTION NO. PA2013-06-25-1, A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, MAKING A FINDING OF GENERAL PLAN CONSISTENCY FOR THE FISCAL YEAR 2013/2014 AND FISCAL YEAR 2014/2015 PROJECTS OF THE SIX-YEAR CAPITAL IMPROVEMENT PROGRAM, BY M/AGENCY MEMBER BRESSETTE, S/AGENCY MEMBER CARRUTH.

APPROVED BY A VOTE OF 4-0-1 (VICE CHAIR BLOUNT ABSENT).

5.5 PLANNING AGENCY PUBLIC HEARINGS

There were no Public Hearings.

PLANNING AGENCY ADJOURNMENT

Mayor Kogerman reconvened the City Council Meeting at 7:34 PM. All Council Members were present with the exception of Mayor Pro Tempore Blount.

6. CITY COUNCIL PUBLIC HEARINGS

6.1 ADOPTION OF THE 2013-15 BIENNIAL BUDGET INCLUDING THE OPERATING BUDGET, DEBT SERVICE, OTHER FUNDING USES AND THE SIX-YEAR CAPITAL IMPROVEMENT PLAN

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

MOTION TO INCREASE THE COMMUNITY SERVICES BUDGET TO INCLUDE \$25,000 FOR THE PURPOSE OF A FOURTH OF JULY CONCERT IN 2014, BY M/MAYOR KOGERMAN, S/COUNCIL MEMBER BRESSETTE.

MOTION FAILED BY A VOTE OF 1-3-1, (COUNCIL MEMBERS BRESSETTE, CARRUTH, AND GILBERT VOTING NO, MAYOR PRO TEMPORE BLOUNT ABSENT).

MOTION TO ADOPT RESOLUTION NO. 2013-06-25-5, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ADOPTING THE OPERATING BUDGET, CAPITAL IMPROVEMENT PROGRAM, AND OTHER APPROPRIATIONS FOR THE CITY OF LAGUNA HILLS FOR FISCAL YEARS 2013/14-2014/15, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER GILBERT.

APPROVED BY A VOTE OF 3-1-1, (COUNCIL MEMBER BRESSETTE VOTING NO, AND MAYOR PRO TEMPORE BLOUNT ABSENT).

7. ADMINISTRATIVE REPORTS

7.1 City Manager

The City Manager made no reports.

7.2 Assistant City Manager

7.2.1 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING NEW CLASSIFICATIONS AND SALARY RANGES AND BENEFITS FOR POSITIONS WITHIN THE BARGAINING UNIT COVERED BY THE MEMORANDUM OF UNDERSTANDING WITH THE LAGUNA HILLS CITY EMPLOYEES ASSOCIATION

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2013-06-25-6, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING NEW CLASSIFICATIONS AND SALARY RANGES AND BENEFITS FOR POSITIONS WITHIN THE BARGAINING UNIT COVERED BY THE MEMORANDUM OF UNDERSTANDING WITH THE LAGUNA HILLS CITY EMPLOYEES ASSOCIATION, BY M/COUNCIL MEMBER GILBERT, S/COUNCIL MEMBER BRESSETTE.

APPROVED BY A VOTE OF 4-0-1, (MAYOR PRO TEMPORE BLOUNT ABSENT).

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

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

9. CITY COUNCIL MEMBER COMMENTS

COUNCIL MEMBER CARRUTH

Council Member Carruth reported that there was graffiti on a large container located at the Hills Hotel on La Paz Road in Laguna Hills.

Public Services Director Rosenfield stated that he would contact the property owner.

COUNCIL MEMBER BRESSETTE

Council Member Bressette indicated that he had concerns with the adoption of Revised City Council Policy No. 105 – Financial Policies.

MAYOR KOGERMAN

Mayor Kogerman reported on her attendance at the Laguna Hills High School Grad Night Preview event.

Mayor Kogerman hoped everyone would attend and enjoy the 4th of July Event to be held at the Laguna Hills Community Center and Sports Complex.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Kogerman declared the meeting adjourned at 8:25 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: JULY 09, 2013
TO: MAYOR AND COUNCIL MEMBERS
FROM: DONALD J. WHITE, ASSISTANT CITY MANAGER
ISSUE: APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED JULY 09, 2013.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF \$410,141.64.

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

7-2-13

DATE

FISCAL IMPACT:

The warrant register total is \$410,141.64.

ATTACHMENTS:

1. **Warrant Register**

**CITY OF LAGUNA HILLS
WARRANT REGISTER
July 9, 2013**

VENDOR		DESCRIPTION	CHECK NO.	AMOUNT
PREPAID WARRANTS:				
AT&T		Communication Expense, Administrative Services Fax Line, Jun '13	8805580	\$ 70.65
AT&T- CALNET 2		Communication Expense, Alarm System, 2-Way Line, Switchboard, Modem, T-1 Line and Traffic Control, Jun '13	8805582	2,143.82
COLLINS, JAMES		Refund C&D Deposit, CR# 46072	8805592	875.70
COX COMMUNICATION		Communication Expense, Traffic Control, Jun '13 and Wi-Fi Service, City Hall, Jul '13	8805595	309.00
EVERBANK COMMERCIAL FINANCE		Lease - Copier, City Hall, Jun '13	8805603	221.55
HOME DEPOT		Program Supplies, Community Services, Jun - Jul '13	8805608	26.73
IRVINE RANCH WATER DISTRICT		Water Usage, Parks, May '13	8805611	154.22
MAILFINANCE, INC.		Lease, Postage Meter, May - Jul '13	8805617	583.26
MARTIN-RUSK, DINA		Contract Instructor Fee, Zumba Spring Session, Community Services	8805569	333.20
PIXELPUSHERS, INC.		Website Annual Maintenance, 07/01/13 - 06/30/14	8805626	4,110.00
QUIKSILVER COURIER		Delivery Service, May '13	8805629	88.92
REFUND, FACILITY RENTAL DEPOSIT		S. Tagalicon, V# 2002810.002	8805570	500.00
REFUND, FACILITY RENTAL DEPOSIT		G. Crecer, V# 2002812.002	8805571	25.00
REFUND, FACILITY RENTAL DEPOSIT		B. Flores, V# 2002813.002	8805572	490.00
REFUND, FACILITY RENTAL DEPOSIT		K. Launen, V# 2002825.002	8805630	250.00
REFUND, FACILITY RENTAL DEPOSIT		P. Morales, V# 2002826.002	8805631	500.00
REFUND, FACILITY RENTAL DEPOSIT		S. Bolton, V# 2002827.002	8805632	200.00
REYES, JANICE MATEO		Petty Cash Replenishment, Departmental Operating Expenditures, May '13	8805573	700.85
SAN DIEGO GAS & ELECTRIC		Electric Usage, Community Center, Traffic Control and Street Lights, May - Jun '13	8805635	22,180.28
SOCAL OFFICE TECHNOLOGIES		Lease - Copier, Community Services, Jun '13	8805568	798.14
SOUTHERN CALIFORNIA EDISON		Electric Usage, Traffic Control and Street Lights, May - Jun '13	8805638	2,159.53
SPARKLETTES		Operating Supplies, Community Services, May '13	8805574	62.20
TARGET STORES		Program Supplies, Community Services, Jun '13	8805641	12.62

**CITY OF LAGUNA HILLS
WARRANT REGISTER
July 9, 2013**

VENDOR		DESCRIPTION	CHECK NO.	AMOUNT
TIME MANAGEMENT		Race Registration Services, 1/2 Marathon and 5K Event, Community Services, May '13	8805575	11,300.17
TOTALFUNDS BY HASLER		Postage, Meter Replenishment, Jun '13	8805643	1,000.00
U.S. POSTAL SERVICE		Bulk Mail Permit, Annual Fee	8805646	200.00
Total Prepaid Warrants:				\$ 49,295.84
REGULAR WARRANTS:				
A SOURCE OF PRIDE		Office Supplies, Jun '13	8805576	\$ 81.00
A. C. LANDSCAPE, INC.		Water Management Services, Irrigation Repairs, Jun '13	8805577	375.42
AGE WELL SENIOR SERVICES		Florence Sylvester Senior Center Rehabilitation Project, CDBG, Jun '13	8805578	33,856.00
ALISO MEADOWS CONDOMINIUM ASN.		Progress Payment #1 12/13, Aliso Meadows Rehabilitation Project, CDBG, Jun '13	8805650	78,192.00
ALL CITY MANAGEMENT, INC.		Crossing Guard Services, 06/02/13 - 06/15/13	8805579	3,504.00
BEE MAN, THE		Bee Removal, Parks, Jun '13	8805583	400.00
BRAME, MARILYN		Contract Instructor Fee, Drawing Spring Session, Community Services	8805584	98.00
BSN SPORTS		Program Supplies, Community Services, Jun '13	8805585	588.69
BUREAU VERITAS NORTH AMERICA		Professional Services, Community Center Renovation CIP # 513	8805586	2,090.00
C&D ELECTRIC, INC.		Meter Pedestal Replacement, Landscape Maintenance, Jun '13	8805587	2,504.74
CALIFORNIA YELLOW CAB		Dial-a-Taxi Senior Transportation Program, May '13	8805588	950.00
CARR, JANE, PH.D.		Professional Services, Employee Training, May - Jun '13	8805589	2,830.00
CDW GOVERNMENT, INC.		Computer Software, Jun '13	8805590	332.75
CHARLES ABBOTT ASSOCIATES, INC.		Professional Services, Plan Checking and Building & Safety Services, May '13	8805591	14,383.53
COMMUNICATIONS LAB		Professional Svcs, Combined Issue, City Views/Community Services Summer 2013 Activity Guide	8805593	16,984.18
COMPLETE OFFICE OF CALIFORNIA		Office and Program Supplies, Community Center, Jun '13	8805594	1,016.12
DATA TICKET, INC.		Parking Citation Processing Fee, May '13	8805596	445.66
DIAMOND ENVIRONMENTAL SERVICES		Program Expense, 4th of July Event, Community Services	8805597	784.20
ECONOLITE CONTROL PRODUCTS, INC.		Hardware Update, Centracas Traffic Signal System, Public Works, Jun '13	8805598	3,515.41

**CITY OF LAGUNA HILLS
WARRANT REGISTER
July 9, 2013**

VENDOR		DESCRIPTION	CHECK NO.	AMOUNT
ECONOMICS, INC.		Professional Services, Recycling Program, May '13	8805599	2,858.34
EISENBERG, DALE		Contract Instructor Fee, Aikido Spring Session, Community Services	8805600	878.50
ELITE SHOW SERVICES, INC.		Program Expense, 1/2 Marathon and 5K Event, Community Services, May '13	8805601	366.94
ELKINS, CHRISTINA		Contract Instructor Fee, Dancing Spring Session, Community Services	8805602	137.20
FEDERAL EXPRESS CORPORATION		Delivery Services, Jun '13	8805604	80.89
GOVPARTNER		Hosting Fees, Request Partner, Jun '13	8805605	500.00
HARTZOG & CRABILL, INC.		Professional Services, Traffic Engineering Services, May '13	8805606	4,589.91
HINDERLITER, DE LLAMAS & ASSOC		Professional Services, Sales Tax Audit 2nd Qtr '13 and Recovery Fee 4th Qtr '12	8805607	2,245.55
IRON MOUNTAIN OFFSITE		Off Site Data Storage, May '13	8805609	216.59
IRV SEAVER MOTORCYCLES		Motorcycle Maintenance, Police Services, Aug '12	8805610	44.30
JAMEY CLARK, INC.		Miscellaneous Park Repairs and Graffiti Removal, Jun '13	8805612	454.15
JCTEES.COM CORPORATION		Program Supplies, 1/2 Marathon and 5K Event, Community Services, May '13	8805613	2,212.71
JOE A. GONSALVES & SON		Professional Services, Legislative Services, Jul '13	8805614	2,900.00
LUCY, STEVEN		Program Expense, Community Services, Jun '13	8805616	650.00
MERCURY DISPOSAL SYSTEM, INC.		Professional Services, Recycling Program, Jun '13	8805618	257.88
NIEVES LANDSCAPE, INC.		Other Assorted Landscape Services, May - Jun '13	8805619	248.34
OFFICE SOLUTIONS		Office and Operating Supplies, Jun '13	8805620	218.03
ORANGE COUNTY REGISTER		Subscription, City Hall, 6/16/13 - 09/15/13 and Community Center, 6/27/13 - 8/22/13	8805621	281.66
ORANGE COUNTY TREASURER		Law Enforcement Services, 1/2 Marathon and 5K Event, Community Services, May '13	8805615	11,643.33
ORANGE COUNTY TREASURER		Parking Fee Surcharge, May '13	8805623	2,045.00
ORANGE COUNTY TREASURER		Road Maintenance, May '13	8805634	14,705.38
ORANGE COUNTY TREASURER		Traffic Signal Maintenance, Feb '13	8805644	12,158.36
PACIFIC TRAFFIC CONTROL, INC.		Program Expense, 1/2 Marathon and 5K Event, Community Services, May '13	8805622	13,640.00
PARSONS BRINCKERHOFF		Professional Services, La Paz Widening @ I-5 CIP # 159	8805624	2,590.01
PIXELPUSHERS, INC.		City Website Updates, May '13	8805625	1,680.00

**CITY OF LAGUNA HILLS
WARRANT REGISTER
July 9, 2013**

VENDOR	DESCRIPTION	CHECK	
		NO.	AMOUNT
PRIORITY MAILING SYSTEMS, LLC	Office Supplies, Jun '13	8805627	50.84
PYRO ENGINEERING, INC.	Program Expense, 4th of July Event, Community Services	8805628	12,250.00
RICHARD FISHER ASSOCIATES	Professional Services, Plan Checking, La Paz Open Space Riparian Habitat CIP # 615 and On-Call Inspections, Jun '13	8805633	19,928.82
SIGN A RAMA	Program Supplies, 4th of July Event, Community Services	8805636	975.78
SOCAL OFFICE TECHNOLOGIES	Printer Maintenance and Supplies, Jul '13	8805637	625.69
STV INCORPORATED	Professional Services, Paseo de Valencia Widening CIP # 145	8805639	15,884.10
SUNSET PROPERTY SERVICES	Graffiti Removal and Street Sweeping, May - Jun '13	8805640	12,089.57
THE ACTIVE NETWORK	Computer Hardware, Community Services, May '13	8805642	315.36
TURF STAR, INC.	Maintenance, Utility Cart, Community Center, May '13	8805645	268.34
WEST COAST ARBORISTS, INC.	Tree Trimming, May '13	8805647	10,620.80
WOODRUFF, SPRADLIN & SMART	Professional Services, Legal, May '13	8805648	46,815.10
XEROX CORPORATION	Lease - Copier, City Hall, Jun '13	8805649	486.63
Total Regular Warrants:		\$	360,845.80
**WARRANT REGISTER TOTAL **		\$	410,141.64



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 09, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AS SET FORTH IN SECTION 414(H)(2) OF THE INTERNAL REVENUE CODE (IRC) AND RESCINDING RESOLUTION NO. 2008-12-09-5

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AS SET FORTH IN SECTION 414(H)(2) OF THE INTERNAL REVENUE CODE (IRC) AND RESCINDING RESOLUTION NO. 2008-12-09-5."

SUMMARY:

Under the terms of the Memorandum of Understanding (MOU) with the Laguna Hills City Employees Association (LHCEA), beginning July 1, 2013, LHCEA represented employees shall pay .075% toward the City's normal cost rate of its pension program with CalPERS. Under Resolution No. 2008-12-09-5, which implemented IRC Section 414(h)(2), Section 5 states "*that the amount of the contribution designated as employee contributions and paid by the City to CalPERS on behalf of an employee shall be the entire contribution required of the employee.*" Since the terms of the MOU will require represented employees to begin paying a portion of the City's normal cost rate, it is necessary for the City Council to rescind Resolution No. 2008-12-09-5 and adopt the attached Resolution, to mirror the terms of the MOU.

BACKGROUND:

On December 18, 1993, the City Council authorized participation in the CalPERS 401(a) defined benefit retirement plan, as set forth in Section 3:I.A of Resolution No. 92-07-14-3,

which states the City “*shall join the State Public Employees Retirement System (PERS) and pay all employee contributions to PERS as deferred income*”. Under IRC Section 3401 (a)(12)(A), employee contributions to a 401(a) plan are includable in the income of the employee, and therefore, are considered “after-tax” contributions and reportable as W-2 wages. IRC Section 414(h)(2) creates an exception for employee contribution to government pension plans, which allows all employee contributions (either employer paid or employee deducted) to be considered as “pre-tax” (not includable as employee income). On December 9, 2008, the City passed Resolution No. 2008-12-09-5, documenting the provision of IRC Section 414(h)(2).

At the City Council meeting on November 27, 2012, the City Council approved and authorized the City Manager to execute the MOU between the City and the LHCEA. Under the terms of the MOU, beginning July 1, 2013, employees represented by the LHCEA shall pay .075% toward the City’s normal cost rate of its pension program with CalPERS. This will increase to 1.5% on July 1, 2014, and again to 2.25% on July 1, 2015.

Under Resolution No. 2008-12-09-5, which implemented IRC Section 414(h)(2), Section 5 states “*that the amount of the contribution designated as employee contributions and paid by the City to CalPERS on behalf of an employee shall be the entire contribution required of the employee.*” Since the terms of the MOU will require represented employees to begin paying a portion of the City’s normal cost rate of its pension program with CalPERS, effective July 1, 2013, it is necessary that the City Council rescind Resolution No. 2008-12-09-5 and adopt the attached Resolution, to reflect the terms of the MOU.

FISCAL IMPACT:

There is no fiscal impact associated with the adoption of the attached Resolution.

ATTACHMENTS:

- Resolution

RESOLUTION NO. 2013-07-09-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM AS SET FORTH IN SECTION 414(H)(2) OF THE INTERNAL REVENUE CODE (IRC) AND RESCINDING RESOLUTION NO. 2008-12-09-5

WHEREAS, the City of Laguna Hills has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

WHEREAS, the Board of Administration of the California Public Employees' Retirement System (CalPERS) adopted its resolution regarding section 414(h)(2) IRC on September 18, 1985; and

WHEREAS, the Internal Revenue Service has stated in December 1985, that the implementation of the provisions of section 414(h)(2) IRC pursuant to the Resolution of the Board of Administration would satisfy the legal requirements of section 414(h)(2) IRC; and

WHEREAS, the City of Laguna Hills has the authority to implement the provisions of IRC section 414(h)(2) and has determined that even though implementation is not required by law, the tax benefit offered by this section should be provided to those employees who are members of CalPERS consistent with the provisions of the City's Classification and Salary Resolution and the Memorandum of Understanding with the Laguna Hills City Employees Association.

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

SECTION 1. That the City of Laguna Hills will implement the provisions of IRC section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to the California State Government Code section 20691 to CalPERS on behalf of its employees who are members of CalPERS. "Employee contributions" shall mean those contributions reported to CalPERS which are deducted from the salary of employees and are credited to individual employee accounts pursuant to California Government Code section 20691, thereby resulting in tax deferral of employee contributions.

SECTION 2. That the contributions made by the City of Laguna Hills to CalPERS, although designated as employee contributions, are being paid by the City of Laguna Hills, in part or in whole, in lieu of contributions by certain categories of employees who are members of CalPERS consistent with the provision of the City's Classification and Salary Resolution and the Memorandum of Understanding with the Laguna Hills City Employees Association.

SECTION 3. That the employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the City of Laguna Hills to CalPERS.

SECTION 4. That the City of Laguna Hills shall pay to CalPERS the contributions designated as employee contributions from the same source of funds as used in paying salary, thereby resulting in tax deferral of employee contributions.

SECTION 5. That the amount of the contributions designated as employee contributions, paid in accordance with the City's Classification and Salary Resolution and the Memorandum of Understanding with the Laguna Hills City Employees' Association, shall be the entire contribution required of the employee by the Public Employees' Retirement Law (California Government Code sections 20000, et seq.).

SECTION 6. That the contributions designated as employee contributions made by the City of Laguna Hills to the Public Employees' Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the Public Employees' Retirement System.

SECTION 7. This Resolution rescinds and replaces Resolution No. 2008-12-09-5.

PASSED, APPROVED, AND ADOPTED this 9th day of July, 2013.

BARBARA D. 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 is a true and correct copy of Resolution No.
2013-07-09-X adopted by the City Council of the City of Laguna Hills, California, at a
Regular Meeting thereof held on the 9th day of July, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

PEGGY J. JOHNS, CITY CLERK



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND CITY COUNCILMEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: AUTHORIZATION TO LEASE CITY VEHICLE

RECOMMENDATION: THAT THE CITY COUNCIL AUTHORIZE THE COMMENCEMENT OF THE PROCUREMENT PROCESS FOR A LEASED CITY VEHICLE.

SUMMARY:

The lease of a city vehicle was included in the Biennial Budget for FY 2013/14 – 2014/15. The City Council is requested to authorize the commencement of the leasing process at this time. Upon approval, the Purchasing Officer will initiate the acquisition process, pursuant to Chapter 3-08.130 of the Laguna Hills Municipal Code. Once acquired, the leased city vehicle will replace the 2005 Ford Explorer currently assigned to the Assistant City Manager.

BACKGROUND:

The City Council amended the City's purchasing procedures by the adoption of Ordinance No. 2011-1 on February 22, 2011. One of the revisions to the purchasing procedures was the addition of a new requirement to seek City Council authorization prior to beginning the procurement process for the purchase of any vehicle with a value greater than twenty thousand (\$20,000). The new Chapter reads as follows:

“3-08.130 Vehicle purchases.

Any vehicle(s) with an estimated value greater than twenty thousand dollars (\$20,000.00) to be purchased by the city shall be approved in advance by the City Council prior to commencement of the procurement process.”

The Biennial Budget for FY 2013/14 – 2014/15 includes funding for the lease of a new vehicle to be assigned to the Assistant City Manager: \$6,065 in FY 2013/14, and \$5,220 in

Authorization to Lease City Vehicle

Page 2

July 9, 2013

FY 2014/15. These estimates were based on a thirty six (36) month lease of a Mazda model CX-9 or equivalent model.

After acquisition of the new leased vehicle, the 2005 Ford Explorer will be added to the City's current fleet of pool vehicles.

FISCAL IMPACT:

The lease of this City vehicle was included in the Biennial Budget for FY 2013/14-2014/15. The estimated cost of this proposed lease is within budget.



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: ADOPTION OF THE 2013-14 CIVIC CENTER BUDGET

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE AND ADOPT THE 2013-14 CIVIC CENTER BUDGET.

SUMMARY:

Prior to this City Council meeting, the Civic Center Management Committee reviewed the proposed 2013-14 Civic Center Budget. If any amendments are made to the proposed budget by the Committee, the item will be pulled from the Consent Calendar for discussion. The budget projects net operating income of \$62,838 and an overall positive net impact on the General Fund of \$252,183.

BACKGROUND:

Attached to this agenda report is the proposed budget for fiscal year 2013-14. This budget is based on the following leasing assumptions:

- Suite 100 will remain vacant.
- Suite 201 will lease up effective January 1, 2014.
- Suite 205 will remain vacant.
- Suite 220 will lease up effective September 1, 2013.

These assumptions are significant since they can trigger not only the start of a revenue stream, but also tenant improvement and leasing commission costs. Budgeted tenant improvement costs and leasing commissions total \$59,224 in the first year and \$29,797 in the second year.

There is one capital project slated for this fiscal year. The parking lots will be repaved and striped. The back parking lot will be completely renovated. This capital project has a budget of \$92,454 and will be funded through the City's Civic Center reserve fund.

FISCAL IMPACT:

The budget projects net operating income of \$62,838 and an overall positive net impact on the General Fund of \$252,183. Even so, the budgeted net cash flow is a negative (-\$46,049) resulting from \$181,475 in one-time capital expenditures. Staff will closely monitor this situation and inform the Civic Center Committee should it become necessary to request a contribution from the City's General Fund.

ATTACHMENTS:

- 2013-14 Civic Center Budget

Laguna Hills Civic Center
2013-14 Budget

	Adopted Budget 2012-13	Estimated Actuals 2012-13	Proposed Budget 2013-14
Rental Income	1,049,046	1,081,198	1,049,952
Contra Revenue	(549,965)	(549,965)	(549,965)
CAM Income	56,193	55,326	54,853
Contra CAM	(49,765)	(41,298)	(48,267)
CAM Rec Revenue	-	9,490	-
Other	3,115	3,363	-
Total Revenue	508,624	558,114	506,573
Direct Operating Expenses	(407,784)	(415,737)	(443,735)
Net Operating Income	\$ 100,840	\$ 142,377	\$ 62,838
Indirect Operating Expenses	(19,066)	(25,157)	(19,866)
Net Income	81,774	117,220	42,972
Capital Expenses	(191,984)	(207,407)	(181,475)
Net Cash Flow After Capital	(110,210)	(90,187)	(138,503)
General Fund Contribution			
Capital Reserve Fund	101,233	101,233	92,454
Grant Monies			
Enterprise Fund Cash			
Distribution to General Fund	-	-	-
Civic Center Net Cash Flow	(8,977)	11,046	(46,049)
General Fund Impact			
Add Back Contra Revenue	599,730	591,263	598,232
Less Debt Service	(300,000)	(300,000)	(300,000)
Add Back GF Distribution	-	-	-
Net General Fund Impact + (-)	\$ 290,753	\$ 302,309	\$ 252,183



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

**ISSUE: APPROVE PROPOSED LEASE AGREEMENT FOR 24031 EL TORO ROAD,
SUITE 260, LAGUNA HILLS, CALIFORNIA, WITH THE LAW OFFICES OF
RICK J. FINELLI, LLP**

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED
LEASE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 260, LAGUNA HILLS,
CALIFORNIA WITH THE LAW OFFICES OF RICK J. FINELLI, LLP AND AUTHORIZE
THE CITY MANAGER TO EXECUTE THE PROPOSED LEASE AGREEMENT.**

SUMMARY:

The Law Offices of Rick J. Finelli, LLP have been a long standing tenant at the Laguna Hills Civic Center. They originally occupied the building in the mid-1990's and were tenants when the City purchased the building in 2002. They presently occupy 2,996 square feet in Suite 260. Their current 8-year lease term began on June 1, 2007 and will expire on May 31, 2015. There are two years left on the lease and their current rental rate is \$2.70 per square foot. The City's current asking rate is \$1.95.

The City was approached by the tenant who wanted to renegotiate their current rent down closer to market. Staff agreed as long as they would commit to a new 7-year term. The following rate structure was negotiated:

2013-14:	\$2.20
2014-15:	\$2.20
2015-16:	\$2.00
2016-17:	\$2.05
2017-18:	\$2.10
2018-19:	\$2.15
2019-20:	\$2.20

The proposed lease also provides the tenant with one month of free rent in 2015-16, 2016-17, and 2017-18. There is also a tenant allowance of \$15,000 for the tenant to use toward improvements over the course of the lease.

FISCAL IMPACT:

This lease will generate \$517,444 in rental income over the next seven years. Accounting for upfront costs, including \$37,749 in abated rental income over the next two years, and utilizing a discount rate of 12%, the net present value on this lease is \$208,375.

ATTACHMENTS:

- Lease for 24031 El Toro Road, Suite 260, Laguna Hills, California.



STANDARD MULTI-TENANT OFFICE LEASE - GROSS

AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only July 9, 2013, is made by and between The City of Laguna Hills ("Lessor") and The Law Offices of Rick J.Fenelli, LLP

(collectively the "Parties", or individually a "Party").

1.2(a) **Premises:** That certain portion of the Project (as defined below), known as Suite Numbers(s) 260 2nd floor(s), consisting of approximately 2,996 rentable square feet and approximately useable square feet ("Premises"). The Premises are located at: 24031 El Toro Road in the City of Laguna Hills, County of Orange, State of California, with zip code 92654. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." The Project consists of approximately 51,946 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** N/A unreserved and N/A reserved vehicle parking spaces at a monthly cost of \$N/A per unreserved space and \$ N/A per reserved space. (See Paragraph 2.6)

1.3 **Term:** 7 years and 84 months ("Original Term") commencing July 1, 2013 ("Commencement Date") and ending May 31, 2020 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$6,591.20 per month ("Base Rent"), payable on the 1st day of each month commencing July 1, 2013. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph Addendum

1.6 **Lessee's Share of Operating Expense Increase:** 5.77% percent (5.77%) ("Lessee's Share"). In the event that that size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

- (a) **Base Rent:** \$6,591.20 for the period July 1-31, 2013.
- (b) **Security Deposit:** \$7,535.40 on file to remain ("Security Deposit"). (See also Paragraph 5)
- (c) **Parking:** \$N/A for the period N/A.
- (d) **Other:** \$N/A for N/A.
- (e) **Total Due Upon Execution of this Lease:** \$6,591.20.

1.8 **Agreed Use:** LAW OFFICE; GENERAL OFFICE

(See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2013. Lessor is the "Insuring Party". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- ☒ Essex Realty Management represents Lessor exclusively ("Lessor's Broker");
- ☐ _____ represents Lessee exclusively ("Lessee's Broker"); or
- ☐ _____ represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in to in ~~the attached~~ a separate written agreement. ~~or if no such agreement is attached, the sum of _____ or _____ % of the total Base Rent payable for the Original Term, the sum of _____ or _____ of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term, and/or the sum of _____ or _____ % of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises.~~

1.11 **Guarantor.** The obligations of the Lessee under this Lease shall be personally guaranteed by Rick J. Fenelli

("Guarantor"). (See also Paragraph 37)

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 2:00 p.m. on Saturdays (except Building Holidays). "Building Holidays" shall mean the dates of observation of New

Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and N/A

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

- ☐ Janitorial services
- ☐ Electricity
- ☐ Other (specify): N/A

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs 1 through 6 ;
- ☒ a plot plan depicting the Premises;Exhibit "A"
- ☒ a current set of the Rules and Regulations; Exhibit "B"
- ☒ a Work Letter; Exhibit "D"
- ☐ a janitorial schedule;
- ☒ other (specify): Exhibit "C" Waiver and Release

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law.

2.3 **Compliance.** Lessor warrants to the best of its knowledge that the improvements comprising the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to nonvoluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** So long as Lessee is not in default, and subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.

2.7 **Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general nonexclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including, but not limited to, common entrances, lobbies, corridors, stairwells, public restrooms, elevators, parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the nonexclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the

terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;
- (b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;
- (c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;
- (d) To add additional buildings and improvements to the Common Areas;
- (e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and
- (f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (~~Paragraph 8.2 & 8.3 of this Lease, see Addendum Paragraph 3~~ **8-5**). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "**Operating Expense Increase**", in accordance with the following provisions:

- (a) "**Base Year**" is as specified in Paragraph 1.9.
- (b) "**Comparison Year**" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.
- (c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "**Operating Expenses**" :
 - (i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:
 - (aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;
 - (bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.
 - (cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.
 - (ii) The cost of trash disposal, janitorial and security services, pest control services, and the costs of any environmental inspections;
 - (iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";
 - (iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;
 - (v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;
 - (vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;
 - (vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;
 - (viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;
 - (ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.
 - (x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.
- (d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expense Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.

(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$7525 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.** *(See Addendum)*

~~6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.~~

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its

agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. Lessee shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any improvements with the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses); Increase), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed \$2000. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with asbuilt plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to

Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. ~~(See Addendum)~~ **Insurance; Indemnity.**

~~8.1 Insurance Premiums.~~ The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

~~8.2 Liability Insurance.~~

~~(a) Carried by Lessee.~~ Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an **"insured contract"** for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

~~(b) Carried by Lessor.~~ Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

~~8.3 Property Insurance - Building, Improvements and Rental Value.~~

~~(a) Building and Improvements.~~ Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

~~(b) Rental Value.~~ Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days (**"Rental Value insurance"**). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

~~(c) Adjacent Premises.~~ Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

~~(d) Lessee's Improvements.~~ Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

~~8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.~~

~~(a) Property Damage.~~ Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

~~(b) Worker's Compensation Insurance.~~ Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.

~~(c) Business Interruption.~~ Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils. -

~~(d) No Representation of Adequate Coverage.~~ Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

~~8.5 Insurance Policies.~~ Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

~~8.6 Waiver of Subrogation.~~ Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

~~8.7 Indemnity.~~ Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

~~8.8 Exemption of Lessor and its Agents from Liability.~~ Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of

paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in ~~Paragraph Sections 8.1 & 8.2 of this Lease, (see Addendum, Paragraph 3)~~ **Paragraph 8.3(a)**, irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in ~~Paragraph Section 8.3 of this Lease (see Addendum, Paragraph 3)~~ **8.6.**

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definitions.** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. **"Real Property Taxes"** shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied

or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.**

11.1 **Services Provided by Lessor.** Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement light bulbs and/or fluorescent tubes and ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the Premises and Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to kitchens or storage areas included within the Premises.

11.2 **Services Exclusive to Lessee.** Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. If a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service.** Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee.** Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading.

11.5 **Interruptions.** There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach

exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in ~~Paragraph~~ *Sections 8.1 & 8.2 of this Lease (see Addendum, Paragraph 3)* ~~is~~ is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies..** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair

and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for nonscheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to nonscheduled payments. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.** *(See Addendum)*

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

~~(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.~~

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 ~~**Additional Commission.** If a separate brokerage fee agreement is attached then in addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.~~

~~15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIRCommercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a

different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) **THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.**

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: **To the Lessor:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. **To the Lessee and the Lessor:** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. **To the Lessee:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. **To the Lessee and the Lessor:** a. Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lesser or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advise is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Devise to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and

Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "**Option**" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. **Reservations.**

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid

"under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable nonmonetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

49. ~~(See Addendum) **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.~~

50. *Tenant Improvement Allowance. Lessor shall provide Lessee with a \$15,000.00 Tenant Improvement Allowance to be used for improvements to the Premises. This one time allowance may be used at any time during the term of this Lease.*

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

- 1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.**
- 2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.**

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: 24031 El Toro Road, Suite 100
On: _____

Executed at: 24031 El Toro Road, Suite 260
On: _____

By LESSOR:

The City of Laguna Hills

By LESSEE:

The Law Offices of Rick J. Fenelli, LLP

By: _____
Name Printed: Bruce E Channing
Title: City Manager

By: _____
Name Printed: Rick J. Fenelli
Title: Partner

By: _____
Name Printed: Peggy Johns
Title: City Clerk
Address: 24031 El Toro Road, Suite 200
Laguna Hills, CA 92653

By: _____
Name Printed: Amy Fenelli-Ciftcikara
Title: Partner
Address: _____

Telephone:(____) _____
Facsimile:(____) _____
Federal ID No. _____

Telephone:(____) _____
Facsimile:(____) _____
Federal ID No. _____

LESSOR'S BROKER:

Essex Realty Management Inc.

LESSEE'S BROKER:

Attn: _____
Address: _____

Attn: Sandi Montez
Address: 111 Corporate Drive, Suite 110
Ladera Ranch, CA 92694

Telephone:(949) 218-3801
Facsimile:(949) 218-3804

Telephone:(____) _____
Facsimile:(____) _____

Broker/Agent DRE License #: 00965485

Broker/Agent DRE License #:

Approved as to Form:

By:Gregory E Simonian, City Attorney

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

©Copyright 1999-By AIR Commercial Real Estate Association.
All rights reserved.
No part of these works may be reproduced in any form without permission in writing.

ADDENDUM TO LEASE

THIS ADDENDUM TO LEASE (this “Addendum”) shall constitute part of that certain STANDARD MULTI-TENANT OFFICE LEASE – GROSS (“Lease”), dated as of July 9, 2013, between The City of Laguna Hills (“Lessor”), and The Law Offices of Rick J. Fenelli, LLP (“Lessee”). The terms of this Addendum shall be incorporated into the Lease for all purposes. In the event of any conflict between the terms of the Lease and the terms of this Addendum, the terms of this Addendum shall control.

1. Base Rent Increase.

4.4 Base Rent Increase

4.4.1 The monthly Base Rent payable as defined in paragraph 4.1 and as set forth in paragraph 1.7 (a) of the Lease shall be adjusted annually on the commencement date of the Lease to the amounts set forth below:

7/1/13 – 6/30/15	\$6,591.20 (\$2.20psf)
7/1/15 – 7/31/15	1/Mo Free (\$5,992.00)
8/1/15 – 6/30/16	\$5,992.00 (\$2.00psf)
7/1/16 – 7/31/16	1/Mo Free (\$6,141.80)
8/1/16 – 6/30/17	\$6,141.80 (\$2.05psf)
7/1/17 – 7/31/17	1/Mo Free (\$6,291.60)
8/1/17 – 6/30/18	\$6,291.60 (\$2.10psf)
7/1/18 – 6/30/19	\$6,441.40 (\$2.15psf)
7/1/19 – 5/31/20	\$6,591.20 (\$2.20psf)

2. Use. Section 6.1 of the Lease is hereby deleted in its entirety and replaced by the following:

“6.1. Use. The Premises shall be used only for the Agreed Use and for no other use. Lessee’s use of the Premises shall be in compliance with and subject to all Applicable Requirements relating to or affecting the Project, the Premises or the Building or the use or operation thereof, whether now existing or hereafter enacted, including, without limitation, the Americans with Disabilities Act of 1990, 42 USC 12111 et seq. (the “ADA”) as the same may be amended from time to time, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of courts, ordinances, rules, codes, orders, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to Lessee, the Premises, the Building, or the Project (“Environmental Laws”), any transportation or traffic management plan in satisfaction of any requirement imposed on the Project by a governmental agency with jurisdiction over the Project, and any CC&Rs or any supplement thereto recorded in any official or public records with respect to the Project or any portion thereof (collectively, “Applicable Laws”). Lessee shall be responsible for obtaining any permit, business license, or other permits or licenses required by any governmental agency permitting Lessee’s use or occupancy of the Premises. Lessee shall not commit waste, overload the floors or structure of the Building, subject the Premises, the Building, the Common Area or the Project to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Lessor shall not be responsible for non-compliance by any other tenant or occupant of the Project with, or Lessor’s failure to enforce, any of the rules or regulations or CC&Rs or any other terms or provisions of such tenant’s or occupant’s lease. Lessee shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Lessee shall not do any act which shall in any way encumber the title of Lessor in and to the Premises, the Building or the Project.

3. Insurance; Indemnity. Sections 8.1 through 8.6 of the Lease are hereby deleted in their entirety and replaced by the following:

“8.1 Lessor’s Insurance. Lessor shall maintain insurance through individual or blanket policies insuring the Building against fire and extended coverage (including, if Lessor elects, “all risk” coverage, earthquake/volcanic action, flood and/or surface water insurance) for the full replacement cost of the Building, with deductibles and the form and endorsements of such coverage as selected by Lessor, together with rental abatement insurance against loss of Rent in an amount equal to the amount of Rent for a period of at least twelve (12) months commencing on the date of loss. Lessor may also carry such other insurance as Lessor may deem prudent or advisable, including, without limitation, liability

insurance in such amounts and on such terms as Lessor shall determine. Lessee shall pay to Lessor, as a portion of the Operating Expenses, the costs of the insurance coverages described herein, including, without limitation, Lessor's cost of any self-insurance deductible or retention.

8.2 Lessee's Insurance. Lessee shall, at Lessee's expense, obtain and keep in force at all times the following insurance:

(a) Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate per location if Lessee has multiple locations, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations with an "Additional Insured Managers or Lessors of Premises Endorsement" and personal and advertising injury coverage, with deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Lessee shall provide for restoration of the aggregate limit, and provided that the policy shall not contain any intra insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under the Lease as an "insured contract" for the performance of Lessee's indemnity obligations under the Lease;

(b) Automobile Liability Insurance. Comprehensive automobile liability insurance having a combined single limit of not less than Two Million Dollars (\$1,000,000) per occurrence and insuring Lessee against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

(c) Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Lessee in the conduct of its operations on the Premises (including the all states endorsement and, if applicable, the volunteers endorsement), together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000);

(d) Property Insurance. "Special Form" property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any of Lessee's personal property, fixtures, equipment and alterations, including electronic data processing equipment (collectively "Lessee's Property") (and coverage for the full replacement cost thereof including business interruption of the Lessee), together with, if the property of Lessee's invitees is to be kept in the Premises, warehouseman's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located on the Premises.

(e) Business Interruption. Loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all peril commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

8.3 General.

(a) Insurance Companies. Insurance required to be maintained by Lessee shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least "A-" (or such higher rating as may be required by a lender having a lien on the Premises) and a financial rating of no less than VII as set forth in the most current issue of "Best's Insurance Guide."

(b) Certificates of Insurance. Lessee shall deliver to Lessor certificates of insurance and endorsements for all insurance required to be maintained by Lessee in the form acceptable to Lessor no later than seven (7) days prior to the date of possession of the Premises. Lessee shall, at least ten (10) days prior to expiration of the policy, furnish Lessor with certificates of renewal or "binders" thereof. If Lessee fails to maintain any insurance required in the Lease, Lessee shall be liable for all losses and costs suffered or incurred by Lessor (including litigation costs and attorneys' fees and expenses) resulting from said failure.

(c) Additional Insureds. Lessor, Lessor's lender, and any property management company of Lessor for the Premises shall be named as additional insureds (utilizing ISO Form CG2010 (11/85) or its equivalent) under all of the policies required by section 8.2(a). The policies required under Section 8.2(a) shall provide for severability of interest.

(d) Primary Coverage. All insurance to be maintained by Lessee shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from insurance of Lessor. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess

coverage will drop down as primary insurance. The limits of insurance maintained by Lessee shall not limit Lessee's liability under the Lease.

(e) Waiver of Subrogation. Notwithstanding any other provisions of the Lease, Lessee and Lessor each waive all rights to recover damages against the other, for loss or damage caused by fire and other perils and any other risk to the extent covered by policies of insurance or required to be covered by policies of insurance which are required to be carried in accordance with this Lease. This provision is intended to waive fully, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverages obtained by each of Lessee and Lessor pursuant to the Lease shall include, without limitation, a waiver of subrogation endorsement attached to the certificate of insurance.

(f) Notification of Incidents. Lessee shall notify Lessor within twenty-four (24) hours after the occurrence of any accidents or incidents in the Premises, the Building, Common Areas or the Project which could give rise to a claim under any of the insurance policies required under this Section 8.

4. Breach by Lessor; Performance by Lessee on Behalf of Lessor. Section 13.6(b) of the Lease is hereby deleted in its entirety and replaced with the following:

“13.6(b). Lessee's Remedies. Lessee and all successors and assigns covenant and agree that, in the event of any actual or alleged default by Lessor, Lessee's sole and exclusive remedy shall be either to seek either specific performance or monetary damages, provided that Lessor shall not be liable for loss of business profits or consequential damages, and provided further, that any recourse for monetary damages by Lessee against Lessor shall be limited solely and exclusively to an amount which is equal to the amounts paid by Lessee to Lessor under the Lease (and Lessee hereby expressly waives and releases personal liability of Lessor in excess of such amount on behalf of itself and all persons claiming by through, or under the lease) Further, in no event shall the obligations of Lessor under the Lease constitute the personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall have no right to seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for the satisfaction of any liability of Lessor with respect to the Lease. Lessee expressly waives all remedies except those specifically set forth in the Lease, including, without limitation, any right of offset or abatement except as specifically set forth in the Lease, any right to terminate the Lease under Civil Code Sections 1932(2), 1933(4) and 1941 or any other successor statute, or any statutory, legal or equitable self-help remedy including, without limitation, Civil Code Section 1942 or any other current or future law. Nothing contained in the Lease shall entitle Lessee to terminate the Lease as a result of Lessor's default nor excuse Lessee from paying Rent or Additional Rent due hereunder.”

5. Americans with Disabilities Act. Section 49 of the Lease is hereby deleted in its entirety and replaced by the following:

49. Accessibility; Americans with Disabilities Act. (a) The Premises: ☐ have not undergone an inspection by a Certified Access Specialist (CASP). ☐ have undergone an inspection by a Certified Access Specialist (CASP) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. ☐ have undergone an inspection by a Certified Access Specialist (CASP) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. (b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

6. Estoppel Certificates. All references in the Lease to “Estoppel Certificate”, including, but not limited to the definition in Section 16(a), shall refer to Lessor's standard form certificate.

7. Recordation. Lessee shall not have any right to cause the Lease or any short form or memorandum thereof to be recorded.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of the Lease.

“Lessor”

THE CITY OF LAGUNA HILLS

By: Bruce E. Channing

By: _____
Its: City Manager

By: Peggy Johns

By: _____
Its: City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

“Lessee”

The Law Offices of Rick J. Fenelli, LLP

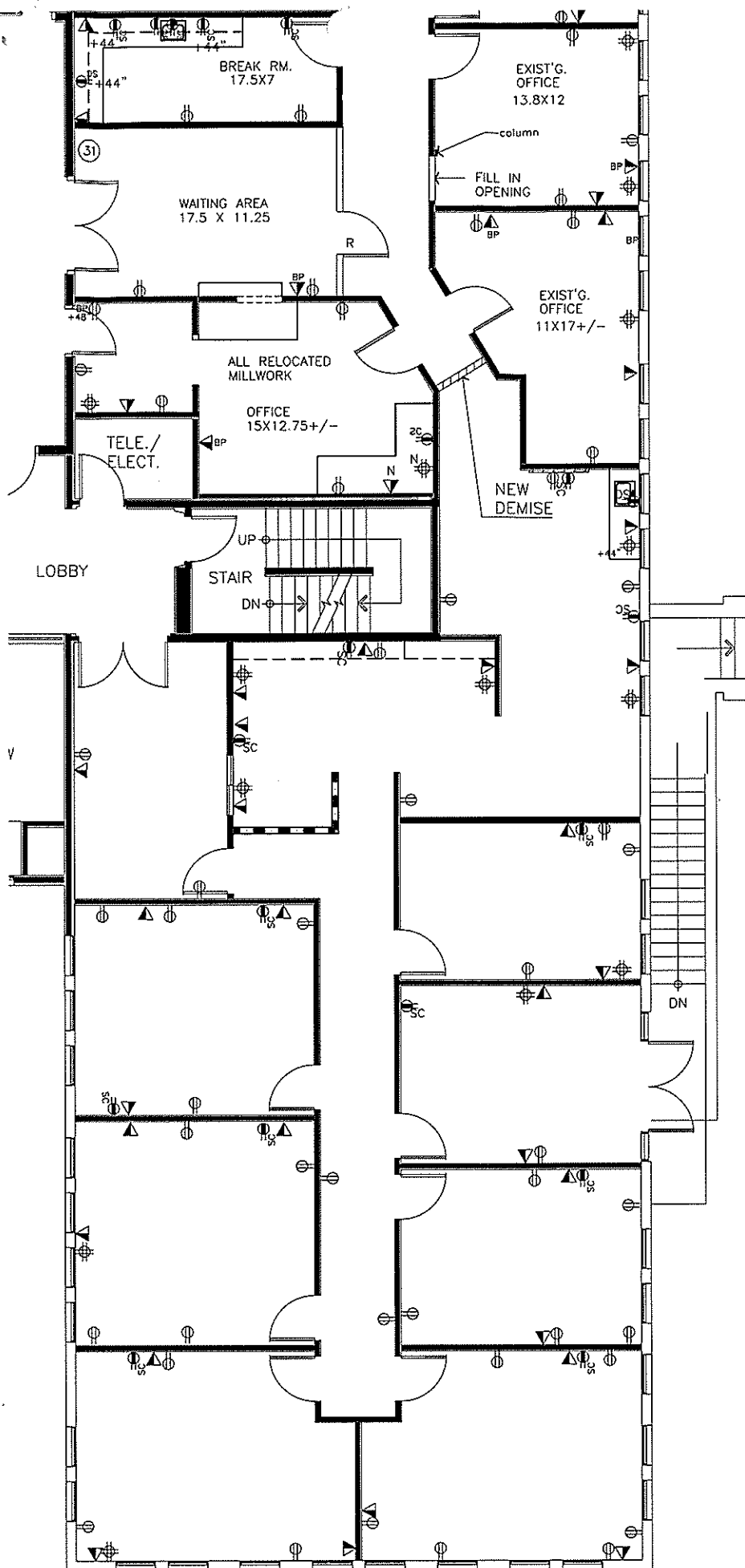
By: _____
Rick J. Fenelli

Its: Partner _____

The Law Offices of Rick J. Fenelli, LLP

By: _____
Amy Fenelli-Ciftcikara

Its: Partner _____



WINDSTONE
EXPANSION
SP-2
478 USF
566 RSF
5/10/11

FINELLI
STE 260
2530 USF
2996 RSF
5/10/11

EXHIBIT B

RULES AND REGULATIONS

ATTACHED TO AND MADE A PART OF STANDARD OFFICE LEASE

The following Rules and Regulations shall be in effect at the Office Building Project. Lessor reserves the right to adopt reasonable modifications and additions hereto. In the case of any conflict between these Rules and Regulations and the Lease, the Lease shall be controlling.

1. Except with the prior written consent of Lessor, no Lessee shall conduct any retail sales or any manufacturing of any kind in or from the Premises, or any business other than that specifically provided for in the Lease.

2. Lessor reserves the right to prohibit personal goods and services vendors from access to the Office Building Project except upon such reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Office Building Project, the preservation of good order thereon, and the relief of any financial or other burden on Lessor occasioned by the presence of such vendors or the sale by them of personal goods or services to the Lessee or its employees. If reasonably necessary for the accomplishment of these purposes, Lessor may exclude a particular vendor entirely or limit the number of vendors who may be present at any one time in the Office Building Project. The term "personal goods or services vendors" means persons who periodically enter the Office Building Project of which the Premises are a part for the purpose of selling goods or services to a Lessee, other than goods or services, which are used by a lessee only for the purpose of conducting its business on the Premises. "Personal goods or services" include, but are not limited to, drinking water and other beverages, food, barbering services, and shoe shining services. This Section 2 shall not apply to Lessee's vendors and suppliers in connection with Lessee's operation of its business.

3. The sidewalks, halls, passages, elevators and stairways shall not be obstructed by any Lessee or used by it for any purpose other than for ingress to and egress from their respective Premises. The halls, passages, entrances, elevators, stairways, balconies and roof are not for the use of the general public, and Lessor shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Lessor shall be prejudicial to the safety, character, reputation and interests of the Office Building Project and its lessees, provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals only for the purpose of conducting its business on the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. No Lessee and no employees of any Lessee shall go upon the roof of the Building without the written consent of Lessor. This Section 3 shall not apply to Lessee's vendor's suppliers in connection with Lessee's operation of its business.

4. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage, resulting from the violation of this rule shall be borne by the Lessee who, or whose clerks, agents, employees, or visitors, shall have caused it.

5. No sign, advertisement or notice visible from the exterior of the Premises or Building shall be inscribed, painted or affixed by Lessee on any part of the Office Building Project or the Premises without the prior written consent of Lessor. If Lessor shall have given such consent at any time, whether before or after the execution of this Lease, such consent shall in no way operate as a waiver or release of any of the

provisions hereof or of this Lease, and shall be deemed to relate only to the particular sign, advertisement or notice so consented to by Lessor and shall not be construed as dispensing with the necessity or obtaining the specific written consent of Lessor with respect to each and every such sign, advertisement or notice, as the case may be, so consented to by Lessor. Lessor shall have the right to remove any non-approved sign, advertisement or notice, without notice to and at the expense of Lessee, and Lessor shall not be liable in damages for such removal.

6. In order to maintain the outward professional appearance of the Office Building Project all window coverings to be installed at the Premises shall be subject to Lessor's prior approval. If Lessor, by a notice in writing to Lessee, shall object to any curtain, blind, shade or screen attached to or hung in, or used in connection with, any window door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by Lessee. No awnings shall be permitted on any part of the Premises.

7. Lessee shall not lay linoleum, tile, carpet or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Lessor.

8. Lessee shall not do or permit anything to be done in the Premises, or bring or keep anything therein, which shall in any way increase the rate of fire insurance on the Office Building Project, or on the property kept therein, or obstruct or interfere with the rights of other Lessees, or in any way injure or annoy them, or conflict with the regulations of the Fire Department or the fire laws, or with any insurance policy upon the Office Building Project, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.

9. No Lessee shall sweep or throw or permit to be swept or thrown from the Premises any dirt or other substance into any of the corridors or halls or elevators, or out of the doors or windows or stairways of the Building. Lessee shall not use, keep or permit to be used any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Lessor or other occupants of the Office Building Project by reason of noise, odors, fire hazards and/or vibrations, or interfere in any way with other Lessees or those having business therein, nor shall any animals or birds be kept in or about the Office Building Project.

10. Lessee and its employees, agents and invitees shall not smoke any tobacco products or any other smoking materials whatsoever in the Premises, Building, common areas or any other area of the Project except in such areas, if any, as shall be designated by Lessor for smoking, in Lessor's sole and absolute discretion.

11. No cooking shall be done or permitted by Lessee on the Premises, except for the use of a microwave oven for food or Underwriter's Laboratory approved equipment for brewing coffee, tea, and similar beverages shall be permitted, provided that such use is in compliance with law. Offices in the Office Building Project shall not be used for the storage of merchandise or for sleeping or lodging.

12. Lessee, upon the termination of its tenancy, shall deliver to Lessor all the keys of offices, rooms and toilet rooms which shall have been furnished Lessee or which Lessee shall have had made, and in the event of loss of any keys so furnished, shall pay Lessor therefore.

13. On Saturdays after 6:00pm., Sundays and legal holidays, and on other days between the hours of 9:00 p.m. and 7:00 a.m., access to the Office Building Project or to the halls, corridors, elevators or stairways in the Building, or to the Premises may be refused unless the person seeking access is known to the building watchman, if any, in charge and has a pass or is properly identified. Lessor shall in no case be liable for damages for the admission to or exclusion from the Office Building Project of any person whom Lessor has the right to exclude under Rule 3 above. In case of invasion, mob, riot, public excitement, or other commotion, Lessor reserves the right but shall not be

obligated to prevent access to the Office Building Project during the continuance of the same by closing the doors or otherwise, for the safety of the tenants and protection of property in the Office Building Project.

14. Lessee shall see that the windows and doors of the Premises are closed and securely locked before leaving the building and Lessee shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Lessee or Lessee's employees leave the Building, and that all electricity, gas or air shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Lessee shall make good all injuries sustained by other Lessees or occupants of the Building or Lessor.

15. Lessee shall not alter any lock or install a new or additional lock or any bolt on any door of the Premises without prior written consent of Lessor. If Lessor shall give its consent, Lessee shall in each case furnish Lessor with a key for any such lock.

16. Lessee shall not install equipment such as, but not limited to, electronic tabulating or computer equipment requiring electrical or air conditioning service in excess of those to be provided by Lessor under the Lease and any such equipment shall be placed in the Premises in settings approved by Lessor to adsorb or prevent any vibration, noise or annoyance.

17. No bicycle, or shopping cart, or other vehicle or any animal shall be brought into the Premises or the halls, corridors, elevators or any part of the Building by Lessee.

18. Lessor shall have the right to prohibit the use of the name of the Office Building Project or any other publicity by Lessee which in Landlord's opinion tends to impair the reputation of the Office Building Project, or their desirability for other Lessees, and upon written notice from Lessor, Lessee will refrain from or discontinue such publicity.

19. Lessee shall not erect any aerial or antenna on the roof or exterior walls of the Premises, the Building, or the Office Building Project.

20. Lessee shall not overload the floor of the Premises. In addition, Lessee shall not mark, drive nails, screw or drill into partitions, ceilings or floor of the Premises or deface the Premises.

21. No furniture, freight or equipment of any kind shall be brought into the Building or the Building's elevator without the consent of Lessor and all moving of the same into or out of the Building shall be done at such time and in such manner, as Lessor shall designate. Lessor shall have the right to prescribe the weight, size and position of all safes and other heavy equipment brought into the Building and also the times and manner of moving the same in and out of the Office Building Project. Safes or other heavy objects shall, if considered necessary by Lessor, stand on wood strips of such thickness as is necessary to properly distribute the weight. However, Lessor's consent to placement of Lessee's safes, heavy equipment or furniture shall not constitute a representation or warranty by Lessor that the safe, heavy equipment or furniture complies, with regard to distribution of weight and/or vibration, with the provisions of the Rule 21 nor relieve Lessee from responsibility for the consequences of noncompliance. Lessor will not be responsible for loss of or damage to any safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or property from any cause and all damage done to the Building by moving or maintaining any such safe or other property shall be repaired at the expense of Lessee. There shall not be used in any space, or in the public halls of the Building, either by any Lessee or others, any hand trucks except those equipped with rubber tires and side guards.

22. Except with the written consent of Lessor, no person or persons other than those approved by Lessor shall be permitted to enter the Building for their purpose of cleaning the same. Lessee shall not cause any unnecessary labor by reason of Lessee's carelessness or indifference in the preservation of good order and cleanliness. Lessor shall in no way be responsible to any Lessee for any loss of property on the Premises, however occurring, or for any damage done to the effects of any lessee by the janitor or any other employee or any other person. Janitor service shall include ordinary dusting and cleaning by the janitor assigned to such work and shall not include cleaning of carpets or rugs, except normal vacuuming, or moving of furniture and other special services. Janitor service may not be furnished on nights when rooms are occupied after 9:00p.m.

23. Lessor will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the consent of Lessor. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Lessor.

24. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours and in such elevators as shall be designated by Lessor.

25. Lessor reserves the right to exclude or expel from the Office Building Project any person who in the judgment of Lessor, is intoxicated or under the influence of liquor or illegal, non-prescription drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations of the Office Building Project.

26. The requirements of Lessee will be attended to only upon application to Lessor. Contractors, vendors and employees of Lessor shall not perform any work or do anything outside of their regular duties unless under special instructions from the Lessor or Lessor's agent.

27. No vending machine shall be installed, maintained or operated upon the Premises without the written consent of the Lessor.

28. Lessor shall have the right, exercisable without notice and without liability to Lessee, to change the name and the street address of the Building and/or Office Building Project of which the Premises are a part.

29. Lessee agrees that it shall comply with all fire and security regulations that may be issued from time-to-time by Lessor and Lessee also shall provide Lessor with the name of a designated responsible employee to represent Lessee in all matters pertaining to such fire or security regulations.

30. Lessor reserves the right by written notice to Lessee, to rescind, alter or waive any rule or regulation at any time prescribed for the Office Building Project when, in Lessor's judgment, it is necessary, desirable or proper for the best interest of the Office Building Project and its lessees.

31. Lessees shall not disturb, solicit, or canvas any occupant of the Office Building Project and shall cooperate to prevent same.

32. Lessor shall furnish heating and air conditioning during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 12:00 p.m. on Saturday except for holidays. In the event Lessee requires heating and air conditioning during off hours, Sundays or Holidays, Lessor shall on notice provide such services at the then prevailing rate for such extra services.

33. Lessee shall cooperate with Lessor in obtaining maximum effectiveness of the cooling system by closing blinds when the sun's rays fall directly on windows of the premises. Lessee shall not obstruct, alter, or in any way impair the efficient operation of Lessor's heating, ventilating and air-conditioning system. Lessee shall not tamper with or change the setting of any thermostats or control valves.

34. Parking

- (a) The parking lot shall be accessible twenty-four (24) hours per day, subject to parking card or other reasonable Identification or security restriction as may be reasonably established by Lessor from time-to-time. Lessee agrees to cooperate with Lessor in completing regular maintenance of the parking lot.
- (b) Automobiles must be parked entirely within the stall lines.
- (c) All directional signs and arrows must be observed and the speed limit shall be 5 miles per hour.
- (d) Parking is prohibited in areas not striped for parking.
- (e) Lessor may refuse to permit any person who violates the within rules to park in the parking lot, and any violation of the rules shall subject the automobile to removal from the parking lot at the parker's expense.
- (f) Every parker is required to park and lock his or her own automobile. All responsibility for any loss or damage to automobile or any personal property therein is assumed by the parker.
- (g) The parking lot is for the sole purpose of parking one automobile per space. Washing, waxing, cleaning or servicing of any vehicles by the parker or his agents is prohibited.
- (h) Storage of vehicles in the parking facilities is prohibited. Lessee and Lessee's employees and visitors shall not leave vehicles in the parking lot overnight.
- (I) Lessor reserves the right to restrict customer, Lessee and Lessee's employees parking to a limited designated area or areas.

35. Lessee agrees to comply and acquaint its employees with such reasonable rules and regulations in the use of such Common areas as Lessor may adopt from time to time for the orderly and proper operation of said Common Areas.

Lessor reserves the right to make such other and further rules and regulations as in its judgment may be for the safety, care and cleanliness of the Office Building Project and for the preservation of good order therein. Lessee agrees to abide by these Rules and Regulations herein above stated and any additional rules and regulations, which are adopted hereafter.

Date: _____

Date: _____

Lessor's Initials: _____

Lessee's Initials: _____

EXHIBIT "C"

Waiver and Release.

It is the express and understood intent, purpose, desire, and agreement of the parties in the event of termination for cause or expiration of the Lease term, that Lessee, on behalf of itself, its officers, heirs, agents, shareholders, employees, subcontractors, executors, successors and assigns, shall and does hereby release and discharge Lessor, and its respective elected and appointed officials, officers, directors, employees, attorneys, accountants, consultants, other professionals, and agents, from and against the following: any claims, penalties, actions or causes of action, obligations, and demands of any kind including but not limited to, any claims arising under the California Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the California Code of Civil Procedure), the Relocation Statutes and Regulations set forth in Chapter 16 (commencing with Section 7260) of Division 7 of the California Government Code and Subchapter 1 (commencing with Section 6000) Division 3 of Title 25 of the California Code of regulations, and claims for a "taking" or inverse condemnation arising under the United States or California Constitutions or under any federal, state, or local law, statute, ordinance, regulation, rule, official policy, court order, or common law (collectively, the "Released Claims").

The parties further acknowledge that the Released Claims include any claims for loss of business goodwill pursuant to Code of Civil Procedure §1263.510 et seq., for precondemnation damages and severance damages.

Initial _____

EXHIBIT "D"

REQUIREMENTS FOR IMPROVEMENTS OR ALTERATIONS BY LESSEE

If Lessor shall permit Lessee to construct any interior improvements (subsequent to the initial Improvements which shall be constructed by Lessor) in the Premises or to have any work performed in the Premises at any time prior to or during the Lease term by a contractor retained by Lessee ("Lessee's Work"), then Lessee shall comply with the requirements set forth herein. If Lessee's Work has been properly authorized, Lessee will receive written approval and consent for alterations to the Premises. All alterations to the Premises, excepting movable furniture and trade fixtures, shall, at Lessor's option, become a part of the realty and belong to Lessor.

1. SUBMITTAL OF PLANS. Prior to commencing any work in the Premises, Lessee shall submit to Lessor for approval its proposed plans for the work. Without limiting the foregoing, Lessee shall provide:

(a) A separate scale drawing denoting all proposed construction and/or demolition, if necessary.

(b) A separate drawing for each trade proposing structural, electrical, mechanical, civil or landscaping modifications.

(c) Specify all dimensions and complete references to all work to be performed in the affected areas.

(d) If adding extra electrical or mechanical equipment, provide complete operating and maintenance specifications for each item.

2. CHECKLIST. With respect to each project, Lessor will provide Lessee with a checklist listing the items required to be furnished to Lessor in connection with the proposed work. Lessee shall furnish to Lessor prior to, during, or upon completion of Lessee's Work, as applicable, each of the items specified in the checklist attached hereto as Attachment 1.

3. CONTRACTORS PROVIDING INTERIOR IMPROVEMENT SERVICES.

(a) The contractor employed by Lessee and any subcontractors shall be (i) duly licensed in the state in which the Premises are located, and (ii) subject to Lessor's prior written approval, which approval shall not be unreasonably withheld. If more than one trade is employed on a single job, state law requires the services of a general contractor in addition to contractors for specialty work being performed.

(b) Each contractor shall provide proof of licensing as a general or specialty contractor in accordance with state law. Additionally, each contractor shall furnish proof of licensing in the city or municipality in which the construction related activity is to take place.

(c) Lessee shall use Lessor's subcontractor for mechanical, electrical, plumbing, roofing and roofing consultant if available at competitive rates.

(d) Lessee and Lessee's contractors shall comply with all Applicable Laws pertaining to the performance of Lessee's Work and the completed improvements and all applicable safety regulations established by Lessor or the general contractor.

(e) Prior to commencement of any work in the Premises, Lessee and Lessee's contractors (and any subcontractors) shall obtain and provide Lessor with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies

satisfactory to Lessor. Each general contractor (and any subcontractor) employed on the Premises shall provide Lessor with a current certificate of insurance in effect for that contractor with a thirty day notice of cancellation or revocation clause. Insurance requirements are as follows:

- (i) Comprehensive General Liability with a \$1,000,000 Combined Single Limit covering the liability of Lessor and contractor for bodily injury and property damage arising as a result of the construction of the improvements and the services performed thereunder. Lessor and any Management Company shall be named as an additional insured.
- (ii) Comprehensive Automobile Liability with a \$1,000,000 Combined Single Limit covering Lessor and vehicles used by contractor (and any subcontractor) in connection with the construction of the improvements.
- (iii) Workers' Compensation and Employer's Liability as required by law, for employees of the contractor (and any subcontractors) performing work on the Premises.

(f) The following requirements shall be incorporated as "Special Conditions" into the contract between Lessee and its contractors and a copy of the contract shall be furnished to Lessor prior to the commencement of Lessee's Work:

- (i) Prior to start of Lessee's Work, Lessee's contractor shall provide Lessor with a construction schedule in "bar graph" form indicating the completion dates of all phases of Lessee's Work.
- (ii) Lessee's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractors' work which specifically includes accessways to the Premises which may be concurrently used by others.
- (iii) Lessee's contractor shall accept the Premises prior to starting any trenching operations. Any rework of sub-base or compaction required after the contractor's initial acceptance of the Premises shall be done by Lessee's contractor, which shall include the removal from the Project of any excess dirt or debris.
- (iv) Lessee's contractor shall contain its storage of materials and its operations within the Premises and such other space as it may be assigned by Lessor or Lessor's contractor. Should Lessee's contractor be assigned space outside the Premises, it shall move to such other space as Lessor or Lessor's contractor shall direct from time to time to avoid interference or delays with other work.
- (v) Lessee's contractor shall clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials shall be stored within the Premises and promptly removed from the Premises and the Project and disposed of in an approved sanitation site.
- (vi) Lessee's contractor shall provide temporary utilities, portable toilet facilities, and potable drinking water as required for its work within the Premises and shall pay to Lessor's contractor the cost of any temporary utilities and facilities provided by Lessor's contractor at Lessee's

contractor's request.

- (vii) Lessee's contractor shall notify Lessor or Lessor's project manager of any planned work to be done on weekends or other than normal job hours.
- (viii) Lessee's contractor or subcontractors shall not post signs on any part of the Project or on the Premises.

4. COSTS.

(a) Lessee shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Lessee's Work (including the costs of permits thereof) and shall furnish to Lessor evidence of such payment upon request.

(b) Except in the case of carpet replacement or repainting, Lessee shall pay Lessor an amount equal to five percent (5%) of the total hard costs of construction and installation of Lessee's Work as compensation to Lessor for review of plans, use of facilities and other miscellaneous costs of Lessor incurred as a result of such work.

5. CONTRACTOR'S BONDS. At Lessor's sole discretion, Lessor may require Lessee to obtain performance and completion bonds to insure Interior Work

6. MECHANIC'S LIENS.

(a) Lessee shall not suffer or permit to be enforced against the Premises or any part of the Project any mechanic's, materialman's, contractor's or subcontractor's lien arising out of any work of improvement, however it may arise.

(b) Lessee shall notify Lessor at least ten (10) days prior to the commencement of construction of any Lessee's Work and Lessor shall have the right to post and record a notice of no responsibility in conformity with applicable law. Within ten (10) days following completion of Lessee's Work, Lessee shall file a Notice of Completion and deliver to Lessor an unconditional release and waiver of lien executed by each contractor, subcontractor and materialman involved in Lessee's Work.

(c) In the event any lien is filed against the Project or any portion thereof or against Lessee's leasehold interest therein as a result of Lessee's work, Lessee shall obtain the release and/or discharge of said lien, within ten (10) days after the filing thereof. In the event Lessee fails to do so, Lessor may obtain the release and/or discharge of said lien and Lessee shall indemnify Lessor for the costs thereof, including reasonable attorney's fees, together with interest at the Applicable Interest Rate from the date of demand. Nothing herein shall prohibit Lessee from contesting the validity of any such asserted claim, provided Lessee has furnished to Lessor a lien release bond freeing the Premises from the effect of the lien claim.

7. INDEMNITY. Lessee shall indemnify, defend (with counsel satisfactory to Lessor) and hold Lessor harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers' compensation, attorney's fees and costs) based on personal injury or property damage, or otherwise (including, without limitation, contract and breach of warranty claims) arising from the performance of Lessee's Work. Lessee shall repair or replace (or, at Lessor's election, reimburse Lessor for the cost of repairing or replacing) any portion of the Building or item of Lessor's equipment or any of Lessor's real or personal property damaged, lost or destroyed in the performance of Lessee's Work.

8. BUILDING STANDARDS. All work shall conform to Lessor's established building standards and specifications. Lessee is required to make these standards part of the construction documents.

9. ROOF PENETRATIONS. If improvements penetrate the roof membrane, the penetrations will be sealed per Lessor/IRC roofing specifications and inspected by IRC to maintain roof warranty. The cost of inspection and all corrective work shall be borne by Lessee. Lessee shall use Lessor's original roofing contractor.

10. BUILDING MODIFICATIONS. Work will only be approved within the confines of a given space. Lessee will not be allowed to modify building exterior or mechanical and electrical service as provided to the building in common with other tenants.

11. ELECTRICAL WORK. All electrical work shall be approved from the unit space electrical panel only. Additional service requirements shall be secured only by direction of Lessor. Lessee shall use Lessor's original electrical contractor if available at competitive rates.

12. SCHEDULE OF WORK. Lessee shall be required to provide a schedule of all work to be performed, subject to Lessor approval. All costs to produce such schedule shall be borne solely by Lessee.

13. CLEAN UP AND DISPOSAL OF CONSTRUCTION DEBRIS. Building trash containers are provided for office generated trash only and are not to be used for disposal of construction-related materials and debris. Unapproved usage will result in a penalty assessment to the Lessee equal to the cost of an extra pick-up service as provided under the current rate schedule of regular trash removal service.

14. INSPECTION BY LANDLORD. Lessor reserves the following rights: (i) the right of inspection prior to, during and at completion of all construction and/or demolition, (ii) the right to post and record a notice of nonresponsibility in conformity with California law, and (iii) the right to order, if reasonable, a total stop to all improvements underway for non-compliance with any of the requirements hereof.

15. GENERAL PROVISIONS.

(a) If Lessor has agreed to provide an allowance toward the cost of tenant improvements (other than the initial Lessee Improvement Allowance), Lessor shall retain from such funds an amount determined by Lessor until Lessee has fully complied with the requirements hereof.

(b) All materials, work, installations and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or throughout the Term shall be at Lessee's risk, and neither Lessor nor any party acting on Lessor's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever.

(c) Nothing contained herein shall make or constitute Lessee as the agent of Lessor.

Attachment 1

ITEMS TO BE FURNISHED TO LESSOR FOR EACH WORK OF IMPROVEMENT

1. Plan of Alterations for Lessor Approval.
2. Contractor(s), Address, Telephone Number, Contact Person.
3. Copy of Contractor's State and City Business License.
4. Copy of Building Permit.
5. Copy of Final Inspection and Signed Building Permit Cards.
6. Copy of Certificate of Insurance Naming The City of Laguna Hills and Essex Realty Management as Additional Insured. Insurance to include Comprehensive General Liability, Comprehensive Auto, Workers' Compensation, Employer's Liability and original Endorsement.
7. Signed Unconditional Lien Waiver in favor of Development Corporation.
8. Schedule of Work.
9. Copy of Completion and Payment Bond.
10. Architect's License and Expiration.
11. Copy of Permit Plans.
12. Copy of As-Builts.
13. Copy of Recorded Notice of Completion.
14. Certificate of Occupancy.
15. Evidence of Insurance for All-Risk/Builder's Risk Insurance to the Amount of Improvements.



City of Laguna Hills City Council Meeting Agenda Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND CITY COUNCIL MEMBERS

**FROM: DAVID REYNOLDS
DEPUTY CITY MANAGER/COMMUNITY SERVICES**

**ISSUE: SOLID WASTE AND RECYCLING CONSULTING SERVICES AGREEMENT
WITH ECONOMICS, INC., FOR THE TWO YEAR BUDGET CYCLE**

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE RECYCLING
CONSULTING SERVICES AGREEMENT BETWEEN ECONOMICS, INC., AND THE
CITY OF LAGUNA HILLS AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE
AGREEMENT.**

SUMMARY:

The Recycling Consulting Services Agreement with EcoNomics expired on June 30, 2013. EcoNomics assists the City with administration of the City's solid waste and recycling services agreement with CR&R, implementation and support of recycling programs, and compliance reporting to CalRecycle. Staff recommends that the City continue to contract with EcoNomics for solid waste and recycling consulting services under a new agreement with a term commencing on July 10, 2013, and ending on June 30, 2015. The not-to-exceed cost of the new agreement is \$100,000 and is funded by the City's recycling funds.

BACKGROUND:

EcoNomics, Inc. serves as the City's recycling consultant and assists the City with solid waste franchise administration, compliance reporting to the State, and recycling program implementation and support. A two-year Recycling Consulting Services Agreement with EcoNomics expired on June 30, 2013. EcoNomics has provided recycling consultant support to the City since 2003 and consequently is very familiar with the City's waste streams, diversion programs, and the business operations of CR&R. Furthermore, EcoNomics assisted the City with the formation and implementation of the current 10-year solid waste and recycling services agreement with CR&R which will expire on June 30, 2016. As a result, EcoNomics is well versed with the terms, conditions, and objectives of this contract.

Staff conducted a competitive bid process for solid waste and recycling consulting services in 2011 by first issuing a Request for Proposal document on April 28, 2011. Several firms submitted a proposal by the proposal deadline. After evaluation of the proposals and interviews with the top three vendors, EcoNomics was selected as the top vendor because of its familiarity with the City's solid waste and recycling contract with CR&R, its history of implementing and supporting recycling programs within the City, its good rapport with businesses in the City, its overall experience in the solid waste and recycling industry, and its competitive cost proposal.

Staff is requesting approval of the proposed contract with EcoNomics for solid waste and recycling consulting services commencing on July 10, 2013, and ending on June 30, 2015. The not-to-exceed cost during the contract term is \$100,000 and is funded by the City's recycling funds. At this time, staff does not think it is necessary to conduct another bid process for the reasons stated in this staff report on why EcoNomics was selected in the past as the City's recycling consultant. Also, EcoNomics rates for service continue to be very competitive and EcoNomics is not proposing any increases to its hourly rates.

FISCAL IMPACT:

There is no impact to the City's General Fund for payment of EcoNomics' services because the City's Recycling Funds account for these types of expenses.

ATTACHMENTS:

- EcoNomics Recycling Consulting Services Agreement

CONSULTING SERVICES AGREEMENT

Solid Waste Collection, Contracting and Recycling Consulting Services
(*ECO/NOMICS, INC., dba ECAL/NOMICS, INC.*)

THIS AGREEMENT FOR CONSULTING SERVICES (the "Agreement") is made, entered into, and effective this 1st day of July 2013, by and between the CITY OF LAGUNA HILLS, a municipal corporation organized and existing under the laws of the State of California ("City"), and ECO/NOMICS, INC., which does business in the State of California as ECAL/NOMICS, INC ("Consultant").

RECITALS

A. City requires the services of a qualified, professional solid waste collection, contracting, and recycling firm to provide City with consulting services related to the administration of the City's solid waste and recycling services franchise agreement, ordinance, and programs, as well as with compliance and reporting to CalRecycle ("Project").

B. Consultant has submitted to City a proposal to provide professional solid waste collection, contracting, and recycling consulting services to City for the Project pursuant to the terms of this Agreement.

C. Based on its experience, education, training, and reputation, Consultant is qualified to provide the necessary professional services to City for the Project and desires to provide such services.

D. City desires to retain the professional services of Consultant for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Consultant and Consultant agrees to provide services to the City as follows:

AGREEMENT

1. CONSULTANT SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide professional solid waste collection, contracting, and recycling consulting services to City for the Project as described in the Scope of Services/Work attached to this Agreement as Exhibit "A" and incorporated herein by reference (the "services" or "work"), which includes the agreed upon schedule of performance and the schedule of fees. Consultant represents and warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 Compliance with Law. All services rendered under this Agreement shall be provided by Consultant in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.3 Licenses and Permits. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 Familiarity with Work. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

2. TIME FOR COMPLETION.

The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A". Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant. Delays shall not entitle Consultant to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONSULTANT

3.1 Compensation of Consultant. For the services rendered pursuant to this Agreement, Consultant shall be compensated by City in accordance with the schedule of fees set forth in Exhibit "A," which total contract amount shall not exceed one hundred thousand dollars (\$100,000).

3.2 Method of Payment. In any month in which Consultant wishes to receive payment, Consultant shall no later than the first working day of such month, submit to City in the form approved by City's Finance Manager, an invoice for services rendered prior to the date of the invoice. Payments shall be based on the hourly rates as set forth in Exhibit "A" for authorized services performed. City shall pay Consultant for all expenses stated thereon, which are approved by City consistent with this Agreement, within thirty (30) days of receipt of Consultant's invoice.

3.3 Changes. In the event any change or changes in the Scope of Services/Work is requested by City, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

3.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Laguna Hills City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence. Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed pursuant to the agreed upon schedule of performance set forth in Exhibit "A". The extension of any time period must be approved in writing by the Contract Officer.

4.3 Force Majeure. The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Consultant shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term. Unless earlier terminated in accordance with Section 8.5 of this Agreement, this Agreement shall continue in full force and effect for a period of two (2) years, commencing on July 1, 2013, and ending on June 30, 2015.

5. COORDINATION OF WORK

5.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the services and work specified herein and make all decisions in connection therewith: **William O'Toole, President.** It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

5.2 Contract Officer. The Contract Officer shall be the City Manager, or the City Manager's designee. It shall be the Consultant's responsibility to keep the Contract Officer, or her designee, fully informed of the progress of the performance of the services and Consultant shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, education, capability, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not contract with any other individual or entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

5.4 Independent Contractor.

A. The legal relationship between the parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the services and work under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Consultant's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Consultant shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of services and work performed by Consultant under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents, for injury or sickness arising out of performing services and work hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 3, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

5.5 Personnel. Consultant agrees to assign the following individuals to perform the services set forth herein. Consultant shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer. Acting through the City Manager, the City shall have the unrestricted right to order the removal of any personnel assigned by Consultant by providing written notice to Consultant.

Name:

Title:

William O'Toole

President

6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. Consultant shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, in a form and content satisfactory to City, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extension thereof, and shall not be cancelable without thirty (30) days written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

6.1.1 Minimum Scope of Insurance. The minimum amount of insurance required hereunder shall be as follows:

A. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and one million dollars (\$1,000,000.00) for products and completed operations; the commercial general liability policy shall name the CITY OF LAGUNA HILLS as an additional insured in accordance with standard ISO additional insured endorsement form CG2010(1185) or equivalent language;

B. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

C. Workers' Compensation insurance in the statutory amount as required by the State of California, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

6.1.2 Sufficiency of Insurers. Insurance required herein shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State

of California with a current rating of A:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Eligible Surplus Lines Insurers (LESLI), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund.

6.1.3 Verification of Coverage. Consultant shall furnish City with both original certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Workers' Compensation policies.

6.1.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents, and volunteers; or, Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6.1.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

6.2 Indemnification. To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City, its elected officials, officers, directors, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, or from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to Consultant's performance under this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder.

7. RECORDS AND REPORTS

7.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

7.2 Records. Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials hereunder. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.5 Cost Records. Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement and shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies thereof shall be promptly furnished to City upon request.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.3 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.4 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

8.5 Termination Prior to Expiration of Term. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Consultant, except that where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter.

8.6 Attorney Fees. In the event any dispute between the parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding.

9. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

9.1 Non-Liability of City Officers and Employees. No officer, director, official, or employee of City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

10. MISCELLANEOUS PROVISIONS

10.1 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing.

Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City:

CITY OF LAGUNA HILLS
Attention: City Manager
24035 El Toro Road
Laguna Hills, CA 92653

To Consultant:

ECO/NOMICS, INC.
ECAL/NOMICS, INC.
Attention: William O'Toole, President
P.O. Box 2790
Del Mar, CA 92014

10.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

10.3 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

10.5 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

**“CITY”
CITY OF LAGUNA HILLS**

Date: _____

By: _____
Bruce E. Channing, City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Gregory E. Simonian,
City Attorney

By: _____
Peggy J. Johns,
City Clerk

**“CONSULTANT”
ECO/NOMICS, INC.
ECAL/NOMICS, INC.**

Date: _____

By : _____
William O'Toole, President

Date: _____

By : _____
Cerene St. John, Vice President

EXHIBIT “A”

CONSULTANT’S SCOPE OF SERVICES/WORK

Including,

Schedule of Fees

And

Schedule of Performance

SCOPE OF SERVICES/WORK/FEES

A. SCHEDULE OF FEES

Consultant will bill time and material (T&M) and Consultant will invoice City for consulting services at the beginning of every month for services rendered the previous month.

a. The hourly rate for Consultant personnel is as follows:

i. Principal (President and Vice President)	\$175.00
ii. Project Manager	\$150.00
iii. Project Supervisor	\$120.00
iv. Director, Project Implementation	\$100.00
v. Computer & Field	\$ 80.00
vi. Clerical	\$ 50.00

b. All invoices will be itemized to show work from Consultant personnel as identified in (a) above.

c. All expenses are included in hourly rates (a) above except for travel beyond a 250-mile radius. Travel expenses for business conducted for the benefit of City that exceed 250 miles, will be itemized on each monthly invoice.

d. The billings shall be sent to:

David Reynolds
Deputy City Manager
City of Laguna Hills
24555 Alicia Parkway, CA 92653

B. PROVIDE RECYCLING/SOLID WASTE ASSISTANCE TO CITY STAFF

The schedule of performance for the following tasks will be determined by the City.

Task B1. CalRecycle Support.

Consultant will represent the City in regards to CalRecycle questions and concerns in relation to the City's diversion activity. Consultant's assistance with CalRecycle shall include:

a. Work with CalRecycle staff to answer and document any questions or concerns in regards to both residential and non-residential programs. Consultant shall respond to City's request to contact CalRecycle for any issue or concern.

- b. Assist in the preparation of any required CalRecycle reports for City review. Assistance shall include the collection of all required data from the franchise holder and the operators of any other recycling programs in the City (e.g. supermarket back hauling of organics and cardboard) and from local recycling facilities, other private recyclers, and any other data collection required for CalRecycle reports.

Task B2. Provide Technical and Field Support for the Administration of the City's Solid Waste and Recycling Franchise Agreement.

Consultant shall provide support to the City with the administration of the City's 10-year franchise agreement with CR&R including the following activity:

- a. Maintain a checklist of all contract requirements and due dates contained in the new contract. Support the City in periodic meetings with CR&R to review the contract requirements and to coordinate with CR&R concerning public education items, writing of brochures and public education materials, placement of customer communications on the CR&R web site, implementation and enhancement of programs, and other coordination issues. Perform additional work items as assigned by the City.
- b. Coordinate with City and CR&R staff to accompany CR&R representatives to meetings with local businesses to assist in implementation of recycling programs at each business. Provide technical support to City staff making site visits to local businesses to discuss recycling programs.
- c. Review reports and correspondence submitted by CR&R, track recycling program implementation for AB 939 reporting purposes, and perform additional work items as assigned by the City.
- d. Conduct waste audits of CR&R and the residential and business communities as requested by the City.
- e. Assist the City in reviewing the Disposal Recording System to resolve any errors in assignment of tonnage to the City of Laguna Hills.
- f. Assist the City with processing any request for a rate increase or other requests pursuant to the contract requirements.
- g. Consultant will periodically perform site visits to determine the condition of bins. Bins will be checked for missing lids, broken wheels, graffiti, condition of paint, and placement of appropriate decal(s) and signage. In addition, bins will be checked for floors that are rusted and/or leaking, damaged arm sleeves, or dented sides.

Task B3. Provide Technical Recycling Assistance to Local Restaurants and Businesses to Maintain and Develop Recycling Programs.

In addition to the work in Task B2, Consultant shall provide technical recycling assistance to individual restaurants and businesses in the City to implement and/or expand recycling programs, training materials and employee training, assistance with recyclables storage container selection, assistance in identifying which materials can be recycled, and technical recycling assistance to business groups as directed by the City.

EcoNomics will work to identify and verify legitimate source reduction efforts that are occurring in the City of Laguna Hills.

- a. Provide assistance to the Laguna Hills Mall and the Saddleback Memorial Medical Center with its recycling programs.
- b. Assist with the implementation and support of a food waste recycling program.

Task B4. Attend Progress Meetings and Prepare Monthly Progress Reports.

Consultant shall attend a monthly progress meeting with City staff to discuss the status of all tasks in progress, problems encountered, schedules, etc. Prepare a written monthly progress report to the City for submittal with each month's invoice.

Task B5. Perform Other Duties As Assigned by the City.

Consultant shall perform other duties as assigned by the City for AB 939 compliance and to assist the City with administration of the solid waste collection contract, Department of Conservation beverage recycling programs, and other recycling activity within the City of Laguna Hills.

Task B6. Assist with the formation of next Franchise Agreement.

Consultant shall assist the City of Laguna Hills with identifying recycling requirements and terms and conditions in the next solid waste and recycling agreement. The current 10-year solid waste and recycling agreement is set to expire on June 30, 2016. This involves conducting research as directed by the City and the drafting of an agreement as requested by the City.



City of Laguna Hills City Council Meeting Agenda Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

**ISSUE: CONTRACT CHANGE ORDER NO. 1 AND PROGRESS PAYMENT NO. 2,
FINAL, FOR CIVIC CENTER SUITE 100B IMPROVEMENTS**

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE CONTRACT CHANGE ORDER NO. 1 AND PROGRESS PAYMENT NO. 2, FINAL, IN THE NET AMOUNT OF \$17,740.56, TO INNOVATIVE BUILDERS & DESIGN, FOR THE CIVIC CENTER SUITE 100B IMPROVEMENTS, 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 Civic Center Suite 100B Improvements began on April 22, 2013, and is being performed by Innovative Builders & Design. Work performed in May and June included removals, capping utilities, patching of perimeter walls, and cleaning the work site. The work has been satisfactorily completed and it is appropriate to file the Notice of Completion. The contractor has submitted the second progress payment request for approval. In addition, Contract Change Order No. 1 is presented for approval to address necessary extra work. Approval of the Progress Payment and Contract Change Order No. 1, acceptance of the work as complete 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 five-percent (5%) retention is withheld from each payment to assure final performance of the work. The contractor for the project, Innovative Builders & Design, has submitted the second progress payment for the subject project as follows:

ITEM #	DESCRIPTION	QUANTITY	UNIT	\$	AMOUNT
2	Unclassified Removals	.25	LS	\$5,100.00	\$1,275.00
3	Remove Vault Doors	2	EA	\$ 950.00	\$1,900.00
5	Cap Utilities	.50	LS	\$3,250.00	\$1,625.00
6	Fur, Insulate, & Drywall	1,359	SF	\$ 6.53	\$8,874.27
7	Clean Site	1	LS	\$1,700.00	\$1,700.00
CCO No. 1	Various	1	LS	\$3,300.00	\$3,300.00

Total To Date	\$33,224.27	
Less Prior Billing	<u>\$14,550.00</u>	
Total This Period	\$18,674.27	\$18,674.27
Less 5% Retention		<u>\$(- 933.71)</u>
		\$17,740.56

CONTRACT CHANGE ORDER:

Contract Change Order No. 1, attached, addresses necessary extra work that was determined necessary following the removal of flooring and walls. The contract work uncovered unforeseen and hidden conditions that required remedial work. Approval of the Change Order in the amount of \$3,300.00 is recommended.

FISCAL IMPACT:

The progress payment and overall project completion is within the budget for Civic Center Improvements to be paid through the Civic Center Enterprise Fund.

ATTACHMENTS:

- Contract Change Order No. 1
- Notice of Completion

**CITY OF LAGUNA HILLS
CONTRACT CHANGE ORDER**

CONTRACT CHANGE ORDER NO. 1

SHEET 1 OF 2 SHEETS

PROJECT: Civic Center Suite 100B Improvements

CONTRACTOR: Innovative Builders & Design, Inc.

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

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

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

Change requested by City Engineer

1. Demolish false walls, patch floor boxes, remove and patch entry mats, remove AC ducting and dispose of debris.

Agreed Price \$3,300.00

Increase \$ 3,300.00

Decrease \$

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

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

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

SUMMARY OF CONTRACT TIME

Original Contract Date:	March 26, 2013 w/NTP April 22, 2013
Original Contract Time:	20 working days
Original Completion Date:	May 17, 2013
Time Extension this C.O.:	0
Time Extension Other:	10 working days to relocate electrical by others
Revised Contract Time:	30 working days
Revised Final Completion Due Date:	June 3, 2013
Time Subject to Liquidated Damages:	0
Actual Final Completion Date:	June 3, 2013

Original Contract Price	\$35,797.50
Prev. Authorized Changes	\$ 0
This Change (Add)	\$ 3,300.00
Amended Contract Price	\$39,097.50

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

Approved by:

Accepted by:

Director of Public Services

Date



Contractor

6/26/2013

Date

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: _____

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 July 9, 2013.

Description of Improvements

Suite 100B Improvements - consists of wall, ceiling, columns, and flooring demolition; capping utilities; and construction of furring, insulation and drywall.

General Location

Within Suite 100B at the Civic Center located at 24035 El Toro Road, Laguna Hills, California, 92653.

Owner of Property Address

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

Contractor

Innovative Builders & Design, Inc.
Mr. Edgar Morales
1445 Rose Avenue, Suite B
Long Beach, CA 90813

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: July 9, 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: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: APPLICATION FOR THE CYCLE 6 HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP), SAFE ROUTES TO SCHOOL

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE GRANT APPLICATION FOR THE CYCLE 6 HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP).

SUMMARY:

Caltrans announced the Highway Safety Improvement Program (HSIP) Cycle 6 Call for Projects on April 29, 2013. Grant applications are due on July 26, 2013. The program funds projects that aim to reduce traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal land. Funding in HSIP includes the "Safe Routes to School" program. Staff has prepared a grant application to partially fund the widening of proposed sidewalk expansion project along La Paz Road, CIP No. 171. Approval of the grant application is recommended.

BACKGROUND:

On April 29, 2013, Caltrans Division of Local Assistance announced Cycle 6 Call for Projects for the HSIP. This Call for Projects is targeted for approximately \$150 million of federal HSIP funds. The purpose of the HSIP program is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads, including non-State-owned public roads and roads on tribal land. The maximum reimbursement amount per project is \$1,500,000, and the minimum is \$100,000. Funding in HSIP includes the "Safe Routes to School" program.

Staff has prepared a grant application, attached, for construction of CIP No. 171, La Paz Road sidewalk widening adjacent to Valencia Elementary School. The proposed project includes widening the existing four feet wide sidewalk to eight feet wide arterial highway sidewalk standards. The sidewalk will be designed per Americans with Disability Act (ADA)

standards along the north side of La Paz Road, from Paseo De Valencia to Grissom Road, and along the south side of La Paz Road, from Paseo De Valencia to Champlain Road (project limits). A vicinity map of the project limits is included in the attached application.

During school drop-off and pick-up hours, the sidewalk width on the south side of La Paz Road is effectively reduced by opening of car doors of the vehicles parked along La Paz Road between Paseo De Valencia and Champlain Road. This forces school aged pedestrians to maneuver around the cars, at times forcing them into the street or onto the adjacent slope. In addition, the number of school aged pedestrians walking to school along the north side of La Paz Road creates congestion along the narrow sidewalk which can cause pedestrians to step into the street. The "Safe Routes to School Guide" recommends a minimum sidewalk width of six to eight feet, particularly when adjacent to school grounds with high pedestrian activity. This project aims to improve pedestrian access to and from the Valencia Elementary School. The application due date for this Call for Projects is Friday, July 26, 2013. Funding, if approved, would be provided for use in the 2014-15 Fiscal Year or later.

FISCAL IMPACT:

Right of Way along the north side of La Paz Road from private residences and from Valencia Elementary School on the south side will cost approximately \$100,000. Project design costs will be approximately \$75,000. Both of the aforementioned project costs are proposed to be funded by the City. The grant amount requested in the funding application is \$351,000, which is 90% of the estimated construction cost of \$390,000.

CEQA FINDINGS:

If the HSIP funding is provided, environmental clearance will be a part of the preliminary engineering work.

ATTACHMENTS:

- Grant Application

APPLICATION FOR CYCLE 6 HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP)

APPLICATION SUMMARY

This summary page is filled out automatically once the application is completed.

After the application is finalized, please save this PDF form using the exact "Application ID" (shown below) as the file name.

Important: Review and follow the Application Instructions step-by-step as you complete the application. Completing an application without referencing to the instructions will result in an incomplete application or an application with fatal flaws that will be excluded from the ranking and selection process.

Application ID: 12-Laguna Hills-1

Submitted By (Agency):
Laguna Hills

Caltrans District

12

Application Number

1

Out of

1

Project Location

The La Paz Road Sidewalk Construction is located both on the northerly side of La Paz Road, from Paseo De Valencia to Grissom Road, and on the southerly side of La Paz Road, from Paseo De Valencia to Champlain Road.

Project Description

This project includes reconstruction of sidewalk to meet standard width arterial highway sidewalk & ADA standards. This project aims to improve school age pedestrian access to the adjacent Elementary School.

Countermeasure 1: R37: Install sidewalk/pathway (to avoid walking along roadway)

Countermeasure 2:

Countermeasure 3:

Total Expected Benefit

\$1,382,400.00

Total Project Cost

\$565,000.00

B/C Ratio:

2.45

I. Basic Project Information

Date Caltrans District MPO
Agency County
Total number of applications being submitted by your agency
Application Number (each application must have a unique number)

Contact Person Information

Name (Last, First):
Position/Title of Contact Person
Email: Telephone: Extension:
Address:
City: Zip Code: (Enter only a 5-digit number.)

Project Information

Project Location
-Be Brief (limited to 250 characters)
-[See Instructions](#)

The La Paz Road Sidewalk Construction is located both on the northerly side of La Paz Road, from Paseo De Valencia to Grissom Road, and on the southerly side of La Paz Road, from Paseo De Valencia to Champlain Road.

Project Description
-Be Brief (limited to 250 characters)
-[See Instructions](#)

This project includes reconstruction of sidewalk to meet standard width arterial highway sidewalk & ADA standards. This project aims to improve school age pedestrian access to the adjacent Elementary School.

Functional Classification (For Functional Classification and CRS Maps, Visit http://www.dot.ca.gov/hq/tsip/hseb/crs_maps/)
CRS Map ID (e.g. 08E14)
Urban/Rural Area (Visit <http://earth.dot.ca.gov/>)
High-Risk-Rural-Roads (HR3) Eligibility

If this project is not HR3 eligible, what is the approximate total cost percentage that is HR3 eligible? %

Work on the State Highway System

Does the project include improvements on the State Highway System?
If no, move on to the next page; If yes, go to the below question.

Is this a joint-funded project with Caltrans?

- ☐ If yes, check this box to confirm a formal Letter of Support from Caltrans - District Traffic is attached to the application. The letter should include estimates of cost sharing.
- ☐ If no, check this box to confirm a written correspondence from Caltrans District Traffic is attached to the application. The correspondence should indicate that Caltrans does not see issues that would prevent the proposed project from receiving an encroachment permit

Non-Infrastructure (NI) ElementsDoes the project include NI Elements? If yes, NI Activity Worksheet and NI Cost Estimate are required attachments. For more information on the requirements and guidance for NI elements of HSIP applications, see the [HSIP NI webpage](#).

What are the primary type(s) of non-infrastructure included? (Check all that apply. Skip if project does not include NI Elements.)

☐ Bicycle and pedestrian safety education (K-12 students)☐ Enforcement (school zones)☐ Bicycle and pedestrian safety education (adults)☐ Other Enforcement (please describe below)☐ Other safety education (please describe below)☐ Emergency Medical System**Additional Information**1. Is the project focused primarily on "spot location(s)" or "systemic" improvements? The primary type of the "systemic" improvements: 2. Which of the California's Strategic Highway Safety Plan (SHSP) Challenge Areas does the project address primarily?
(For more information on the SHSP and its Challenge Areas, see: <http://www.dot.ca.gov/SHSP/>)3. How were the safety needs and potential countermeasures for this project **first** identified?

4. What is the primarily mode of travel intended to be benefited by this project?

5. Approximate percentage of project cost going to improvements related to **motorized** travel %6. Approximate percentage of project cost going to improvements related to **non-motorized** travel %

7. Is the project focused primarily on "Intersection" or "Roadway" improvement?

Miles of Roadway 8. Posted Speed Limit (mph)

9. Average Daily Traffic (See Instructions)	ADT (Major Road)	ADT (Minor Road)	Year Collected
	17,500	5,500	2013

II. Narrative Questions (See Instructions)

These narrative questions are intended to provide additional project details for the application reviewers and project files. Application reviewers will use the information in their "fatal flaw" assessment of the applications, including:

- 1) The project scope is eligible for HSIP and/or HR3 funding;
- 2) The countermeasures used in the B/C ratio calculation are appropriately applied based on the scope of the project;
- 3) The crash data used in the B/C ratio calculation is appropriately applied based on the scope of the project and countermeasures used;
- 4) The costs included in the application represent the likely total project cost necessary to fully construct the proposed scope. If the proposed project is a piece of a larger construction project, the entire scope of the larger project must be identified and included in the B/C ratio calculation;
- 5) The application data and attachments are reasonable and meet generally accepted traffic engineering and transportation safety principles.

If significant inconsistencies or errors are found in the application information, the Caltrans reviewers may conclude that the application includes one or more "fatal flaws" and the application will be dropped from further funding considerations. The applicant will not be notified of Caltrans findings until after the selection process is complete.

1. Overall Identification of Need

Describe how the agency identified the project as one of its top safety priorities. Was a data-driven, safety evaluation of their entire roadway network completed? Do the proposed project locations represent some of the agency's highest crash concentrations? (limited to 5,000 characters)

Valencia Elementary School is one of busiest elementary schools in the City of Laguna Hills. It is located on the corner of two arterial highways, namely, La Paz Road and Paseo De Valencia. The public sidewalk along the north and south side of La Paz Road east of Paseo De Valencia, adjacent to the school is only four feet wide. Parking alongside the curb is necessarily permitted to meet school access needs. During school drop off and pick up hours, when cars are parked along the aforementioned street section, a clear passage width of sidewalk is reduced and almost eliminated by the opening of car doors. This forces the pedestrians to either walk along an adjacent slope or walk into the roadway. The "Safe Routes to School Guide" recommends a minimum sidewalk width of six to eight feet especially when adjacent to school grounds with high pedestrian activity. The City has reviewed adding parking restrictions adjacent to these stretches of sidewalk for safety, however, due to high parking demand and accessibility, parking cannot be restricted. This project is necessary for a safe and clear passage for school age pedestrians.

2. Potential for Proposed Improvements to Correct the Problem

Describe the primary causes of the collisions that have occurred within the project limits. Are there patterns in the crash types? Clearly demonstrate the connection between the problem and the proposed countermeasures utilized in the Benefit/Cost Ratio calculations. Depending on the nature of the project, explain why the agency choose to pursue "Spot location(s)" or "Systemic" improvements. If the proposed project include Non-Infrastructure (NI) elements, also describe how the NI elements will complement in improving the safety within the project limits. (limited to 5,000 characters)

Note: Safety improvements that do not have countermeasures and crash reduction factors identified in the TIMS B/C Calculator can be included in the project scope; they just won't be added to the project's B/C ratio shown in the application.

Widening the sidewalk to arterial highway and ADA standards will promote safe and clear passage for school aged pedestrians during school drop off and pick up hours. The four pedestrian related crashes used in the Benefit/Cost Ratio calculations are within 600 feet of the proposed project area. There are sixteen pedestrian related crashed within a one mile radius of the school within a 10 year period.

3. Crash Data Evaluation

Explain how the influence areas for each separate countermeasure were established. Describe how the limits of the crash data were established for each countermeasure to ensure only appropriate crashes were included in the Collision Summary Report(s), Collision Diagram(s) and B/C calculations. (limited to 5,000 characters)

The crash data utilized for the Benefit/Cost (B/C) Ratio calculations are within 600 feet of the proposed project area. The sidewalk width is the same four feet and is a part of the route many pedestrians take to get to the school. A total of sixteen pedestrian crashes occurred within a 1 mile radius of the school from 01/01/02 through 12/31/11. Only the four within a reasonable limit of the proposed project area were included in B/C calculations. The proposed project area allows parking, thus occasionally forcing the pedestrians into the street, creating an elevated potential for a school aged pedestrian crash.

4. Prior attempts to address the Safety Issue

If appropriate, list all other projects/countermeasures that have been (or are being) deployed at this location. Applicants must identify all prior federal HSIP, HR3 or Safe Routes To School (SRTS) funds approved within or directly adjacent to the proposed projects limits within the last 10 years. (limited to 5,000 characters)

Note: HSIP funding cannot be used to construct the same general type of countermeasures within the same limits within 10 years to ensure agencies do not apply the same Crash Reduction Factors to the same crashes.

-The City has worked with the School on multiple occasions to improve vehicular access to the school parking lot on Paseo De Valencia. These efforts have improved vehicular and bus access but the pedestrian access issues remain along La Paz Road.
-Police Enforcement of existing traffic controls has been utilized.

5. Total project costs

Describe the process used to establish the total cost for the project. Confirm contingencies for reasonably expected costs, including drainage, environmental, traffic, etc, are included. For a large project where the HSIP funding is only a small portion of the overall project scope and costs, the total project cost must still be included in the application and its B/C ratio calculation. (limited to 5,000 characters)

Costs for this project used are based on costs incurred for similar projects in recent years and are shown on the Engineer's Estimate.

III. Project Cost Estimate *(See Instructions)*

All project costs must be accounted for on this form, even if substantial elements of the overall project are to be funded by other sources.

Do not enter in shaded fields (calculated - read only). Round all costs up to the nearest hundred dollars. Once all costs and the desired HSIP/Total ratios are entered, click "Check Cost Estimate" to perform validation. If errors are detected, they will appear below the button. **Click it to check again each time when the costs have been revised.**

Phase		Total Cost	HSIP/Total (%)	HSIP Funds	Local/Other Funds
Preliminary Engineering	Environmental	\$30,000	0 (%)	\$0	\$30,000
	PS&E	\$45,000	0 (%)	\$0	\$45,000
	PE Subtotal	\$75,000		\$0	\$75,000
☒ Agency does NOT request HSIP funds for PE Phase (automatically checked if PE - HSIP funds is \$0).					
Right of Way	Right of Way Engineering	\$10,000	0 (%)	\$0	\$10,000
	Appraisals, Acquisitions & Utilities	\$90,000	0 (%)	\$0	\$90,000
	ROW Subtotal	\$100,000		\$0	\$100,000
Construction Engineering & Construction	Construction Engineering	\$40,000	90 (%)	\$36,000	\$4,000
	Construction	\$350,000	90 (%)	\$315,000	\$35,000
	CON Subtotal	\$390,000		\$351,000	\$39,000
Non - Infrastructure (NI)	NI Elements			\$0	\$0
Total Cost		\$565,000	62 (%)	\$351,000	\$214,000

Click to Check Cost Estimate (See Notes in Instructions)

IV. Implementation Schedule *(See Instructions)*

The local agency is expected to deliver the project per Caltrans Local Assistance safety program delivery requirements.
In order for the milestones to be calculated correctly, all fields needs to be filled in. For steps that are not applicable, enter "0".

Target Date for the Project's Amendment into the FTIP:**01/01/2014**

Time for agency to internally staff project and request PE authorization

4

Month(s)

Typical Time for Caltrans and FHWA to process and approve PE authorization

2

Month(s)

Proposed PE Authorization Date:**07/02/2014****(PE Authorization
Delivery Milestone)***Will external consultants be required to complete the PE phase of this project?***No***Additional time needed to the Delivery Process for hiring PE consultant(s)***0**

Month(s) (0 - 6)

Time to prepare environmental studies request

1

Month(s)

Time to complete CEQA/NEPA studies/approvals

3

Month(s)

See PES Form in the LAPM for Typical studies and permits

Time to complete the Right of Way Acquisition (federal process)

12

Month(s)

Plan on 18 months minimum for federal process including a condemnation

Time to complete final PS&E documentation

3

Month(s)

Other

Month(s)

Expected Completion Date for the PE Phase:

Time for agency to request CON authorization

2

Month(s)

Typical Time for Caltrans and FHWA to process and approve CON Auth

3

Month(s)

Proposed CON Authorization Date:**(CON Authorization
Delivery Milestone)**

Time included for the agency's workload-leveling or construction-window needs

2

Month(s)

Time to award contract with CON contractor (following the federal process, including Board/Council approval, advertise, award, execute and mobilize)

3

Month(s)

Time to complete construction

6

Month(s)

Time included for closing the CON contract

2

Month(s)

Other

0

Month(s)

Expected Completion Date for the CON Phase:

Time to complete the project close-out process

2

Month(s)

Typical Time for Caltrans and FHWA to process and approve project close-out

3

Month(s)

Expected Completion Date for the project Close-Out:**(Close-Out
Delivery Milestone)**

V. Countermeasures, Crash Data and Benefit/Cost Ratio *(See Instructions)*

In the process of completing this application, the Local Agency is required to utilize the Benefit/Cost Ratio Calculation Tool that is included in the Safe Transportation research and Education Center (SafeTREC) Transportation Injury Mapping System (TIMS) web site. This **web site** can be assessed at <http://tims.berkeley.edu/>

The final output summary page from TIMS must be included as part of the official application (both electronically and hard copy). The hard copy page must be included in the application as one of the attachments.

In order to facilitate the electronic collection and tracking of this data, Caltrans is requiring agencies to manually enter some of the key "input data" and "output data" used in their final TIMS B/C Ratio. ***NOTE: If any of the values inputted on this sheet do not match the values from the TIMS B/C Ratio Output Summary sheet, THE APPLICATION WILL BE REJECTED. Be Careful and confirm the numbers!***

TIMS Application ID: **12-Laguna Hills-1** (This ID is generated by this form.
TIMS Application ID must match this ID.)

Version (from TIMS) : **1** Crash Data Period: from **1/1/2002** to **12/31/2011**

Total Project Cost: **\$565,000** (This must match the total project cost in Section III.)

Countermeasure Information

Number of countermeasures utilized: **1**

Countermeasure

- #1: **R37: Install sidewalk/pathway (to avoid walking along roadway)**
- #2:
- #3:

B/C Ratio Calculation

	Expected Benefit (Life)	Expected Cost	Resulting B/C
Countermeasure #1	\$1,382,400	\$565,000	2.45
Countermeasure #2			0.00
Countermeasure #3			0.00
Project's Total (Overall)	\$1,382,400	\$565,000	2.45

VI. Application Attachments *(See Instructions)*

Check all attachments included in this application.

- ☒ Vicinity map /Location map (Required)
- ☒ Project map showing existing and proposed conditions (Required)
- ☒ Pictures of Existing Condition (Required)
- ☒ Collision diagram(s) (Required)
- ☒ Collision summary report / list (Required)
- ☒ TIMS B/C output summary sheet (Required)
- ☒ Detailed Engineer's Estimate (Required)
- ☐ Warrant studies (Required when applicable)
- ☐ Letter of Support from Caltrans (Required when applicable)
- ☐ Non-Infrastructure (NI) Activity Worksheet and NI Cost Estimate (Required when applicable)
- ☐ Additional narration, documentation, letters of support, etc. (optional)

VII. Application Data Verification and Signature [\(See Instructions\)](#)**Part A. Engineer's Signature and Stamp**

Chapter 7; Article 3; Section 6735 of the Professional Engineer's Act of the State of California requires engineering calculation(s) or report(s) be either prepared by or under the responsible charge of a licensed civil engineer. Since this HSIP application defines the scope of work of a future construction project and requires complex engineering principles and calculations which are based on the best data available at the time of the application, the application must be signed and stamped by a registered civil or traffic engineer.

By signing and stamping this HSIP application, the engineer is attesting to this application's technical information and engineering data upon which local agency's recommendations, conclusions, and decisions are made and upon which statewide funding will be determined, including:

1. All likely project costs associated with the project scope of work are included in the Total Project Cost;
2. Each countermeasure included represents a minimum of 15% of the construction costs and is applied consistently with Appendix B of the Local Roadway Safety Manual;
3. All crash data is: 1) accurately shown in collision diagram(s) and collision summary report(s) attached to this application; and 2) applied to countermeasures using generally accepted traffic engineering principles; and
4. When applicable, all traffic warrant studies have been prepared per the CA-MUTCD.

Registered Engineer:Name (Last, First): Title: Engineer License Number: Signature*: Date: **Engineer's Stamp*:****Part B. Transportation Manager's Signature**

To ensure the application's quality and the agency's commitment to deliver the safety project in an expedited manner, the application must be signed by the Agency's Transportation/Traffic Engineering Manager.

By signing this application, the manager is attesting to:

1. All data in the application is accurate and represents the total scope of the planned project;
2. The agency understands the Project Delivery Requirements for the HSIP Program and is prepared to deliver the project with these requirements; and
3. The agency understands if Caltrans staff determine that any of the above requirements are not met, or data is inaccurate, or the application fails to meet the program guidelines and application instructions, the application will be rejected and will not be eligible to receive federal safety funding. Due to time constraints in the evaluation process, applicants will not be notified until after the selection process is complete. Refer to Application Form Instructions for more information.

Transportation Manager:Name (Last, First): Title: Signature*: Date:

* Note: The signatures and the engineer's stamp are only expected on the two hard copies of the application. The electronic copy of this PDF form must be saved in the original format (NOT a scanned copy) so the application data can be extracted.

VICINITY MAP



Date: 06/28/13

VICINITY MAP



PROJECT MAP



Valencia
Elementary

RW Sidewalk 4' Roadway varies 32'-37' Median varies 4' to 14' Roadway varies 32'-37' Sidewalk 4' RW

La Paz Road
Existing Condition

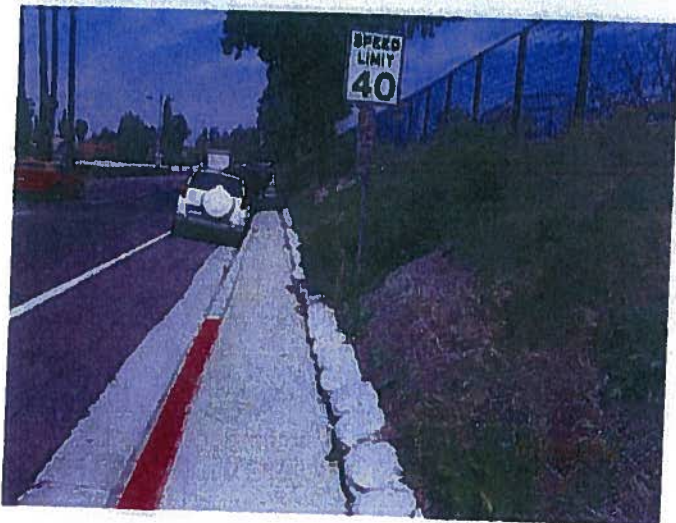
Valencia
Elementary

RW Sidewalk 8' Roadway varies 32'-37' Median varies 4' to 14' Roadway varies 32'-37' Sidewalk 8' RW

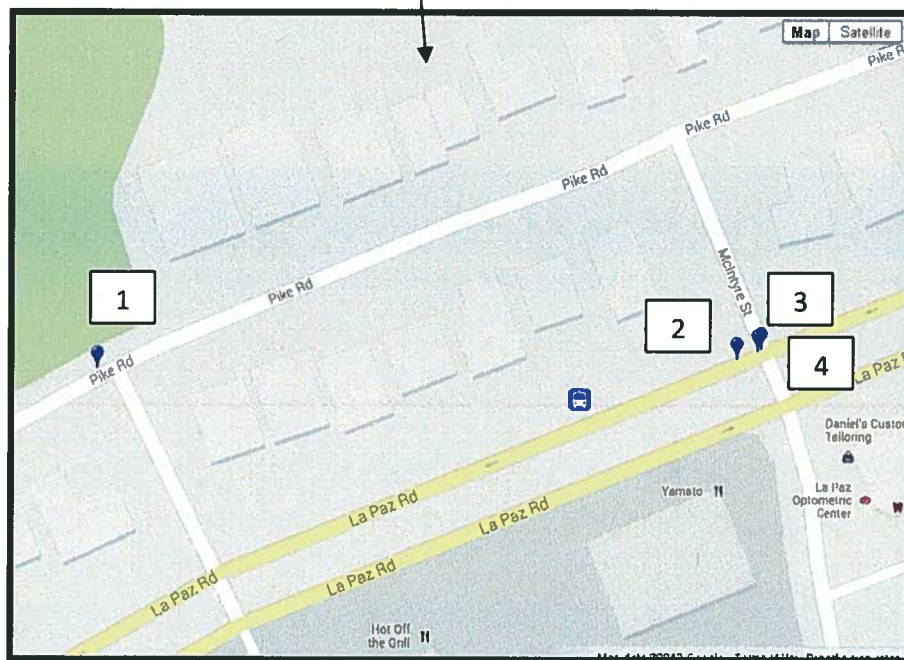
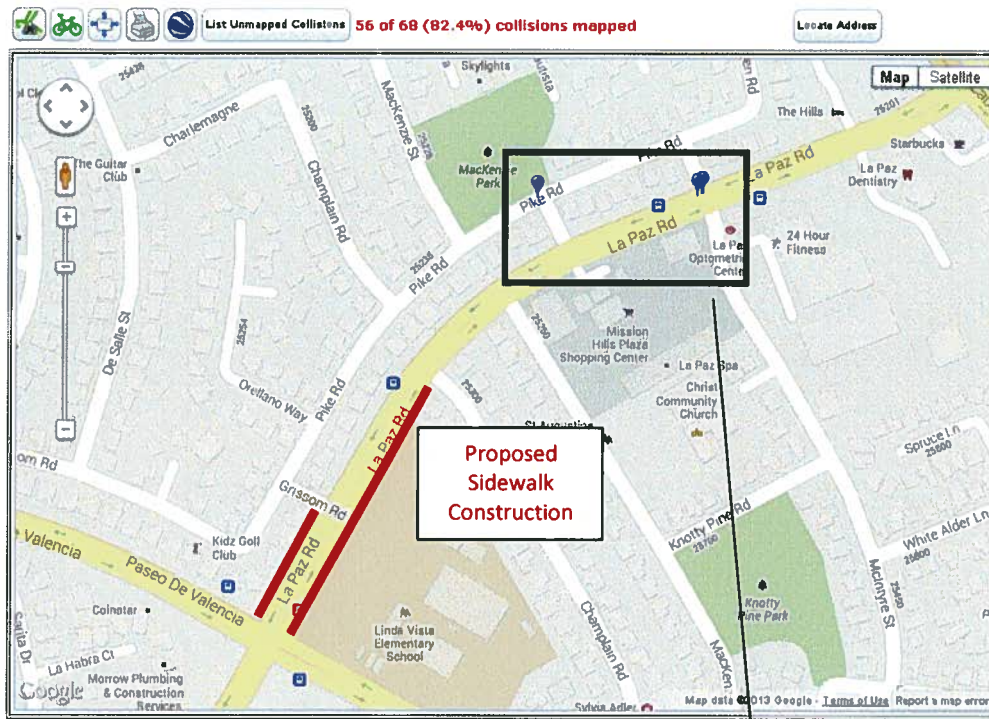
La Paz Road
Proposed Condition

PHOTOS



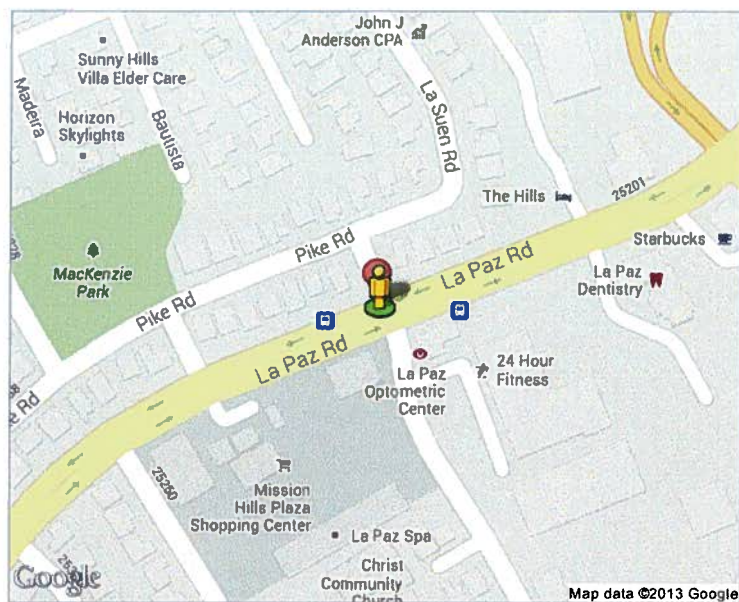


COLLISION DIAGRAM



COLLISION DETAIL REPORT

COLLISION DETAILS: CASE ID 1217045

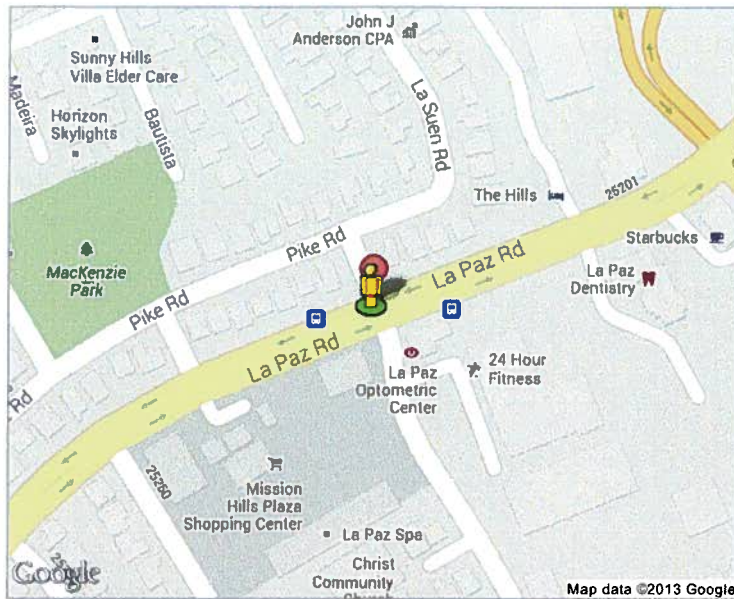


County	ORANGE	City	LAGUNA HILLS
Date (Y-M-D)	2004-01-08	Time	07:55
Nearby Intersection	LA PAZ RD & MCINTYRE		
Coordinate Location	33.5960350037, -117.679831999		
State Highway	N	Route	-
		Postmile	-
Injured Victims	1	Fatalities	0
Alcohol	NO	Weather	Clear
Primary Collision Factor	Pedestrian Right of Way	Involved with	Pedestrian

STREET VIEW



COLLISION DETAILS: CASE ID 1275137

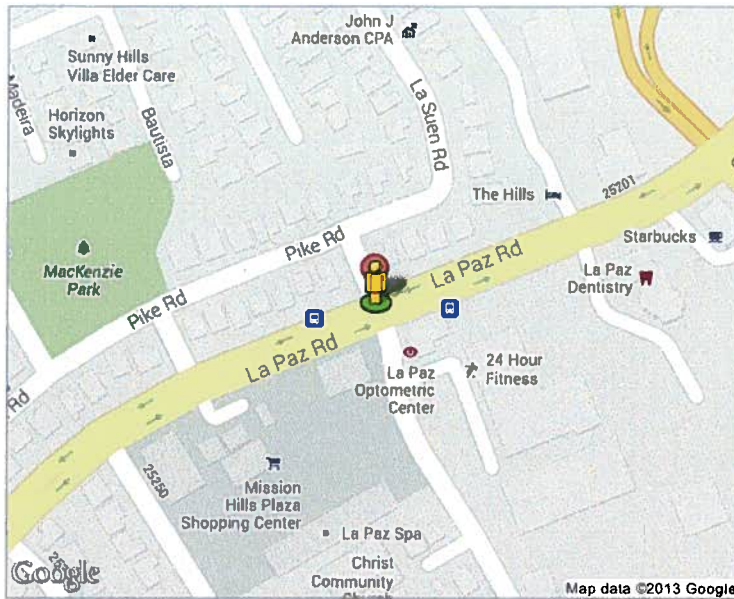


County	ORANGE	City	LAGUNA HILLS
Date (Y-M-D)	2004-02-04	Time	07:45
Nearby Intersection	LA PAZ RD & MCINTYRE RD		
Coordinate Location	33.5960502625, -117.679780272		
State Highway	N	Route	-
Postmile	-		-
Injured Victims	1	Fatalities	0
Alcohol	NO	Weather	Clear
Primary Collision Factor	Pedestrian Right of Way	Involved with	Pedestrian

STREET VIEW



COLLISION DETAILS: CASE ID 4279456

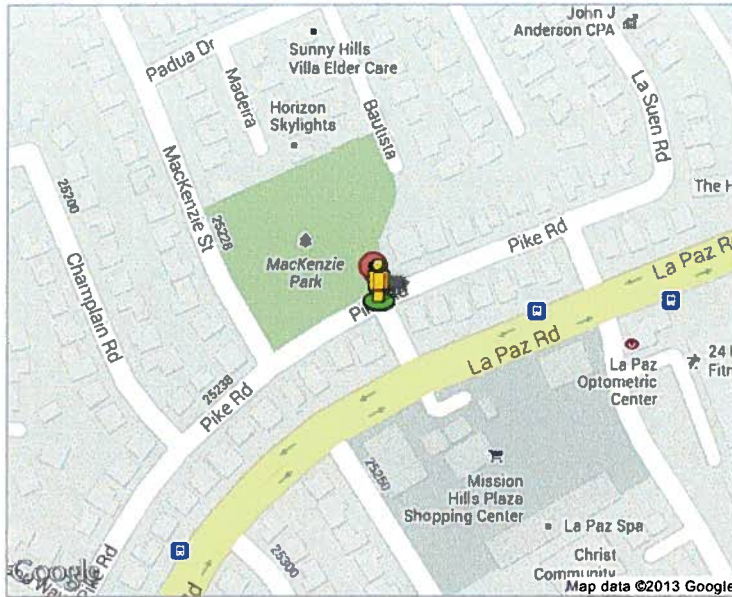


County	ORANGE	City	LAGUNA HILLS
Date (Y-M-D)	2009-05-06	Time	10:00
Nearby Intersection	LA PAZ RD & MCINTYRE ST		
Coordinate Location	33.59605515, -117.6797711		
State Highway	N	Route	-
Postmile	-		-
Injured Victims	1	Fatalities	0
Alcohol	NO	Weather	Clear
Primary Collision Factor	Pedestrian Right of Way	Involved with	Pedestrian

STREET VIEW



COLLISION DETAILS: CASE ID 3583007



County	ORANGE	City	LAGUNA HILLS
Date (Y-M-D)	2008-01-14	Time	16:50
Nearby Intersection	PIKE & RICKENBACKER		
Coordinate Location	33.5960159302, -117.681411999		
State Highway	N	Route	-
Injured Victims	1	Fatalities	0
Alcohol	NO	Weather	Clear
Primary Collision Factor	Unsafe Speed	Involved with	Pedestrian

STREET VIEW



TIMS B/C OUTPUT SUMMARY SHEET

1. Project Information

Version 1

Crash Data Time Period	01/01/2002	to	12/31/2011	Years	10
------------------------	------------	----	------------	-------	----

CM Number	Project Type	Crash Type	CRF	Life
R37	Ped and Bike	Ped & Bike	80	20

Annual Benefit	\$ 69,120	Cost	\$ 565,000
Life Benefit	\$ 1,382,400	B/C Ratio	2.45

Total Benefit	\$ 1,382,400
Total Cost	\$ 565,000
B/C Ratio	2.45

By signing this B/C Calculation Result, you are attesting to your authority / responsibility at your local agency for this work and you are attesting to the accuracy of the values on this page and that they have been entered into the HSIP Application Form correctly, **DO NOT SIGN** if any of this is not the case.

ENGINEER'S ESTIMATE

Detailed Engineer's Estimate and Cost Breakdown by Countermeasure

For Construction Items Only

Important: Read the Instructions in the other sheet before entering data.
Do not enter in shaded fields (with formulas).

Agency:	City of Laguna Hills	Application ID:	12-Laguna Hills-1	Prepared by:	Kenneth H. Rosenfield	Date:	6/28/2013						
Project Description: La Paz Road Sidewalk Construction													
Project Location: La Paz Road from Paseo De Valencia to Champlain Road													
Engineer's Estimate (for Construction Items Only)													
Item No.	Item Description	Quantity	Units	Unit Cost	Total	Safety-Related Costs				Non Safety-Related Costs			
						Countermeasure #1	Countermeasure #2	Countermeasure #3	Other Safety-Related	Countermeasure #1	Countermeasure #2	Countermeasure #3	Other Safety-Related
1	Unclassified Excavation	975	CY	\$60.00	\$58,500	%	\$	%	\$	%	\$	%	\$
2	Curb & Gutter	1,220	LF	\$25.00	\$30,500	100	\$58,500	100	\$30,500				
3	Sidewalk	9760	SF	\$6.00	\$58,560	100	\$58,560	100	\$12,000				
4	Access Ramps	4	QTY	\$3,000.00	\$12,000	100	\$6,100	100	\$2,500				
5	A.C. patch	1220	SF	\$5.00	\$6,100	100	\$4,200	100	\$91,500				
6	Signing & Striping	2500	LS	\$1.00	\$2,500	100	\$4,125	100	\$56,997				
7	Trees and Irrigation	21	EA	\$200.00	\$4,200	100							
8	Walls - Retaining and Freestanding	1220	LF	\$75.00	\$91,500	100							
9	Fill	165	CY	\$25.00	\$4,125	100							
10	Clearing & Grubbing / Mobilization	1	QTY	\$57,697.00	\$56,997	100							
11													
12													
13													
14													
15													
16													
17													
Sub Total of Construction Items:					\$324,982	100%	CM #1	CM #2	CM #3	Other Safety	Non Safety		
% of "Construction Items only" Cost per Countermeasure (Yellow fields - To be entered in TMS B/C Calculator)					\$324,982	100%	CM #1	CM #2	CM #3	Other Safety	Non Safety		
Construction Item Contingencies (% of Con Items): Enter in the cell to the right					20.00%								
Total (Construction Items & Contingencies):					390,000								
Maximum "HSIP/Total" percentage allowed for Construction					90%								

(Rounded up to the nearest hundreds)



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

**ISSUE: CONTRACT CHANGE ORDER NO. 1 FOR CIVIC CENTER IMPROVEMENTS
- CARPETING & FLOORING**

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE CONTRACT CHANGE
ORDER NO. 1 FOR CIVIC CENTER IMPROVEMENTS - CARPETING & FLOORING.**

SUMMARY:

The replacement of the carpeting and flooring in most areas of the City office spaces at the Civic Center is under construction by G & S Carpet Mills, Inc. Two changes to the work scope have been identified which necessarily requires the issuance of a Contract Change Order. One of the changes relates to the selection of one of the types of carpet and the second change relates to a resolution of floor slab moisture that, if not corrected, could lead to the failure of the new carpet. It is recommended that the City Council approve Contract Change Order No. 1 for the Civic Center Improvements – Carpeting & Flooring for the above-described extra work.

BACKGROUND:

In accordance with City Council authorization, the carpeting in most areas of the City office spaces at the Civic Center, along with the public hallways on the second and third floors of the building, is being replaced as a part of the ongoing building maintenance program. The work is being satisfactorily performed by the Contractor, G & S Carpet Mills, Inc., and is approximately 75% complete. During the work, however, two changes to the scope of work have been identified and need to be recognized through the issuance of a Contract Change Order to the Contractor, as follows:

1. An accent carpet used in a few areas of the City spaces was determined to no longer be available at a compatible thickness to properly join the remaining carpets. An alternate carpet type has been selected with a small cost increase to the project.

2. The removal of the existing carpeting on the northerly side of the City offices revealed a moist concrete slab condition that had deteriorated the existing carpet installation. The placement of new carpeting on the moist slab could lead to a short-term failure of the carpet installation and void the manufacturer's warranty. A remediation company was called into the Civic Center to address the immediate moist conditions and the flooring Contractor proposed a long-term solution to the issue through the application of a sealant on all affected floors. Staff reviewed both the materials and costs of this solution and concluded that it is justified and appropriate to address the condition. The cost of this work is significant relative to the overall project cost but is necessary to be implemented. The application of the moisture barrier will allow the project to be completed.

FISCAL IMPACT:

Contract Change Order No. 1, attached, details the additional project costs in the total amount of \$32,297.18. These costs consist of a \$1269.00 additional charge for changing one of the carpet selections and a \$31,028.18 additional expense to resolve the slab moisture issue. The Change Order costs are funded by the Civic Center Enterprise Fund.

ATTACHMENTS:

- Contract Change Order No. 1

**CITY OF LAGUNA HILLS
CONTRACT CHANGE ORDER**

CONTRACT CHANGE ORDER NO. 1

SHEET 1 OF 2 SHEETS

PROJECT: CIVIC CENTER IMPROVEMENTS – CARPETING & FLOORING

CONTRACTOR: G & S CARPET MILLS, INC.

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

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

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

Change requested by City Engineer

1. Substitute Turin TN888-33 Tribolo Border Carpet for Tandus Border Carpet as specified, per Proposal 1403. Agreed Price \$1269.00.
2. Supply and install 6,000 square feet of Chapco floor sealer and Ardex underlayment per Manufacturer's recommended installation procedures to resolve slab moisture condition per Proposal 1445. Agreed Price \$31,028.18.

Increase \$32,297.18

Decrease \$

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

CONTRACT CHANGE ORDER NO. 1

SHEET 2 OF 2 SHEETS

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

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

SUMMARY OF CONTRACT TIME

Original Contract Date:	March 26, 2013
First Working Day:	June 21, 2013
Original Contract Time:	20 Working Days
Original Completion Date:	July 19, 2013
Time Extension this C.O.:	3 working days
Time Extension Other:	-0-
Revised Contract Time:	23 working days
Revised Final Completion Due Date:	July 24, 2013
Time Subject to Liquidated Damages:	-0-
Actual Final Completion Date:	

Original Contract Price	\$ 78,214.21
Prev. Authorized Changes	\$ 0
This Change (Add)	\$ 32,297.18
Amended Contract Price	\$110,511.39

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

Approved by:

Accepted by:

Director of Public Services

Date

 Jun 28, 2013

Contractor Date



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: FY 2013-2014 TRAUMA INTERVENTION PROGRAM AGREEMENT

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED VICTIM SUPPORT SERVICES AGREEMENT WITH TIP FOR FY 2013-2014 AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND TRAUMA INTERVENTION PROGRAMS, INC.

SUMMARY:

The City of Laguna Hills has given financial support to the Trauma Intervention Programs, Inc. (TIP) since June 24, 1997. The services provided by TIP are invaluable to victims of traumatic events and their families that live in, or are visitors to the City. TIP counselors also offer valuable assistance to our Public Safety Officers when needed. This arrangement remains both effective and cost efficient. The Agreement will provide the City with TIP services 24-hours a day for the year.

BACKGROUND:

The level of services provided by TIP will remain the same as in years past. They will ensure volunteer availability on a 24-hour a day basis. Some of the services TIP provides are grief counseling, referral services, shelter, food, and transportation arrangements.

FISCAL IMPACT:

The total cost of the service is \$3,641.28, which equates to \$.12 per capita based on the 2010 City population estimate of 30,344 from the 2010 United States Census Report. The cost per capita did not increase over last year and is within the amount budgeted for FY 2013-2014.

ATTACHMENTS:

- FY 2013-2014 Trauma Intervention Program Agreement

VICTIM SUPPORT SERVICES AGREEMENT
(Trauma Intervention Programs, Inc. – FY 2013/14)

THIS AGREEMENT FOR VICTIM SUPPORT SERVICES (the “Agreement”) is made, entered into, and effective this 1st day of July 2013, by and between the CITY OF LAGUNA HILLS, a municipal corporation organized and existing under the laws of the State of California (“City”), and TRAUMA INTERVENTION PROGRAMS, INC., a California corporation (“Contractor”).

RECITALS

A. City requires the services of a qualified contractor equipped and trained in appropriate procedures to provide emotional aid and practical support to victims of traumatic events and their families in the first few hours following a tragedy in the City of Laguna Hills (“Project”).

B. Contractor has submitted to City a proposal to provide victim support services to City for the Project pursuant to the terms of this Agreement.

C. Based on its experience, education, training, and reputation, Contractor is qualified to provide the necessary services to City for the Project and desires to provide such services.

D. City desires to retain the services of Contractor for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Contractor and Contractor agrees to provide services to the City as follows:

AGREEMENT

1. CONTRACTOR SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide victim support services to City as described in the Scope of Services attached to this Agreement as **Exhibit “A”** and incorporated herein by reference (the “services” or “work”), which includes the agreed upon schedule of performance and the schedule of fees. Contractor represents and warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the Scope of Services and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 Compliance with Law. All services rendered under this Agreement shall be provided by Contractor in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.3 Licenses and Permits. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 Familiarity with Work. By executing this Agreement, Contractor warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

2. TIME FOR COMPLETION.

The time for completion of the services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in **Exhibit "A"**. Contractor shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Contractor. Delays shall not entitle Contractor to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONTRACTOR

3.1 Compensation of Contractor. For the services rendered pursuant to this Agreement, Contractor shall be compensated by City in accordance with the schedule of fees set forth in **Exhibit "A,"** which total contract amount shall not exceed \$3,641.28 (i.e., 30,344 population x 12¢).

3.2 Method of Payment. In any month in which Contractor wishes to receive payment, Contractor shall no later than the first working day of such month, submit to City in the form approved by City's finance manager, an invoice for services rendered prior to the date of the invoice. Payments shall be made consistent with the terms set forth in **Exhibit "A"** for authorized services performed. City shall pay Contractor for all expenses stated thereon, which are approved by City consistent with this Agreement, within thirty (30) days of receipt of Contractor's invoice.

3.3 Changes. In the event any change or changes in the Scope of Services is requested by City, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Contractor's profession.

3.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Laguna Hills City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence. Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed pursuant to the agreed upon schedule of performance set forth in **Exhibit “A”**. The extension of any time period must be approved in writing by the Contract Officer.

4.3 Force Majeure. The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Contractor shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer’s judgment such delay is justified, and the Contract Officer’s determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term. Unless earlier terminated in accordance with Section 8.5 of this Agreement, this Agreement shall continue in full force and effect for a period of twelve (12) months, commencing on July 1, 2013, and ending on June 30, 2014, unless extended by mutual written agreement of the parties.

5. COORDINATION OF WORK

5.1 Representative of Contractor. The following principal of Contractor is hereby designated as being the principal and representative of Contractor authorized to act in its behalf with respect to the services and work specified herein and make all decisions in connection therewith: Wayne Fortin, Founder and CEO. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Contractor without prior written approval of the Contract Officer.

5.2 Contract Officer. The Contract Officer shall be the City Manager, or his/her designee. It shall be the Contractor’s responsibility to keep the Contract Officer, or his/her designee, fully informed of the progress of the performance of the services and Contractor shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, education, capability, and reputation of Contractor, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not contract with any other individual or entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

5.4 Independent Contractor.

A. The legal relationship between the parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Contractor a City employee. During the performance of this Agreement, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the services and work under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of its officers, employees, or agents, except as set forth in this Agreement. Contractor, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Contractor's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Contractor shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Contractor in its business or otherwise a joint venturer or a member of any joint enterprise with Contractor.

B. Contractor shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Contractor, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Contractor as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for the performance of services and work performed by Contractor under this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, or agents, for injury or sickness arising out of performing services and work hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 3, of any nature relating to salary, taxes, or benefits of Contractor's officers, employees, servants, representatives, subcontractors, or agents, Contractor shall indemnify City for all such financial obligations.

6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. Contractor shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, in a form and content satisfactory to City, public liability and property damage insurance against all claims for injuries against

persons or damages to property resulting from Contractor's performance under this Agreement. Contractor shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extension thereof, and shall not be cancelable without thirty (30) days written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Contractor's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

6.1.1 Minimum Scope of Insurance. The minimum amount of insurance required hereunder shall be as follows:

A. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and one million dollars (\$1,000,000.00) for products and completed operations; the commercial general liability policy shall name the City of Laguna Hills as an additional insured in accordance with standard ISO additional insured endorsement form CG2010(1185) or equivalent language;

B. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

C. Workers' Compensation insurance in the statutory amount as required by the State of California, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Contractor's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

6.1.2 Sufficiency of Insurers. Insurance required herein shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A-VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Eligible Surplus Lines Insurers (LESLI), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund.

6.1.3 Verification of Coverage. Contractor shall furnish City with both original certificates of insurance and endorsements, including additional insured endorsements, effecting

all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Contractor's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Workers' Compensation policies.

6.1.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents, and volunteers; or, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6.1.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

6.2 Indemnification. To the fullest extent permitted by law, Contractor shall defend (at Contractor's sole cost and expense with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City, its elected officials, officers, directors, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Contractor's employees included), for damage to property, including property owned by City, or from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to Contractor's performance under this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's indemnification obligation or other liability hereunder.

7. RECORDS AND REPORTS

7.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

7.2 Records. Contractor shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Contractor in the performance of this Agreement

shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.5 Cost Records. Contractor shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement and shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies thereof shall be promptly furnished to City upon request.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.3 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.4 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

8.5 Termination Prior to Expiration of Term. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of Contractor and constitutes an

immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter.

8.6 Attorney Fees. In the event any dispute between the parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert Contractor fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding.

9. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

9.1 Non-Liability of City Officers and Employees. No officer, director, official, or employee of City shall be personally liable to the Contractor, or any successor-in-interest, in the event of any default or breach by City or for any amount which may become due to the Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

10. MISCELLANEOUS PROVISIONS

10.1 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City:

City of Laguna Hills
Attention: City Manager
24035 El Toro Road
Laguna Hills, CA 92653

To Contractor:

Trauma Intervention Programs, Inc.
Attention: Founder and CEO
24301 Airporter Way
Laguna Niguel, CA 92677

10.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

10.3 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

10.5 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

“CITY”
City of Laguna Hills

Date: _____

By: _____
Bruce E. Channing,
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Gregory E. Simonian,
City Attorney

By: _____
Peggy J. Johns,
City Clerk

“CONTRACTOR”
Trauma Intervention Programs, Inc.

Date: _____

By : _____
Wayne Fortin, Founder & CEO

Date: _____

By : _____
Maryann Vinci,
Admin Assistant / Assistant Treasurer

EXHIBIT “A”

CONTRACTOR’S SCOPE OF SERVICES/WORK

Including

Schedule of Fees

and

Schedule of Performance

EXHIBIT “A”

CONTRACTOR’S SCOPE OF SERVICES/WORK

Schedule of Fees

Trauma Intervention Programs, Inc. shall invoice City of Laguna Hills annually for services. Invoices under this agreement shall not exceed the total amount of \$3,641.28 (30,344 population x 12¢).

Schedule of Performance and Services

Trauma Intervention Programs, Inc., hereinafter referred to as “TIP”, shall provide a range of emotional and practical support services to victims of traumatic events and their family members in the City of Laguna Hills (hereinafter referred to as “clients”) including, but not limited to providing on-scene emotional comfort and support to clients; help arrange for shelter, clothing, food, and transportation for clients; assist police officers with death notifications; serve as liaisons between the victims and the emergency personnel; provide information and referrals to appropriate agencies for ongoing support of clients; and serve as temporary protectors for vulnerable victims.

TIP volunteers shall be available 24 hours a day, 365 days a year and assist with:

- Family members and friends following a natural or unexpected death of a loved one
- Victims of crime, including rape, assault, robbery or burglary
- Victims of fire and floods
- Disoriented or lonely older persons
- Persons involved in vehicle accidents
- Person who are distraught and seeking immediate support
- Survivors of suicide
- Employees after workplace tragedies

TIP shall make available to the City sufficient information to enable the City to contact the appropriate TIP volunteer, including 24-hour on-call phone number, address, and names of volunteers, supervisors (when appropriate), as well as alternate or backup telephone numbers.

TIP or TIP’s employees and/or volunteer’s shall provide all vehicles and equipment necessary for the performance of services in this Agreement and shall be responsible for maintenance of said equipment and vehicles.

TIP shall provide all personnel, volunteers, supplies, and equipment necessary for the efficient and effective operation of the services and programs provided for herein.



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: FY 2013-2014 SCHOOL CROSSING GUARD AGREEMENT

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED CROSSING GUARD SERVICES AGREEMENT FOR FY 2013-2014 AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT BETWEEN THE CITY OF LAGUNA HILLS AND ALL CITY MANAGEMENT SERVICES.

SUMMARY:

Since 1994, the City of Laguna Hills has contracted with All City Management Services to provide six (6) crossing guards at five (4) locations throughout the City. All City Management Services has continued to be a reliable and cost effective method of providing this needed service. Staff recommends the City Council continue the current level of service provided in the Agreement for FY 2013-2014.

FISCAL IMPACT:

The projected number of hours for crossing guard services this year, including summer school, is four thousand, three hundred and twenty (4,320) hours. The contract cost for FY 2013-2014 shall not exceed sixty-three thousand and seventy-two dollars (\$63,072). The proposal includes no cost increase over the FY 2012-2013 agreement.

ATTACHMENTS:

- Crossing Guard Services Agreement

CROSSING GUARD SERVICES AGREEMENT
(All-City Management Services, Inc.)

THIS AGREEMENT FOR CROSSING GUARD SERVICES (the “Agreement”) is made, entered into, and effective this 1st day of July 2013, by and between THE CITY OF LAGUNA HILLS, a municipal corporation organized and existing under the laws of the State of California (“City”), and ALL-CITY MANAGEMENT SERVICES, INC., a California corporation (“Contractor”).

RECITALS

A. City requires the services of a qualified contractor equipped and trained in appropriate procedures for crossing pedestrians in designated marked crosswalks for general pedestrian safety and school crossing areas in the City of Laguna Hills (“Project”).

B. Contractor has submitted to City a proposal to provide crossing guard services to City for the Project pursuant to the terms of this Agreement.

C. Based on its experience, education, training, and reputation, Contractor is qualified to provide the necessary services to City for the Project and desires to provide such services.

D. City desires to retain the services of Contractor for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Contractor and Contractor agrees to provide services to the City as follows:

AGREEMENT

1. CONTRACTOR SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide crossing guard services to City as described in the Scope of Services attached to this Agreement as Exhibit “A” and incorporated herein by reference (the “services” or “work”), which includes the agreed upon schedule of performance and the schedule of fees. Contractor represents and warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the Scope of Services and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 Compliance with Law. All services rendered under this Agreement shall be provided by Contractor in accordance with all applicable federal, state, and local laws, statutes, and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.3 Licenses and Permits. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 Familiarity with Work. By executing this Agreement, Contractor warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

2. TIME FOR COMPLETION.

The time for completion of the services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A". Contractor shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Contractor. Delays shall not entitle Contractor to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONTRACTOR

3.1 Compensation of Contractor. For the services rendered pursuant to this Agreement, Contractor shall be compensated by City in accordance with the schedule of fees set forth in Exhibit "A," which total contract amount shall not exceed \$63,072.00.

3.2 Method of Payment. In any month in which Contractor wishes to receive payment, Contractor shall no later than the first working day of such month, submit to City in the form approved by City's finance manager, an invoice for services rendered prior to the date of the invoice. Payments shall be based on the hourly rates as set forth in Exhibit "A" for authorized services performed. City shall pay Contractor for all expenses stated thereon, which are approved by City consistent with this Agreement, within thirty (30) days of receipt of Contractor's invoice.

3.3 Changes. The City shall have the right to determine the hours and locations when and where such services and work shall be furnished by the Contractor. The City Manager, or the City Manager's designee, on behalf of the City, shall be authorized to add to, delete from, or revise the work schedule/locations at any time and shall notify the Contractor in writing of any changes. Such a change shall not be considered a change in the Scope of Services requiring a written amendment.

In the event any change or changes in the Scope of Services is requested by City, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Contractor's profession.

3.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the Laguna Hills City Council for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence. Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed pursuant to the agreed upon schedule of performance set forth in Exhibit "A". The extension of any time period must be approved in writing by the Contract Officer.

4.3 Force Majeure. The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Contractor, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Contractor shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term. Unless earlier terminated in accordance with Section 8.5 of this Agreement, this Agreement shall continue in full force and effect for a period of one (1) year, commencing on July 1, 2013, and ending on June 30, 2014, unless extended by mutual written agreement of the parties.

5. COORDINATION OF WORK

5.1 Representative of Contractor. The following principal of Contractor is hereby designated as being the principal and representative of Contractor authorized to act in its behalf with respect to the services and work specified herein and make all decisions in connection therewith: **Baron Farwell, General Manager**. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Contractor without prior written approval of the Contract Officer.

5.2 Contract Officer. The Contract Officer shall be the City Manager, or his/her designee. It shall be the Contractor's responsibility to keep the Contract Officer, or his/her designee, fully informed of the progress of the performance of the services and Contractor shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, education, capability, and reputation of Contractor, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Contractor shall not contract with any other individual or entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

5.4 4.4 Independent Contractor.

A. The legal relationship between the parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Contractor a City employee. During the performance of this Agreement, Contractor and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the services and work under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of its officers, employees, or agents, except as set forth in this Agreement. Contractor, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision, or control of Contractor's employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service. Contractor shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Contractor in its business or otherwise a joint venturer or a member of any joint enterprise with Contractor.

B. Contractor shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Contractor, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Contractor as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Contractor for the performance of services and work performed by Contractor under this Agreement. City shall not be liable for compensation or indemnification to Contractor, its officers, employees, or agents, for injury or sickness arising out of performing services and work hereunder. If for any reason any court or governmental agency determines that the City has financial obligations, other than pursuant to Section 3, of any nature relating to salary, taxes, or benefits of Contractor's officers, employees, servants, representatives, subcontractors, or agents, Contractor shall indemnify City for all such financial obligations.

6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. Contractor shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, in a form and content satisfactory to City, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Contractor's performance under this Agreement. Contractor shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extension thereof, and shall not be cancelable without thirty (30) days written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Contractor's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

6.1.1 Minimum Scope of Insurance. The minimum amount of insurance required hereunder shall be as follows:

A. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) per occurrence, two million dollars (\$2,000,000.00) in the general aggregate, and one million dollars (\$1,000,000.00) for products and completed operations; the commercial general liability policy shall name the City of Laguna Hills as an additional insured in accordance with standard ISO additional insured endorsement form CG2010(1185) or equivalent language;

B. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

C. Workers' Compensation insurance in the statutory amount as required by the State of California, and Employer's Liability Insurance with limits of at least one million

dollars (\$1,000,000.00) per accident for bodily injury or disease.

For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Contractor's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

6.1.2 Sufficiency of Insurers. Insurance required herein shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A-VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Eligible Surplus Lines Insurers (LESLI), by the latest edition of A.M. Best's Key Rating Guide, except that the City will accept workers' compensation insurance from the State Compensation Fund.

6.1.3 Verification of Coverage. Contractor shall furnish City with both original certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Contractor's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Workers' Compensation policies.

6.1.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents, and volunteers; or, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6.1.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

6.2 Indemnification. To the fullest extent permitted by law, Contractor shall defend (at Contractor's sole cost and expense with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City, its elected officials, officers, directors, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Contractor's employees included), for damage to property, including

property owned by City, or from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to Contractor's performance under this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's indemnification obligation or other liability hereunder.

7. RECORDS AND REPORTS

7.1 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

7.2 Records. Contractor shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

7.3 Ownership of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Contractor in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein.

7.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.5 Cost Records. Contractor shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement and shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies thereof shall be promptly furnished to City upon request.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.3 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.4 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

8.5 Termination Prior to Expiration of Term. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of Contractor and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter.

8.6 Attorney Fees. In the event any dispute between the parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert Contractor fees, court costs and all fees, costs, and expenses incurred in any appeal or in collection of any judgment entered in such proceeding.

9. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

9.1 Non-Liability of City Officers and Employees. No officer, director, official, or employee of City shall be personally liable to the Contractor, or any successor-in-interest, in the event of any default or breach by City or for any amount which may become due to the Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

10. MISCELLANEOUS PROVISIONS

10.1 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City: City of Laguna Hills
Attention: City Manager
24035 El Toro Road
Laguna Hills, CA 92688-2824

To Contractor: All City Management Services, Inc.
Attention: General Manager
10440 Pioneer Blvd., Suite 5
Santa Fe Springs, CA 90670

10.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

10.3 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

10.5 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

“CITY”

**City of Laguna Hills, a municipal corporation
organized and existing under the laws of the
State of California**

Date: _____

By: _____
Bruce E. Channing, City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Gregory E. Simonian,
City Attorney

By: _____
Peggy J. Johns,
City Clerk

“CONTRACTOR”

**All-City Management Services, Inc., a California
corporation**

Date: _____

By : _____
Baron Farwell, President

Date: _____

By : _____
Demetra Farwell, Secretary

EXHIBIT "A"

CONTRACTOR'S SCOPE OF SERVICES/WORK

Including,

Schedule of Fees

And

Schedule of Performance

(comprised collectively of three separate documents):

- 1) a letter from Demetra Farwell to Tom Behrens, Chief of Police Services March 12, 2013, regarding the proposed billing rate for Fiscal Year 2013-2014;
- 2) a document entitled "Exhibit 'A' Scope of Services"; and
- 3) a matrix constituting a schedule of performance

EXHIBIT "A"



ALL CITY MANAGEMENT SERVICES

March 12, 2013

Tom Behrens, Chief of Police Services
City of Laguna Hills
24035 El Toro Road
Laguna Hills, CA 92653

Dear Tom Behrens:

It is once again the time of the year when many agencies are formulating their budgets for the coming fiscal year. Toward that end, please allow this letter to serve as confirmation of our interest in extending our agreement with the City of Laguna Hills for Crossing Guard Services through the 2013-2014 fiscal year.

All City Management Services (ACMS) is keenly aware of the difficult economic times faced by many of our clients. Many Agencies continue to reassess their budgets against the need to maintain critical services and provide for public safety.

In light of these circumstances ACMS has placed a price freeze on our billing rate for the coming 2013-2014 fiscal year for the City of Laguna Hills. The hourly billing rate will remain at Fourteen Dollars and Sixty Cents (\$14.60) per hour.

To facilitate the calculation of the annual cost of your Crossing Guard program we have developed and included with this letter a Client Worksheet. This Worksheet is our best estimation of the hours and cost of your program as it exist currently.

We look forward to another safe and successful school year. If you have any questions, please feel free to contact us.

Sincerely,

Demetra Farwell, Corporate Secretary

"The Crossing Guard Company"

10440 Pioneer Blvd., Ste. #5, Santa Fe Springs, CA 90670 • 310-202-8284 • 800-540-9290 • FAX 310-202-8325

EXHIBIT "A"
SCOPE OF SERVICES

1. The Contractor will provide personnel equipped and trained in appropriate procedures for crossing pedestrians in marked crosswalks. Such personnel shall be herein referred to as a Crossing Guard. The Contractor is an independent Contractor and the Crossing Guards to be furnished by it shall at all times be its employees and not those of the City.
2. The Contractor shall provide supervisory personnel to see that Crossing Guard activities are taking place at the required places and times, and in accordance with all items of this Agreement.
3. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report for work at the assigned time and location.
4. The Contractor shall provide personnel properly trained as herein specified for the performance of duties of Crossing Guards. In the performance of their duties the Contractor and employees of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and the laws and codes of the State of California pertaining to general pedestrian safety and school crossing areas.
5. Crossing Guard Services shall be provided by the Contractor at the designated locations and at the designated hours on all days on which the designated schools in the City of Laguna Hills are in session.
6. The Contractor shall provide all Crossing Guards with apparel by which they are readily visible and easily recognized as Crossing Guards. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. The Contractor shall also provide all Crossing Guards with hand held Stop Signs and appropriate safety vest.
7. The City agrees to pay the Contractor for the services rendered pursuant to this Agreement the sum of Fourteen Dollars and Sixty Cents (\$14.60) per hour, with a minimum of 4 hours, per day, per site. It is understood and agreed that contractor's compensation shall not exceed Sixty-Three Thousand and Seventy-Two dollars and 00/100 (\$63,072.00).

EXHIBIT "A"



ALL CITY MANAGEMENT SERVICES

Matrix

Payne, Carrie Ph:714.231.9369		203101 / Laguna Hills Division 2				
Last Updated:03/18/2013		MON	TUE	WED	THU	FRI
Alicia/Wilkes Lomarena Elem. 949.581.1370 Dis:Saddleback Valley	1.1 / CERT Holder,Marcy Reg:4 Other:4 H: 949.707.4549	07:35 - 08:20	07:35 - 08:20	07:35 - 08:20	07:35 - 08:20	07:35 - 08:20
		02:20 - 03:05	02:20 - 03:05	01:05 - 01:50	02:20 - 03:05	02:20 - 03:05
Alicia/Wilkes Lomarena Elem. 949.581.1370 Dis:Saddleback Valley	1.2 / CERT Nieradka,Denise Reg:4 Other:4 H: 949.586.1144	07:35 - 08:20	07:35 - 08:20	07:35 - 08:20	07:35 - 08:20	07:35 - 08:20
		02:20 - 03:05	02:20 - 03:05	01:05 - 01:50	02:20 - 03:05	02:20 - 03:05
Earhart/Barents Lomarena Elem. 949.581.1370 Dis:Saddleback Valley	2 / CERT Bostwick,Jennifer Reg:4 Other:4 H: 949.433.0474	07:40 - 08:25	07:40 - 08:25	07:40 - 08:25	07:40 - 08:25	07:40 - 08:25
		02:20 - 03:05	02:20 - 03:05	01:00 - 01:45	02:20 - 03:05	02:20 - 03:05
Santa Victoria/Barbera San Joaquin Elem. 949.581.3450 Dis:Saddleback Valley	3 / CERT Miller,John Reg:4 Other:0 H: 949.315.8142	07:25 - 08:10	07:25 - 08:10	07:25 - 08:10	07:25 - 08:10	07:25 - 08:10
		01:45 - 02:30	01:45 - 02:30	01:45 - 02:30	01:45 - 02:30	01:45 - 02:30
La Paz/ Paseo De Valencia Valencia Elem. 949.830.3650 Dis:Saddleback Valley	4.1 / CERT Sullivan,Carol Reg:4 Other:0 H: 949.859.6774	08:00 - 08:45	08:00 - 08:45	08:00 - 08:45	08:00 - 08:45	08:00 - 08:45
		02:20 - 03:05	02:20 - 03:05	02:20 - 03:05	02:20 - 03:05	02:20 - 03:05
La Paz/Paseo De Valencia Valencia Elem. 949.830.3650 Dis:Saddleback Valley	4.2 / CERT Bledsoe,Christina Reg:4 Other:0 H: 949.228.3568	08:00 - 08:45	08:00 - 08:45	08:00 - 08:45	08:00 - 08:45	08:00 - 08:45
		02:20 - 03:05	02:20 - 03:05	02:20 - 03:05	02:20 - 03:05	02:20 - 03:05
ALT / CERT Amann,Whitney Reg:0 Other:0 C: 949.829.9278						
ALT / PEND Clyne,Wendy Reg:0 Other:0 C: 949.648.7076						



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

**ISSUE: APPROVE ACCOMMODATION LICENSE AGREEMENT FOR THE USE OF
24031 EL TORO ROAD, SUITE 220, LAGUNA HILLS, CALIFORNIA, WITH
VILMA M. AARONS AND GENEVIEVE WALLS**

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED
ACCOMMODATION LICENSE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 220,
LAGUNA HILLS, CALIFORNIA, WITH VILMA M. AARONS AND GENEVIEVE WALLS
AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE ACCOMMODATION
LICENSE AGREEMENT.**

SUMMARY:

At the April 9, 2013, City Council meeting, the City Council approved a three year lease with Vilma M. Aarons and Genevieve Walls for Suite 200. At that time, the estimated lease start date was June 1, 2013. As a result of delays by the tenant in approving final tenant improvement plans, the lease start date has been revised to August 1, 2013. In an effort to accommodate the tenant and their need to vacate their present offices, staff is recommending that the City Council approve an Accommodation License Agreement for Suite 220, which is currently vacant. This Accommodation License Agreement is month-to-month and is intended to be utilized while tenant improvements are completed in Suite 200. The tenant will pay the City the same monthly rent that would be due on Suite 200.

FISCAL IMPACT:

The monthly rent for this agreement is \$2,869.35.

ATTACHMENTS:

- Accommodation License Agreement

ACCOMMODATION LICENSE SUMMARY

Building and Suite where User is located

Address 24031 El Toro Road, 220	City Laguna Hills
State CA	Zip Code 92653

User Information

Name Vilma Aarons and Genevieve Wall	Contact Name/Title Vilma and Genevieve Wall
Address 23521 Paseo De Valencia Suite 304B	City Laguna Hills
State CA	Zip Code 92653
Telephone (949) 454-9455	Fax

User invoicing details (if different from above)

City name	Contact Name/Title
Address	City
State	Zip Code
Telephone	Fax

User Business

Type	Areas Assigned	Move-In Date	Qty.	Fee per Area	Total Monthly Fee
Office	Suite 220	July 5, 2013	1	\$2,714.25	\$2,714.25
Workstation				\$	\$

Service Retainer on file	\$2,869.35
--------------------------	------------

Total due at signing \$

Make All Payments to: The City of Laguna Hills

c/o Essex Realty Management 10812 Sky Park Circle #200 Irvine, CA 92614

This License Summary applies to the provision of accommodations and services by City under the Accommodation License Agreement to which this is attached ("Agreement"). Capitalized terms not defined herein have the meaning ascribed to them in the Agreement.

THE CITY OF LAGUNA HILLS

By: Bruce E. Channing

By: _____
Its: City Manager

By: Peggy Johns

By: _____
Its: City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

"User"
Vilma Aarons

By: _____
Vilma Aarons

Genevieve Wall

By: _____
Genevieve Wall

ACCOMMODATION LICENSE AGREEMENT

This Accommodation License Agreement ("License") is entered into by The City of Laguna Hills ("City") and the undersigned ("User") as of the date signed by City. This License includes the preceding Accommodation License Summary ("License Summary") and attached Rules and Regulations (Exhibit A) which are incorporated herein by this reference.

Purpose and Intent. The purpose of this License is to set forth the terms and provisions under which City will provide the accommodations and services described herein to User. Notwithstanding anything to the contrary contained herein or in the Master Services Agreement, City and User expressly acknowledge, confirm and agree that: (i) this License is and shall at all times be a license and is the commercial equivalent of an agreement for accommodation in a hotel; (ii) the relationship between City and User created hereunder is that of licensor-licensee, and not of landlord-tenant or lessor-lessee; and (iii) this License shall not create or be deemed to create any tenancy interest, leasehold estate or other real property interest in favor of User with respect to the accommodations and services provided hereunder.

ACCOMMODATION SERVICES

Accommodations Provided. City shall use its good faith efforts to provide User with the number of ~~furnished~~ offices and workstations (individually, an "Area" and collectively, the "Areas") specified on the License Summary within the Building and Suite specified in the License Summary ("Building"). User shall be responsible for all costs of installing any telephone or internet service to the Areas.

In connection with User's use of the Areas, City will use its good faith efforts to provide the following services during the Building's normal business hours (as the same may be modified from time to time by City):

1. access to User's Areas;
2. heating and air conditioning during normal business hours for the Building;
3. lighting and electrical power for normal business use;
4. cleaning and janitorial;
5. use of the common area generally made available to other users of the Building, including, without limitation, lobby and sanitary facilities; and
6. Wireless internet connection

Notwithstanding anything to the contrary contained in this License, the City reserves the right to add, delete or modify any or all of said services at any time. Any special arrangements for User's use of such services outside the Building's normal business hours will be considered in good faith by City within a reasonable time period after requested by User.

USING THE BUILDING

Move In. Upon moving in, User shall sign an inventory of all furniture and equipment User is permitted to use hereunder, together with a note of its condition, and details of the keys or entry cards issued to User.

Permitted Use. User may only use the Building (including, without limitation, the Areas) for the purposes stated in the License Summary or subsequently agreed to between User and City. Use of the Building for a "retail" use, involving frequent visits by members of the public, is not permitted.

User's Name and Address. User may only transact business from the Building in its own name or some other name that City consents in writing to allow. User shall not put up any signs on the doors to the Areas or anywhere else which is visible from outside the Areas which User is then using. User may use the Building's address as its business address during the term hereof; provided, however, that User may not use the pictures or illustrations of the Building in any advertising or other publicity without the prior written consent of City.

City's property. User must take good care of all parts of the Building, including any equipment, fixtures and furnishings which User is permitted to use hereunder. User shall not alter any part of the Building or City's equipment, fixtures or furnishings. User shall be liable for any damage caused by User or its employees, agents, customers, vendors, permittees or invitees.

Furniture and equipment. User shall not install any furniture or office equipment, satellite or microwave antennas or dishes, cabling, technology or telecommunication lines or connections without City's prior written consent, which City may refuse at City's sole and absolute discretion.

Keys. Any keys or entry cards which City permits User to use shall remain City's property at all times. User must not make any copies of them or allow anyone else to use them without City's consent. Any loss of keys or entry cards must be reported to City immediately and User must pay the cost of replacement keys or entry cards and of changing locks, if required. If User is permitted to use the Building outside normal Building hours, then User shall be responsible for locking the doors to User's Areas and to the Building when User leaves.

Compliance with law. User must comply with all relevant laws and regulations in the conduct of User's business. User must do nothing illegal. User must not do anything that may interfere with the use of the Building by City or by others permitted to use the Building, cause any nuisance or annoyance, increase the insurance premiums City has to pay or cause loss or damage to City. User acknowledges that the terms of the foregoing sentence are a material inducement to City for the execution of User's agreement.

Compliance with Building rules. User must comply with all Building rules, policies and procedures that City imposes generally on users of the Building, whether for reasons of health and safety, fire precautions or otherwise as amended by City from time to time in its discretion ("City Rules").

Insurance. User shall obtain and maintain the following insurance policies: (a) property insurance for User's own property and items which User bring into the Building, (b) workman's compensation insurance in the minimum amounts required under applicable state law, and (c) commercial general liability of no less than \$1,000,000.

PROVIDING THE SERVICES

Access to the Areas. City shall have the right to enter the Areas that User is permitted to use hereunder at any time and without prior notice; provided, however, that City will use its reasonable efforts to respect security procedures to protect the confidentiality of User's business.

Parking. User may, subject to rules made by City, use one (1) parking space per Area on a nonexclusive basis with other users of the Building.

Unavailability of Areas. If for any reason City cannot provide the number of Areas stated in the License Summary by the date specified in the License Summary or during the term hereof, City shall not be liable to User for any losses or damages of User whatsoever, provided, however, City will not charge User the standard fee for Areas User cannot use until such Areas or substitutes thereto become available.

City's liability. City shall not be liable for any loss, liability or damage as a result of City's failure to provide all or any portion of the Areas or services hereunder as a result of mechanical breakdown, strike, delay, failure of staff, termination of City's interest in the building containing the Building or for any reason whatsoever that is beyond the reasonable control of City. City may suspend the provision of Areas and services (including access to the Areas) for reasons of political unrest, strikes, or other events beyond City's reasonable control, in which event payment of the standard fee will also be suspended for the same period.

Security. City makes no warranty or representation to User with respect to any security services or systems. User shall be fully responsible for the safety and security of its personal property brought onto the Building.

USER'S AGREEMENT

User's agreement. User acknowledges that its use of the Areas and services permitted under this License are solely being provided by City so that City can provide services to User. This License is personal to User, unassignable and revocable by City at any time; User acknowledges that its rights hereunder are solely that of a licensee, and therefore, User cannot transfer any rights hereunder to anyone else.

TERM AND TERMINATION

Duration. This License may be terminated at any time by City by providing notice to User. If such termination by City is purely for convenience, then City will provide a minimum of thirty (30) days advance written notice of City's intent to terminate this License. This License may be terminated by User upon ninety (90) days prior written notice to City of the termination date. If User terminates this License, User shall be obligated to pay the standard license fees through the termination date set forth in the notice (regardless of the date User vacates any or all of the Areas). ~~and, in addition, shall pay City a termination fee equal to ten percent (10%) of the monthly standard license fee (but in no event shall such fee exceed \$2,500) to compensate City for~~

~~administrative and transaction costs associated with the termination.~~

If the Building is not available. In the unlikely event that City is no longer able to provide the Areas and/or services (or reasonable substitutes thereto) at the Building stated in the License Summary, then this License will end and User will only have to pay standard fees up to the date this License ends.

When License ends. Upon the termination of this License:

1. User shall vacate the Areas and the Building immediately, leaving them in the same condition as they were in when User moved in, reasonable wear and tear excepted. If User leaves any of User's own property in the Building after this License has been terminated, City may dispose of it in any way City chooses without liability to User for such property or any proceeds of sale thereof; and

2. User shall indemnify City for any loss, claim or liability City incurs as a result of User's failure to vacate on time.

Notices. Any notices permitted or required under this License must be in writing and will be deemed given when delivered personally, by facsimile (with confirmation of receipt), by air express courier (charges prepaid with return receipt requested), or five (5) days after deposit in the U.S. mail. City may provide notice of amendments to any services provided hereunder, Building rules or increases in license fees or service retainers by e-mail or publication of the same on a City designated Web Site, which is identified by notice given in any of the foregoing manners. All other notices permitted hereunder shall be addressed to the other party at the address identified in the License Summary, but each party may change the address by written notice in accordance with this paragraph.

Indemnification. Except to the extent caused by City's gross negligence or willful misconduct, User will defend, indemnify and hold City and its affiliates, officers, directors, employees, agents and successors and assigns harmless from any and all liability, claims, damages, loss and expenses (including attorneys' fees) incurred in connection with or arising from any acts, omissions or negligence of User or any person claiming by, through or under User or any breach of this License.

Consequential loss. If for any reason City cannot provide User with any Areas or services, City's liability is limited to crediting or returning to User a fair proportion of the relevant standard fee. To the extent permitted by law, City will have no liability whatsoever for any consequential loss as a result of anything City or City's manager do or fail to do.

Applicable law. This License shall be interpreted and enforced in accordance with the laws of the state of California.

FEES

Standard license fee. The standard license fee initially charged by City is set forth in the License Summary; City reserves the right to increase such fee at any time and from time to time by giving notice of the same to User. The standard license fee is payable in advance in full by the 1st day of each month in respect of standard services to be provided during such calendar month. For any period of time less than a month, the license fee will be apportioned on a daily basis. User agrees to promptly pay (or reimburse City, if applicable, for) (i) all sales, use, excise and any other taxes and license fees which User is required to pay to any governmental authority (and, at City's request, will provide to City evidence of such payment) and (ii) any taxes paid by City to any governmental authority that are attributable to the accommodation, including, without limitation, any gross receipts, occupancy taxes, or tangible personal property taxes.

Payment terms. Payment is due on the 1st of each month. A late fee of 10% will be charged after the 10th of the month. Any amounts not paid when due shall, in addition to any other remedies, bear interest at a rate of 1.2% per month (or the maximum rate allowed by law, if less) on the delinquent amount from the date due. All payments will be made in U.S. Dollars to City at the address stated in the License Summary, or such other address that is from time to time designated by City.

Service retainer. The service retainer specified in the License Summary (if any) User paid on entering into this License will be held by City, without interest, as security for performance of all User's obligations under this License. The service retainer, or any balance after deducting outstanding fees and other costs due to City hereunder, will be returned to User within 60 days after the termination of this License. City may require User to pay an increased service retainer if outstanding fees exceed the service retainer held or if User fails to timely pay any amounts due hereunder.

Withholding services. City may withhold services (including for the avoidance of doubt, denying User access to User's Areas) while there are any outstanding fees or User is otherwise in breach of this License.

THE CITY OF LAGUNA HILLS

By: Bruce E. Channing

By: _____
Its: City Manager

By: Peggy Johns

By: _____
Its: City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

“User”
Lisa Saputo

By: _____
Lisa Saputo

5. 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 7:32 PM.

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

Present: Chair Kogerman, Agency Member Bressette, Agency Member Carruth, and Agency Member Gilbert

Absent: Vice Chair Blount

5.2 PUBLIC COMMENTS

There were no Public Comments.

5.3 MINUTES**5.3.1 REGULAR MEETING, JUNE 11, 2013**

MOTION TO APPROVE THE MINUTES OF THE JUNE 11, 2013, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/AGENCY MEMBER GILBERT.

APPROVED BY A VOTE OF 3-0-1-1 (VICE CHAIR BLOUNT ABSENT, AGENCY MEMBER BRESSETTE ABSTAINED).

5.4 ADMINISTRATIVE REPORTS**5.4.1 FISCAL YEAR 2013/2014 AND FISCAL YEAR 2014/2015 CAPITAL IMPROVEMENT PROGRAM CONFORMANCE WITH THE GENERAL PLAN**

THE PLANNING AGENCY ADOPTED RESOLUTION NO. PA2013-06-25-1, A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, MAKING A FINDING OF GENERAL PLAN CONSISTENCY FOR THE FISCAL YEAR 2013/2014 AND FISCAL YEAR 2014/2015 PROJECTS OF THE SIX-YEAR CAPITAL IMPROVEMENT PROGRAM, BY M/AGENCY MEMBER BRESSETTE, S/AGENCY MEMBER CARRUTH.

APPROVED BY A VOTE OF 4-0-1 (VICE CHAIR BLOUNT ABSENT).

5.5 PLANNING AGENCY PUBLIC HEARINGS

There were no Public Hearings.

PLANNING AGENCY ADJOURNMENT

Mayor Kogerman reconvened the City Council Meeting at 7:34 PM. All Council Members were present with the exception of Mayor Pro Tempore Blount.



City of Laguna Hills

City Council Meeting Agenda

Staff Report

DATE: JULY 9, 2013

TO: CHAIR AND AGENCY MEMBERS

**FROM: DAVID CHANTARANGSU, AICP
DIRECTOR OF COMMUNITY DEVELOPMENT**

ISSUE: TENTATIVE PARCEL MAP & VARIANCE NO. 11-12-2428, A REQUEST TO SUBDIVIDE THE CABOT TOWN CENTER PROPERTY INTO FOUR PARCELS AT 25214-25272 CABOT ROAD IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT.

RECOMMENDATION: THAT THE PLANNING AGENCY: (1) CONDUCT A PUBLIC HEARING FOR TENTATIVE PARCEL MAP/VARIANCE NO. 11-12-2428; AND (2) ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP/VARIANCE NO. 11-12-2428, A REQUEST TO SUBDIVIDE THE CABOT TOWN CENTER PROPERTY INTO FOUR PARCELS AT 25214-25272 CABOT ROAD IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT AND A REQUEST FOR A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT FOR THE EXISTING BUILDING ON PROPOSED PARCEL 2".

SUMMARY:

Tentative Parcel Map/Variance No. 11-12-2428 is a request by Brenda Wright of Walden and Associates ("Applicant"), on behalf of Mouldy, LLC ("Owner"), to subdivide the Cabot Town Center property into four parcels. The property is developed as a retail shopping center use located at 25214-25272 Cabot Road, near the intersection of La Paz and Cabot Roads. The property is located in the City's Freeway Commercial zoning district.

The proposed subdivision is consistent with the General Plan's goals and strategies and generally consistent with the City's Development Code ("Code"). In order to approve a tentative parcel map, the City must find that the parcel map meets all of its zoning development code standards such as lot size and building setbacks. Two of the existing buildings on the property are located within a required rear setback area; however, it is believed that these buildings were legally constructed in their current locations pursuant to variances approved by the County of Orange at the time the property was developed. In order for the property to be subdivided, a variance is requested of the City to allow one of

the existing buildings to maintain a substandard side setback. Staff supports this variance request and believes the required findings for the variance can be made.

Staff has reviewed this project for compliance with the California Environmental Quality Act (CEQA) and determined that this project will have no possibility of having a significant effect on the environment. Finally, conditions of approval have been added to ensure that this project will not result in any significant and adverse impacts to the public health, safety, and general welfare.

BACKGROUND:

Cabot Town Center is located at the southeast corner of Cabot Road and La Paz Road, bordered by the I-5 Freeway to the north and east, and La Paz Office Plaza to the south and west. It's believed the property was developed in the 1960s under County jurisdiction and is situated on one parcel. Eight buildings are located on the property, which have seen a variety of tenants over the years, including Lucky's supermarket, Love's restaurant, and existing tenants such as Howard's Appliance, and Outback Steakhouse. Although the development is located on one parcel, sections and individual buildings have been improved or redeveloped over different time periods and there is not a consistent architectural theme over the property. However, the property maintains coordinated circulation, parking, landscaping, and utilities.

The City's historical record (planning entitlements, building permits, etc.) for the property extends back to 1977, but does not include records from when the property was originally developed in the 1960s. The center is located on an irregularly shaped parcel with several buildings situated unusually close to property lines, so it is believed that a number of variances were issued by the County to help facilitate development on the parcel. Two such variances can be found in the City's historical record, but at least three more are referenced, but not included in the record. Staff believes these records were either not provided to the City, or lost during the transition from County to City jurisdiction. County entitlements issued to facilitate development of the site "run with the land," meaning the City must honor the use permits and variances granted to the property under the County's jurisdiction.

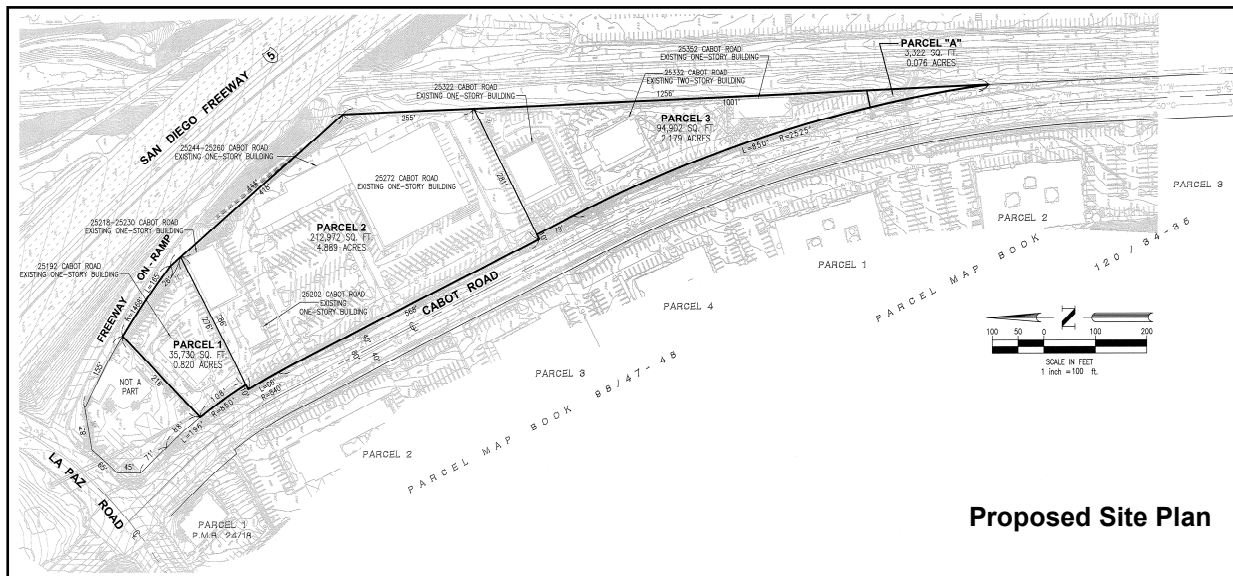
PROJECT DESCRIPTION:

The Applicant is proposing to subdivide the Cabot Town Center property into four parcels as shown on the provided site plan (Attachment No. 3). The parcels can generally be described as follows:

- Parcel 1: 0.82 acres in size encompassing the McDonald's restaurant and surrounding parking lot.
- Parcel 2: 4.89 acres in size encompassing the Wienerschnitzel restaurant, Roman Cucina and other inline shops, and Howard's Appliance.
- Parcel 3: 2.18 acres in size encompassing Outback Steakhouse, DaVita Dialysis, and the former Just Tires building.

Parcel A: 0.08 acre open space/remnant parcel that is unbuildable and not currently or prospectively intended to be used by the property owner. The Applicant proposes to voluntarily dedicate this parcel in fee to the City of Laguna Hills.

The graphic below depicts the arrangement of property lines and parcels if approved.



APPROVAL CRITERIA:

The State of California Subdivision Map Act vests local agencies with the authority to regulate and control the design and improvement of projects where land is being subdivided. Subdivisions involving the creation of less than five parcels are accomplished through a parcel map. The City has adopted the County of Orange subdivision ordinance and manual as its policy document for regulating the subdivision process. The approval criteria outlined in this document are primarily based upon a proposed subdivision's consistency with the City's General Plan, Development Code, and all applicable development standards of the zone where the subdivision is proposed. Approval of the proposed parcel map also requires a variance from the minimum side setback requirements of ten feet to permit a side setback of six feet between the lot line dividing proposed Parcels 1 and 2 and the existing building on proposed Parcel 2. Variance requests are evaluated based upon the unique circumstances of the property that necessitate the variance, including size, shape, topography, location or surroundings.

Consistency with the General Plan:

The General Plan Land Use Element identifies areas in the city where opportunities exist for future revitalization and calls these areas "future study areas." Cabot Town Center is located in the La Paz Gateway study area, where the General Plan envisions buildings to be reconstructed, enlarged or reoriented "to create more vibrant street life and to provide

better pedestrian access from adjacent areas.” The Applicant has indicated that the proposed subdivision will assist the property owner in securing financing for future improvements to the center. Any future improvements to the center will be evaluated with the General Plan’s goals for the La Paz Gateway in mind.

Consistency with the Development Code and Subdivision Ordinance:

Section 7-9-254 of the 1991 County subdivision ordinance, and Sections 9-86.060 and 9-86.050 of the City’s Development Code require subdivisions to be consistent with the Laguna Hills General Plan, the County subdivision ordinance, and applicable development standards including lot size, coverage, density, setbacks, and parking. The table below summarizes the characteristics of the property upon completion of the subdivision and compares them to the Code’s development standards.

Cabot Town Center Development Standards Matrix				
Development Standard		Parcel 1	Parcel 2	Parcel 3
Min. Lot Size	10,000 sf.	35,730	212,972	94,902
Min. Lot Width	50 ft.	108'	568'	750'
Min. Lot Depth	100 ft.	216'	286'	50'
Max Lot Coverage	50%	10%	24%	20%
Max Density	.40 FAR	✓	✓	✓
Max Building Height	50 ft.	✓	✓	✓
Min. Setback- front				
Parking Lot	10 ft.	-	-	-
Parking Structure	20 ft.	-	-	-
Building	20 ft.	58'	122'	28'
Min. Setback- side (int.)	10 ft.	31'	6'	28'
Min. Setback- street side	15 ft. (lot 10 ft.)	-	-	-
Min. Setback- rear	15 ft.	77'	8'	5'
Parking	Determined by shared parking agreement.			
Signage	Determined by approved master sign program.			

As shown in the table, Parcel 1 in the proposed subdivision meets all of the Code’s applicable development standards. Parcels 2 and 3 are deficient in one or more required setbacks. Parcel A is not subject to the Code’s development standards since it is being dedicated to the City.

The setback deficiency on Parcel 3 is due to the former Just Tires building being built five feet from the rear property line instead of the required fifteen feet. In researching the entitlement history of the property, staff found a variance approved by the County (Use Permit No. 77-86P) allowing this building to be constructed five feet from the property line.

This variance serves as justification for the five foot setback to remain in the current proposal. Parcel 2 has setback deficiencies on the side and rear due to the building housing the Roman Cucina restaurant and inline shops being constructed six feet and eight feet from the side and rear property lines, respectively. The Code-required setback is ten feet. The Applicant has represented that the County approved variances to permit the construction of this building in its current location, as well. The City's records of the prior County entitlements are incomplete and, although staff found references to multiple County-approved variances for the property, it was unable to locate the actual documents evidencing County approval of these variances. In light of the City's incomplete entitlement record and the rationale that a 15,582 square foot building could not be built without permits, staff believes it is likely that variances to the setback requirements for this building were granted by the County. The side setback deficiency is caused by the location of the proposed northern parcel line for Parcel 2 and requires approval of the requested variance.

Request for Variance:

In order for the City to approve the requested parcel map, the Applicant must obtain approval of a variance to address the side setback deficiency on proposed new Parcel 2. Otherwise the Applicant would be required to adjust the property line in a manner that does not reflect the use of the parking improvements. The northern parcel line for Parcel 2 is in its proposed location to create a stand-alone parcel for the McDonalds restaurant located on Parcel 1. The location of the parcel line is ideal, as it runs along the full length of the restaurant's parking lot boundary. In order to meet the Code-required setback of ten feet, the parcel line will have to shift further north an additional four feet, which would situate ten of McDonalds' parking stalls straddling the northern property line with part of the spaces located on Parcel 1 and the other part on Parcel 2. As a matter of practice, "splitting" improvements over property lines is an undesirable scenario as it creates complications in maintenance, use, and access to improvements.

Overall, staff is supportive of the requested variance in light of the fact that other developments in the area that were approved under the County (such as La Paz Office Plaza across the street) were constructed in a way that allowed the property to be subdivided so that each individual building would be situated on its own, stand-alone parcel. Approval of this variance will grant the Cabot Town Center property owner the same privilege while assisting the property owner with obtaining financing for future center improvements.

Parking and Circulation:

While staff supports the Applicant's request, staff is concerned that approval of this variance request and parcel map could interfere with the local traffic circulation network. Drivers can presently circulate through the shopping center from one end to the other without leaving the site or adding to traffic levels on Cabot Road. In addition, the existing uses on proposed Parcels 2 and 3 share common parking. To ensure this local circulation pattern and parking access remains in the event the new separate parcels are ultimately

sold in the future, staff has included **Condition of Approval No. 8**, which requires the Applicant to prepare recordable documents in a form approved by the City Attorney and City Manager that address responsibility for parking, ingress and egress, and circulation should individual parcels be sold. In satisfaction of this Condition, the Applicant has executed the Declaration, Covenant, and Agreement Establishing Reciprocal Access, Circulation, Parking and Utility Easements included as Attachment 4 to this staff report, which was prepared by the City Attorney's Office. Staff notes that a previous entitlement (Condition 24 of Site Development Permit/Conditional Use Permit/Parking Use Permit/Master Sign Program No. 07-11-2030) over the site also provides the City with the ability to review and approve any changes to parking and circulation proposed on the site.

Land Dedication to the City:

The Applicant's proposal creates a 3,322 square foot open space, remnant parcel at the "tail" end of the property, at the southernmost portion of the site, labeled Parcel A. Proposed Parcel A is undevelopable and not currently, or prospectively intended to be, used by the Applicant. The Applicant has voluntarily proposed to dedicate Parcel A to the City in fee. The City's Public Services Director has indicated that this parcel would be beneficial to the City for drainage purposes, so Staff supports acceptance of this proposed dedication.

PUBLIC COMMENT:

A total of 37 public hearing notices were mailed to surrounding property owners within a 300' radius of the subject site and to tenants within Cabot Town Center. To date, no comments have been received.

CEQA FINDINGS:

This project is deemed exempt from the requirements of the California Environmental Quality Act based upon CEQA Guidelines Section 15061(b)(3), which exempts projects that have no possibility of having a significant effect on the environment. The proposed subdivision does not include any physical improvements to the project site and will therefore have no possibility of having a significant effect on the environment.

CONCLUSION:

The proposed tentative parcel map and variance will allow the Cabot Town Center property owner to subdivide the property into four parcels, which will assist them in obtaining financing for future improvements to the center. In the process, the City will receive dedication of property for public benefit. Staff has reviewed this project for compliance with the requirements of the City's Development Code and General Plan goals and strategies and determined that, subject to approval of the proposed variance, this project is in compliance with these regulations. Therefore, approval of Tentative Parcel Map/Variance No. 11-12-2428 is warranted.

ATTACHMENTS:

1. Resolution of Approval
2. Letter of Justification submitted by the Applicant
3. Proposed tentative parcel map
4. Declaration, Covenant and Agreement Establishing Reciprocal Access, Circulation, Parking and Utility Easements

TPM/VA-11-12-2428

Attachment #1

Resolution of Approval



RESOLUTION NO. PA2013-

A RESOLUTION OF THE PLANNING AGENCY OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP/VARIANCE NO. 11-12-2428, A REQUEST TO SUBDIVIDE THE CABOT TOWN CENTER PROPERTY INTO FOUR PARCELS AT 25214-25272 CABOT ROAD IN THE (FC) FREEWAY COMMERCIAL ZONING DISTRICT AND A REQUEST FOR A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT FOR THE EXISTING BUILDING ON PROPOSED PARCEL 2

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

WHEREAS, an application for Tentative Parcel Map/Variance No. 11-12-2428 (the "Project") has been received from Brenda Wright on behalf of Walden & Associates and the property owner, Mouldy, LLC. (the "Applicant," "Owner" or "Applicant/Owner"), for the subdivision of the Cabot Town Center property located at 25214-25272 Cabot Road (the "Property") in the (FC) Freeway Commercial zoning district.

WHEREAS, the Project consists of (a) the proposed subdivision of the Property into four parcels: (i) an approximately 0.82 acre parcel containing the existing McDonald's restaurant and surrounding parking lot (Parcel 1); (ii) an approximately 4.89 acre parcel containing the existing Wienerschnitzel restaurant, an existing building containing the Roman Cucina restaurant and inline shops, and the existing Howard's Appliance (Parcel 2); (iii) an approximately 2.18 acre parcel containing the existing Outback Steakhouse, DaVita Dialysis, and former Just Tires buildings (Parcel 3); and (iv) an approximately 0.08 acre unbuildable vacant open space / remnant parcel not currently or prospectively planned to be used by the Owner, to be dedicated to the City in fee (Parcel A); (b) a proposed variance from the minimum side setback requirement of ten (10) feet to permit a side setback of six (6) feet between the lot line dividing proposed Parcels 1 and 2 and the existing building on proposed Parcel 2.

WHEREAS, the Project is hereby found to be exempt from the requirements of the California Environmental Quality Act pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations, which exempts projects that have no possibility of having a significant effect on the environment.

WHEREAS, Government Code Section 65402 provides that if there is an applicable general plan, no real property shall be acquired by dedication or otherwise for street, square, park or other public purposes until the location, purpose and extent of such acquisition have been reported upon by the planning agency as to conformity with the general plan.

WHEREAS, the Planning Agency has considered evidence presented by the Community Development Department, the Applicant/Owner, and other interested parties with respect to the subject application at a public hearing held on July 9, 2013.

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

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

SECTION 2. That, in compliance with Government Code Section 65402, the dedication of Parcel A to the City pursuant to the proposed Parcel Map is in conformity with the City's General Plan, based on the following:

A. Pursuant to the Proposed Parcel Map, an approximately 0.08 acre unbuildable vacant open space/remnant parcel described as Parcel A on the Parcel Map would be dedicated to the City in fee. Public easements for drainage already exist over Parcel A, and the Owner does not currently use, or intend in the future to use, the property comprising Parcel A. The location, purpose, and extent of the dedication of Parcel A in fee to the City pursuant to the proposed Parcel Map is in conformity with the City's General Plan because the land described as Parcel A in the proposed Parcel Map will further the City's goal of maintaining adequate drainage facilities and flood hazard protection for the community as described on pages CSF-14 and CSF-15 in the General Plan's Community Services and Facilities Element.

SECTION 3. That the required findings by the City for approval of Tentative Parcel Map/Variance No. 11-12-2428 have been met and made as follows:

Findings for a Tentative Parcel Map:

1. That the proposed map is consistent with the General Plan:

The General Plan land use designation of the Property subject to the proposed parcel map is Freeway Commercial, which provides for the development and maintenance of medium intensity commercial uses that serve the needs of the motoring public, including restaurants, discount warehouse outlets, service stations, and hotels and motels. The maximum Floor Area Ratio (FAR) for property in the Freeway Commercial land use designation is 0.40. Existing uses on the Property include restaurant, retail, and commercial uses permitted within the Freeway Commercial land use designation, and no new development is proposed in conjunction with the proposed parcel map. The proposed parcel map would divide the Property into four parcels: (i) an approximately 0.82 acre parcel containing the existing McDonald's restaurant and surrounding parking lot (Parcel 1); (ii) an approximately 4.89 acre parcel containing the existing Wienerschnitzel restaurant, an existing building containing the Roman Cucina restaurant and inline shops, and the existing Howard's Appliance; (iii) an approximately 2.18 acre parcel containing the existing Outback Steakhouse, DaVita Dialysis, and former Just Tires buildings; and (iv) an approximately 0.08 acre unbuildable vacant open space / remnant parcel not currently or

prospectively planned to be used by the Owner, to be dedicated to the City in fee. Creation of these new, separate parcels will not result in the maximum FAR of 0.40 to be exceeded with respect to any of the proposed new parcels. The subject Property is also located in the General Plan's "La Paz Gateway" future study area, which envisions buildings to be reconstructed, enlarged, or reoriented "to create more vibrant street life and to provide better pedestrian access from adjacent areas." The proposed parcel map will further that goal by aiding the Owner in obtaining funding to finance future improvements to the project site.

2. That the design and improvement of the proposed subdivision is consistent with the General Plan:

The General Plan land use designation of the Property subject to the proposed parcel map is Freeway Commercial, which is implemented by the Freeway Commercial chapter in the City's Development Code. No physical development is proposed in conjunction with the proposed subdivision. All development at the project site already exists and has supported the retail/ commercial use of the Property without issue since the 1960s. The proposed subdivision merely creates property lines along existing development "envelopes" such as buildings and parking improvements. With approval of the proposed variance, the Applicant/Owner will be relieved from compliance with certain development standards outlined in the Freeway Commercial chapter of the Development Code, which help implement the General Plan. The granting of the variance will not materially affect the implementation of the City's General Plan since the Property is already used for commercial purposes.

3. That the site is physically suitable for the proposed type of development:

No physical development is proposed in conjunction with the proposed subdivision. All development at the project site already exists and has supported the retail/ commercial use of the Property without issue since the 1960s. The proposed subdivision merely creates property lines along existing development "envelopes" such as buildings and parking improvements.

4. That the requirements of the California Environmental Quality Act have been satisfied:

The proposed subdivision has been deemed exempt from the requirements of the California Environmental Quality Act

based upon CEQA Guidelines Section 15061(a)(b)(3). This section exempts projects that have no possibility of having a significant effect on the environment. The Applicant is not proposing a physical development on the Property at this time, so no impact to the environment will occur as a result of this Tentative Parcel Map.

5. That the site is physically suitable for the proposed density of development:

No physical development is proposed in conjunction with the proposed subdivision. All development at the project site already exists and has supported the retail/ commercial use of the Property without issue since the 1960s. The proposed subdivision merely creates property lines along existing development "envelopes" such as buildings and parking improvements. Further, creation of the proposed new, separate parcels will not result in the maximum Floor Area Ratio (FAR) of 0.40 applicable to the property to be exceeded on any of the proposed new parcels with respect to the existing improvements.

6. That the design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat.

No physical development is proposed in conjunction with the proposed subdivision. All development at the project site already exists and has supported the retail/ commercial use of the Property without issue since the 1960s. The proposed subdivision merely creates property lines along existing development "envelopes" such as buildings and parking improvements.

7. That the design of the subdivision and the type of improvements proposed are not likely to cause serious public health problems:

No physical development is proposed in conjunction with the proposed subdivision. All development at the project site already exists and has supported the retail/ commercial use of the Property without issue since the 1960s. The proposed subdivision merely creates property lines along existing development "envelopes" such as buildings and parking improvements. A condition of approval has been included to ensure that adequate utilities continue to be provided, along with the use of joint parking facilities and internal on-site circulation, should individual parcels be sold.

8. That the design of the subdivision and the type of improvements proposed will not conflict with easements of record or established

by court judgment acquired by the public at large for access through or use of property within the proposed subdivision; or, if such easements exist, that alternate easements for access or for use will be provided and that these will be substantially equivalent to ones previously acquired by the public:

The proposed subdivision will occur on a site with existing development and easements that have adequately supported the improvements without issue. An approximately 0.08 acre area of the Property currently subject to a public easement, and not currently or prospectively planned to be used by the Owner, is proposed to be dedicated to the City in fee pursuant to the map.

9. That the design and improvement of the proposed subdivision are suitable for the uses proposed and the subdivision can be developed in compliance with the applicable zoning regulations pursuant to Section 7-9-254 of the subdivision code:

The existing land use mix at the project site will not change as a result of this subdivision proposal. Section 7-9-254 of the County subdivision code relates to the parcel map's conformity with applicable zoning standards. The proposed variance will allow the County-approved land use development pattern to remain. The improvements at the site have existed since the 1960s and have been adequately served by public and private infrastructure. The proposed parcel map does not include any new development.

10. That the design of the subdivision, to the extent feasible, does have allowance for future passive or natural heating and cooling opportunities:

No physical development is proposed in conjunction with the proposed parcel map that would benefit from passive heating or natural heating and cooling. No physical development is proposed in conjunction with the proposed subdivision. All development at the project site already exists and has supported the retail/commercial use of the Property without issue since the 1960s. The proposed subdivision merely creates property lines along existing development "envelopes" such as buildings and parking improvements. The proposed parcel map does not preclude the future implementation of passive or natural heating and cooling opportunities.

11. That the design, density, and configuration of the subdivision strikes a balance between the effect of the subdivision on the housing needs of the region and of public service needs:

No physical development is proposed in conjunction with the proposed subdivision, so the housing needs of the region will be unaffected. All development at the project site already exists and has supported the retail/ commercial use of the Property without issue since the 1960s. The proposed subdivision merely creates property lines along existing development “envelopes” such as buildings and parking improvements.

12. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in violation of existing requirements prescribed by the California Regional Water Quality Control Board:

No physical development is proposed in conjunction with the proposed subdivision. All development at the project site already exists and has supported the retail/commercial use of the Property without issue since the 1960s. The proposed subdivision merely creates property lines along existing development “envelopes” such as buildings and parking improvements.

Findings for a Variance:

1. That the strict application of the Laguna Hills Development Code deprives the property owner of privileges enjoyed by other properties in the vicinity and in an identical land use designation because of special circumstances applicable to the subject property or intended use of the property that do not generally apply to other properties in the same zoning district such as size, shape, topography, location or surroundings:

The Applicant/Owner has requested a variance from the minimum side setback requirement of ten (10) feet to permit a side setback of six (6) feet between the lot line dividing proposed Parcels 1 and 2 and the existing building on proposed Parcel 2. The requested variance will allow the Property Owner of Cabot Town Center to create stand-alone parcels for the previously developed McDonald's restaurant and adjoining commercial space on the property. The variance is necessary due to the circumstances with which the inline commercial property was originally approved under the County in the 1970s and due to the parcel's irregular shape. Specifically, the Roman Cucina and inline shops building at Cabot Town Center was constructed approximately six feet from the edge of the McDonalds parking lot, which is the ideal location for a parcel line that will create the standalone parcel for McDonalds (Parcel 1) because it runs along the full length of the restaurant's

parking lot boundary. Moving the proposed lot line between Parcels 1 and 2 to the north in order to create a ten (10) foot side setback would result in splitting the defined parking improvements serving the use on Parcel 1 between Parcels 1 and 2, which is undesirable because it would create complications in maintenance, use, and access to improvements. Other developments in the area that were approved under the County (such as the nearby La Paz Office Plaza) were constructed in a way that allowed the property to be subdivided and for each building to have its own individual parcel. The requested variance will allow the Cabot Town Center Property Owner the same privilege.

2. That the grant of the variance does not constitute the grant of special privilege not available to other properties under similar circumstance in the same zoning district:

Granting of the requested variance will provide relief from the City's side setback development standard to allow creation of a stand-alone lot for an existing restaurant. The variance is necessary due to the unique circumstances under which the property was originally approved and developed under County jurisdiction and due to the Property's irregular shape. Without the variance, the Cabot Town Center Property Owner would be unable to create such a stand-alone parcel, where other properties in the Freeway Commercial zone have already done so. For example, the La Paz Office Plaza located directly to the west shares a similar irregular parcel shape, and was originally approved by the County, but has been able to exercise the ability to subdivide the property into parcels for each individual building on the property. Therefore, approval of the proposed variance will not grant a special privilege, but will allow the Property Owner the same development rights other property owners have exercised.

3. That the variance is granted upon hardship and not convenience:

The proposed variance is being requested due to hardship stemming from the irregular shape of the Cabot Town Center Property and the circumstances under which the Property was originally approved by the County. In an effort to help facilitate development on the irregular shape of the parcel, a number of variances were granted by the County, resulting in construction of a building (Roman Cucina & inline shops) that is close to the northern and eastern property lines. The location of this building limits the Property Owner's ability to subdivide the property with stand-alone parcels for the McDonald's restaurant (Parcel 1) and adjoining commercial property (Parcel 2) without the proposed variance. It should

be noted that the La Paz Office Plaza located directly to the west shares a similar irregular parcel shape, and was originally approved by the County, but has been able to exercise the ability to subdivide the property into parcels for each individual building on the property.

4. That the grant of variance will not be detrimental to the public health, safety, and welfare of the community, nor be injurious to properties, uses, or improvements in the vicinity:

The variance is being requested in conjunction with a parcel map that does not include physical development. The existing land use and configuration of the project site will not change as a result of granting this variance. Therefore, approval of this variance will not be detrimental to the public health, safety, and welfare of the community, nor be injurious to properties, uses, or improvements in the vicinity.

5. That the variance does not grant a use not permitted by the zoning district:

The variance is being requested in conjunction with a tentative parcel map that does not include physical development. The existing land use and configuration of the project site will not change as a result of granting this variance. Therefore, approval of this variance will not grant a land use not permitted in the Freeway Commercial zone.

NOW, THEREFORE, based upon the above findings, the Planning Agency of the City of Laguna Hills does hereby approve Tentative Parcel Map/Variance No. 11-12-2428 subject to the following conditions:

Standard Conditions

1. The following Conditions of Approval shall be binding on and enforceable against, and, whenever used herein, the terms "Applicant", "Owner", and/or "Applicant/Owner" shall mean and refer to, each of the following: the project applicant, Walden & Associates, on behalf of Mouldy LLC property owner, the owner(s) and tenants(s) of the property, and each of their respective successors and assigns.
2. The term "Permit" as used in these conditions of approval refers to the tentative map and variance approved by the City of Laguna Hills Planning Agency pursuant to Tentative Parcel Map/Variance No. 11-12-2428. This approval constitutes approval of the proposed Permit only to the extent that it complies with the City Development Code and any other applicable zoning regulations. Approval does not include any action or findings as to compliance or approval of

the Permit regarding any other applicable ordinance, regulation, or requirement.

3. Failure to abide by and faithfully comply with any and all conditions of approval shall constitute grounds for revocation of the approved tentative parcel map and/or approved variance by the Laguna Hills Planning Agency.
4. To the fullest extent permitted by law, the Applicant shall, at its sole cost and expense, protect, defend, indemnify, and hold harmless the City, its elected and appointed officers and officials, employees, agents, departments, agencies, authorized volunteers, consultants, boards, commissions, and committees, and instrumentalities thereof ("Indemnitees"), from and against any and all claims, liabilities, losses, fines, demands, penalties, lawsuits, writs of mandamus, and any other claims or actions or proceedings of any kind whatsoever (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolution procedures (including, but not limited to, arbitrations, mediations, and other such procedures), judgments, orders and decisions (collectively "Claims" and "Actions"), brought against the Indemnitees, which seek to attack, challenge, modify, set aside, void, or annul any action of or any permit or approval issued by the Indemnitees (including actions approved by the voters of the City) for, in connection with, or concerning the approval of this Permit. It is expressly understood and agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the defense of the Indemnitees for the Claims and Actions, and that the Applicant shall promptly reimburse the City for all costs and expenses directly and necessarily incurred by the City in the course of the defense, including reasonable attorneys' fees. The City shall promptly notify the Applicant of any Claims and Actions brought against the Indemnitees and shall cooperate in the defense of any such Claims and Actions. If the Applicant fails to so defend the Claims and Actions, the City shall have the right but not the obligation to do so and, if it does, the Applicant shall promptly pay the City's full cost thereof.
5. Pursuant to Government Code Section 66020, the Applicant is informed that the 90-day period in which the Applicant may protest the fees, dedications, reservation or other exaction imposed on this Permit through the conditions of approval has begun.
6. The Applicant/Owner shall agree in writing to these conditions of approval within 30 days of the Planning Agency's action.
7. The Applicant shall reimburse the City for any outstanding staff time spent on the processing of Tentative Parcel Map/Variance No. 11-12-2428, including City Attorney costs, within 60 days of Planning Agency action.

Planning

8. Prior to recordation of the Final Parcel Map, the Applicant/Owner shall record a declaration, covenant, agreement, or other document, in a form approved by the City Attorney and City Manager, which provides for continued (a) reciprocal pedestrian and vehicular access and circulation between Parcels 1, 2 and 3; (b) reciprocal parking between parcels 2 and 3; and reciprocal easements for common utility facilities serving Parcels 1, 2, and/or 3. The document shall be consistent with the approved tentative parcel map, shall be enforceable by the City, shall run with the land, shall bind all current and future owners and tenants of all or portions of Parcels 1, 2 and 3, shall provide that violation of the terms of the document constitute a violation of these conditions of approval, and shall not be modified or terminated without prior written approval from the City.
9. A final map shall be recorded within two years of July 9, 2013, unless the Applicant/Owner has filed a request for extension consistent with the provisions of City requirements and the Subdivision Map Act.

Public Services

10. The Applicant/Owner shall submit the Final Parcel Map, Title Report, Lot Closure Calculations and other supporting documentation as required to the City Engineer for plan review and pay related plan checking fees.
11. The Applicant/Owner shall process the Final Parcel Map through the City and also through the County of Orange Surveyor's Office in the County-required format for plan check and for compliance with boundaries and monumentation and pay related plan checking fees.
12. The Applicant/Owner shall not grant any easements or license over any portion of the property subject to a requirement of dedication, irrevocable offer of dedication, or reservation to the City unless such easements or licenses are expressly made subordinate to easements to be offered for dedication to the City. Prior to granting such an easement, the Applicant/Owner shall submit a copy of the proposed easement, or license, to the City Engineer for approval.

PASSED, APPROVED, AND ADOPTED this 9th day of July, 2013.

BARBARA D. KOGERMAN, CHAIR

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 is a true and correct copy of Resolution
No. PA2013-XXX by the Planning Agency of the City of Laguna Hills, California, at a
Regular Meeting thereof held on the 9th day of July, 2013, by the following vote:

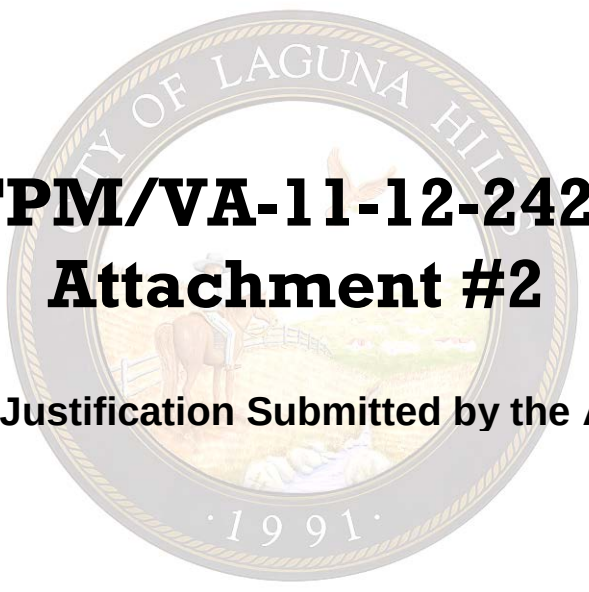
AYES:

NOES:

ABSENT:

ABSTAIN:

PEGGY J. JOHNS, CITY CLERK

The seal of the City of Laguna Hills is a circular emblem. It features a central illustration of a horse and rider in a field, with a sun rising over hills in the background. The words "CITY OF LAGUNA HILLS" are inscribed around the top inner edge of the seal, and the year "1991" is at the bottom.

TPM/VA-11-12-2428

Attachment #2

Letter of Justification Submitted by the Applicant

October 1, 2012

Community Development Department
City of Laguna Hills
24035 El Toro Road
Laguna Hills, Ca. 92653

Attn: Planning Division

Re: *City of Laguna Hills Planning Application Filing Instructions*, Item 6, Justification of the proposed Tentative Parcel Map No. 2011-115.

Tentative Parcel Map No. 2011-115 submittal is to subdivide the existing Cabot Town Center into individual parcels for each existing building. The property legal is currently described as sectional land and consists of two (2) parcels and five (5) Assessors Parcels. Final Parcel Map No. 2011-115 will have four (4) parcels; three (3) numbered, one (1) lettered to be dedicated to the City of Laguna Hills. Shared access, parking, utilities, and maintenance will be addressed in a Declaration of Covenants, Conditions and Restrictions (CC&R's). There are no improvements that are a part of the Tentative Map submittal. Improvements, if any, will be submitted separately. The site is suitable for the subdivision of land as its existing use will not change and no improvements are a part thereof.

Our findings according to the Subdivision Map Act, Section 66474 are as follows:

(a) That the proposed plan is consistent with applicable general and specific plans.

The existing Zoning District designation for the project site is *Freeway Commercial*. The site is existing, there are no improvements a part of Tentative Parcel Map No. 2011-115, and the current use of the existing site will not change. Therefore, the subdivision is consistent with the applicable general plan. There is no specific plan for the area.

(b) That the design or improvement of the proposed subdivision is consistent with the applicable general and specific plans.

The tentative map submittal is for subdivision of the land only. The site is currently two (2) legal parcels with eight (8) existing buildings on site. The parcel map will separate the land into four (4) individual parcels, three (3) parcels with buildings, and one (1) lettered non-buildable parcel. The design and improvements of the subdivision are consistent with the City's General Plan in that on-site improvements area already in place and have complied with City standards. There are no proposed improvements a part of the Tentative Parcel Map No. 2011-115 submittal.



(c) That the site is physically suitable for the type of development currently in use.

The site is physically suitable for office/commercial/retail development in that the site exists and is currently in use within the designated zoning. The site is existing and no improvements are a part of the subdivision of land.

(d) That the site is physically suitable for the proposed density of development.

The site is existing and there will be no changes from its current zoning use. The site is to remain its current use and no improvements are a part of the subdivision of land.

(e) That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat.

There will be no substantial environmental damage nor will the project substantially and avoidably injure fish or wildlife as the site is existing and no improvements are a part of the subdivision of land.

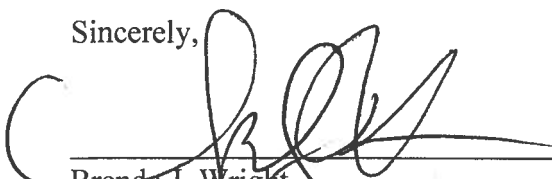
(f) That the design of the subdivision or type of improvements is not likely to cause serious public health problems.

The design of the subdivision is not likely to cause serious public health problem due to the fact that it has been constructed in conformance to City standards and are subject to inspections. There are no proposed improvements as a part of the property subdivision.

(g) That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

The easements acquired by the public for access through or use of the property within map boundary do not have a conflict with the subdivision of the property. A shared access, parking, utilities and maintenance agreement will be provided in the form of CC&R's. Further, all known existing easements for the site are shown on the map.

Sincerely,



Brenda J. Wright
For Jeffrey A. Walden, PLS 7914

The seal of the City of Laguna Hills is a circular emblem. It features a central illustration of a horse and rider in a field, with a fence and hills in the background. The text "CITY OF LAGUNA HILLS" is written in a semi-circle at the top, and "1991" is at the bottom.

TPM/VA-11-12-2428
Attachment #3

Proposed Tentative Parcel Map

TENTATIVE PARCEL MAP NO. 2011-115

IN THE CITY OF LAGUNA HILLS COUNTY OF ORANGE
STATE OF CALIFORNIA

A.P. NO.: 620-031-18, 20, 22, 24 AND 25
AREA: 7.964 ACRES
OCTOBER 2012

LEGAL DESCRIPTION:

PORTIONS OF LOTS 1 AND 2 OF SECTION 1, TOWNSHIP 7 SOUTH, RANGE 8 WEST, S.B.B.&M., IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA.

OWNER:

MOULDY, LLC., A CALIFORNIA LIMITED LIABILITY COMPANY
300 SOUTH GRAND AVENUE, 7TH FLOOR
LOS ANGELES, CA 90071

CIVIL ENGINEER/LAND SURVEYOR

WALDEN & ASSOCIATES
2552 WHITE RD., SUITE B
IRVINE, CA 92614

ZONING:

FREEWAY COMMERCIAL

LAND USE:

FREEWAY COMMERCIAL

SITE REQUIREMENTS:

MINIMUM LOT WIDTH: 50 FT.
MINIMUM LOT DEPTH: 100 FT.
MINIMUM LOT COVERAGE: 50%
MAXIMUM DENSITY: 0.40 FAR
MINIMUM SETBACKS:
FRONT
PARKING LOT: 10 FT.
BUILDING: 20 FT.
SIDE (INTERIOR): 10 FT.
REAR: 15 FT.

AREAS:

GROSS AREA: 7.964 ACRES
PARCEL 1: 0.820 ACRES
PARCEL 2: 4.889 ACRES
PARCEL 3: 2.179 ACRES
PARCEL A: 0.076 ACRES

NOTES:

PARCEL "A" IS TO BE DEDICATED TO THE CITY OF LAGUNA HILLS IN FEE PER THE FINAL PARCEL MAP.

FLOOD ZONE:

THE SUBJECT PROPERTY LIES IN AN AREA LABELED ZONE X PER THE FLOOD INSURANCE RATE MAP NUMBER 06065C0745G, REVISED AUGUST 28, 2008.

BASIS OF BEARING:

THE BEARINGS SHOWN HEREON ARE BASED UPON THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 3 SOUTH, RANGE 4 WEST (CENTERLINE OF DAY STREET) BEING NORTH 0°33'07" EAST PER PARCEL MAP NO. 32297, FILED IN BOOK 218, PAGES 66 THROUGH 70 OF PARCELS MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LEGEND:

⊙	- CENTERLINE	⊙	- FIRE DEPT. CONNECTION	⊙	- TRAFFIC PULL BOX
TE	- TRASH ENCLOSURE	⊙	- IRRIGATION CONTROL VALVE	⊙	- CABLE TV PULL BOX
EC	- ELECTRIC CABINET	⊙	- MANHOLE	⊙	- PULL BOX
⊙	- PARKING METER	⊙	- SEWER MANHOLE	⊙	- GAS VALVE
⊙	- GUARD POST	⊙	- STORM DRAIN MANHOLE	⊙	- GAS METER
⊙	- VAULT VENT	⊙	- CATCH BASIN	⊙	- TELEPHONE PEDESTAL
⊙	- ROOF DRAIN	⊙	- GRATE DRAIN	⊙	- TELEPHONE MANHOLE
⊙	- INDICATES FLOW	⊙	- DRAIN INLET	⊙	- WALL
⊙	- HOSE BIB	⊙	- SIGN	⊙	- CHAIN LINK FENCE
⊙	- STORM DRAIN LINE	⊙	- SIGN	⊙	- H.C. PARKING
⊙	- 8" SEWER LINE	⊙	- TREE	⊙	- PARCEL BOUNDARY
⊙	- 12" WATER LINE	⊙	- PALM TREE	⊙	- LIMITS OF EASEMENT (C)
⊙	- WATER VALVE	⊙	- STREET LIGHT	⊙	- RECIPROCAL PEDESTRIAN AND VEHICULAR ACCESS BETWEEN PARCELS 1, 2, & 3.
⊙	- WATER METER	⊙	- PARKING LOT LIGHT		
⊙	- FIRE HYDRANT	⊙	- CONDUIT		
⊙	- WATER MANHOLE	⊙	- POWER POLE		
⊙	- BACK FLOW DEVICE	⊙	- GUY WIRE		
⊙	- PIV				

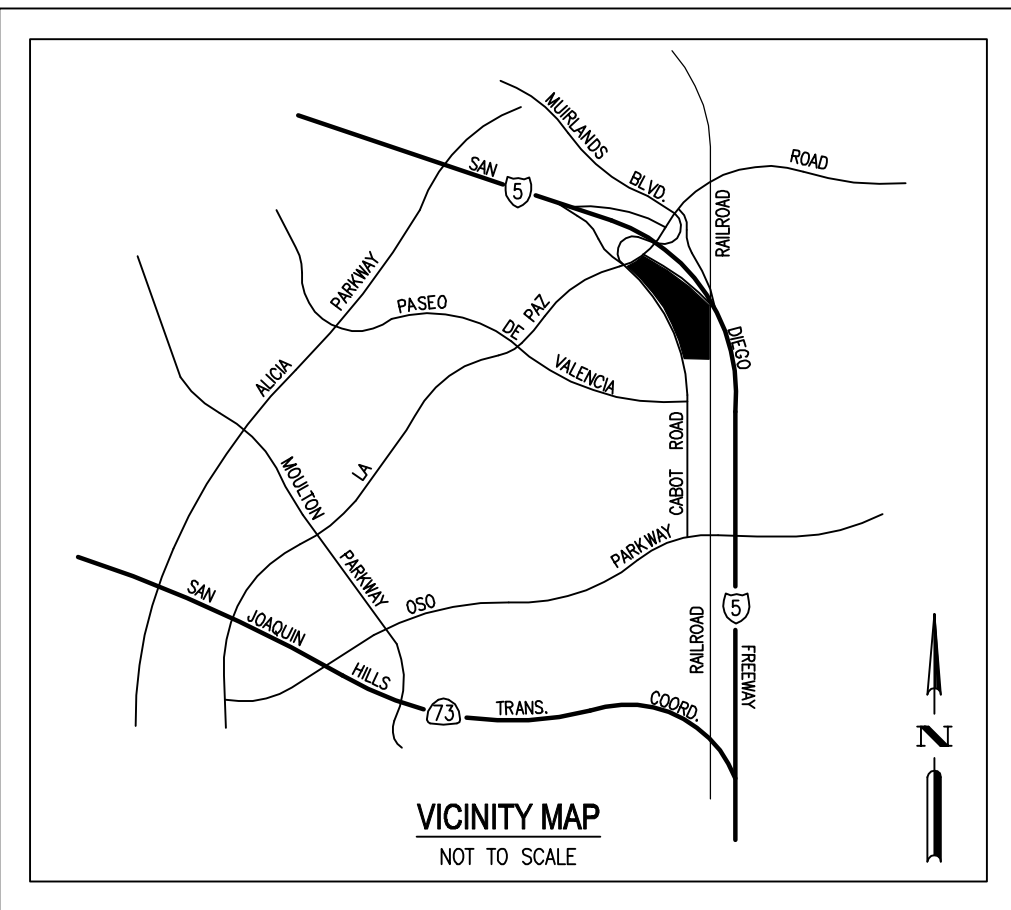
EASEMENT LEGEND (CONTINUED):

- (D) AN EASEMENT IN FAVOR OF THE COUNTY OF ORANGE, FOR DRAINAGE PURPOSES, RECORDED JUNE 15, 1972 IN BOOK 10175, PAGE 621, OF OFFICIAL RECORDS.
- (E) AN EASEMENT IN FAVOR OF THE COUNTY OF ORANGE, FOR DRAINAGE PURPOSES, RECORDED JUNE 15, 1972 IN BOOK 10175, PAGE 627, OF OFFICIAL RECORDS.
- (F) AN EASEMENT IN FAVOR OF STANDARD OIL COMPANY OF CALIFORNIA, WESTERN OPERATIONS, INC., FOR SEWER LINES, RECORDED JULY 13, 1972 IN BOOK 10221, PAGE 989, OF OFFICIAL RECORDS.
- (G) ACCESS RIGHTS RELINQUISHED TO THE CITY OF LAGUNA HILLS, A MUNICIPAL CORPORATION, BY GRANT DEED RECORDED JULY 5, 1996 AS INSTRUMENT NO. 96-341843, OF OFFICIAL RECORDS.
- AN EASEMENT IN FAVOR OF SAN DIEGO GAS AND ELECTRIC COMPANY, FOR UNDERGROUND LINES, RECORDED AUGUST 20, 1996 AS INSTRUMENT NO. 96-426748, OF OFFICIAL RECORDS. (THE LOCATION OF SAID EASEMENT CANNOT BE DETERMINED FROM RECORD DOCUMENT).
- (H) VEHICULAR ACCESS RIGHTS CONVEYED TO THE CITY OF LAGUNA HILLS, A MUNICIPAL CORPORATION, BY DEED RECORDED OCTOBER 25, 1996 AS INSTRUMENT NO. 96-541716, OF OFFICIAL RECORDS.
- AN EASEMENT IN FAVOR OF SAN DIEGO GAS AND ELECTRIC COMPANY, FOR EITHER OR BOTH UNDERGROUND LINES, CONDUITS, RECORDED NOVEMBER 14, 1996 AS INSTRUMENT NO. 96-575437, OF OFFICIAL RECORDS. (THE LOCATION OF SAID EASEMENT CANNOT BE DETERMINED FROM RECORD DOCUMENT).

EASEMENT LEGEND:

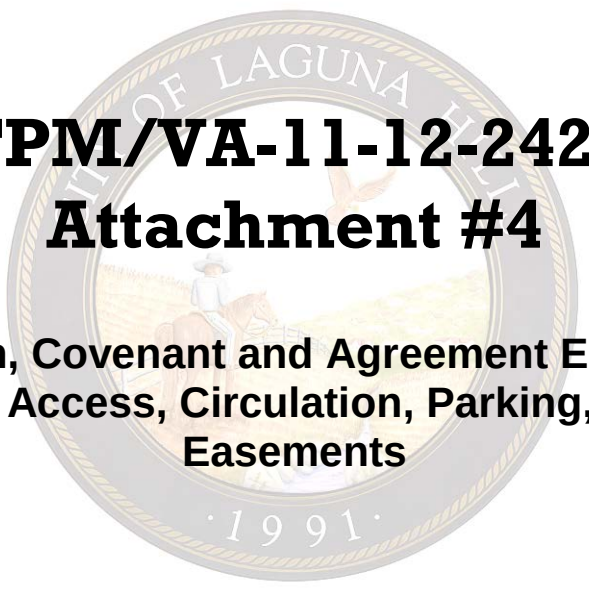
- AN EASEMENT IN FAVOR OF ORANGE COUNTY FOR ROAD PURPOSES, RECORDED JANUARY 7, 1903 IN BOOK 86, PAGE 207, OF DEEDS AND MODIFIED BY DOCUMENTS RECORDED MARCH 26, 1928 IN BOOK 149, PAGE 57 AND APRIL 27, 1964 IN BOOK 7021, PAGE 182 BOTH OF OFFICIAL RECORDS (THE LOCATION OF SAID EASEMENT CANNOT BE DETERMINED FROM RECORD DOCUMENT).
- AN EASEMENT IN FAVOR OF SOUTHERN CALIFORNIA EDISON COMPANY, FOR A PRIVATE RIGHT OF WAY, RECORDED JUNE 18, 1941, IN BOOK 1096, PAGE 372, OF OFFICIAL RECORDS (THE LOCATION OF SAID EASEMENT CANNOT BE DETERMINED FROM RECORD DOCUMENT).
- AN EASEMENT IN FAVOR OF SAN DIEGO GAS AND ELECTRIC COMPANY, FOR PUBLIC UTILITIES, RECORDED JUNE 18, 1958, IN BOOK 4320, PAGE 409, OF OFFICIAL RECORDS. (THE LOCATION OF SAID EASEMENT CANNOT BE DETERMINED FROM RECORD DOCUMENT).
- AN EASEMENT IN FAVOR OF THE PACIFIC TELEPHONE & TELEGRAPH COMPANY, FOR PUBLIC UTILITIES, RECORDED JUNE 29, 1965 IN BOOK 7574, PAGE 995 OF OFFICIAL RECORDS. (NOT PLOTTABLE).
- ANY EXISTING EASEMENTS OR FRANCHISES OF PUBLIC OR PRIVATE UTILITIES OVER, ACROSS OR UNDER THAT PORTION OF LAND ABANDONED BY A RESOLUTION OF THE BOARD OF SUPERVISORS OF ORANGE COUNTY, CALIFORNIA, RECORDED SEPTEMBER 25, 1969 IN BOOK 9089, PAGE 791, OF OFFICIAL RECORDS (NOT PLOTTABLE).
- (A) AN EASEMENT IN FAVOR OF MOULTON-NIGUEL WATER DISTRICT, FOR SEWER LINES AND WATER TRANSMISSION, RECORDED JULY 7, 1970 IN BOOK 9339, PAGE 359, OF OFFICIAL RECORDS.
- (B) AN EASEMENT IN FAVOR OF SAN DIEGO GAS AND ELECTRIC COMPANY, FOR EITHER OR BOTH UNDERGROUND LINES, CONDUITS, RECORDED DECEMBER 16, 1971 IN BOOK 9929, PAGE 559, OF OFFICIAL RECORDS.
- (C) AN EASEMENT IN FAVOR OF MOULTON-NIGUEL WATER DISTRICT, FOR SEWER LINES AND WATER TRANSMISSION, RECORDED APRIL 3, 1972 IN BOOK 10065, PAGE 342, OF OFFICIAL RECORDS.

EASEMENT MAP



REV. 05-21-2013
REV. 03-13-2013

	WALDEN & ASSOCIATES CIVIL ENGINEERS LAND SURVEYORS PLANNERS 2552 WHITE ROAD, SUITE B, IRVINE, CA 92614 (949) 660-0110 FAX: 660-0418 JEFFREY A. WALDEN PLS 7914 DATE	TENTATIVE PARCEL MAP NO. 2011-115 CABOT TOWN CENTER LAGUNA HILLS, CALIFORNIA	JOB NUMBER 1641-814-001 DATE: 10/01/12 DRAWN: BJW CHECKED: JW SHEET 1 OF 1
--	--	---	---

The seal of the Village of Laguna Hills is a circular emblem. It features a central illustration of a person riding a horse through a field. The words "VILLAGE OF LAGUNA HILLS" are inscribed around the top inner edge of the seal, and the year "1991" is at the bottom. The seal is rendered in a light, faded gray color.

TPM/VA-11-12-2428

Attachment #4

**Declaration, Covenant and Agreement Establishing
Reciprocal Access, Circulation, Parking, and Utility
Easements**

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Mouldy, LLC
c/o William B. Brinckloe, Jr., Esq.
9841 Irvine Center Drive, Suite 220
Irvine, CA 92618-4316

(Space above this line for Recorder's use)

**DECLARATION, COVENANT, AND AGREEMENT ESTABLISHING
RECIPROCAL ACCESS, CIRCULATION, PARKING AND UTILITY EASEMENTS
(CABOT TOWN CENTER)**

This DECLARATION, COVENANT AND AGREEMENT ESTABLISHING RECIPROCAL, ACCESS, CIRCULATION, PARKING AND UTILITY EASEMENTS (this "**Declaration**") is made as of June 18, 2013, by MOULDY, LLC, a California limited liability company ("**Mouldy**"), for the benefit of the current and future owners of the real property described herein and the CITY OF LAGUNA HILLS, a California municipal corporation (the "**City**"), with reference to the following facts:

A. Mouldy owns fee title to that certain real property in the City of Laguna Hills, County of Orange, State of California, commonly referred to as the Cabot Town Center and commonly known as located at 25214-25272 Cabot Road, Laguna Hills, California, which is more particularly described on Exhibit A, attached hereto and incorporated herein by reference (the "**Cabot Town Center Property**"). As of the date of this Declaration, the Cabot Town Center Property is improved as an integrated commercial center containing several different structures and uses, some of which share common parking facilities, with coordinated vehicular and pedestrian circulation and access between the structures and uses.

B. The Cabot Town Center Property is subject to that certain Joint Parking Covenant and Agreement between Mouldy and the City, dated September 5, 2012 and recorded in the Official Records of Orange County, California on November 2, 2012 as Instrument No. 201200675398 (the "**2012 Joint Parking Agreement**").

C. The City is the owner of that real property constituting Cabot Road, which abuts the Cabot Town Center Property. Maintenance of the existing internal circulation patterns and shared parking on the Cabot Town Center Property in accordance with this Declaration will advance the public interest, health, safety and welfare and will prevent an undue increase in traffic levels and congestion on Cabot Road due to ingress and egress between the Cabot Town Center Property and Cabot Road.

D. On or about July 9, 2013, pursuant to Resolution No. PA11-12-2428, the City's Planning Agency approved Tentative Parcel Map/Variance No. 11-12-2428 (the "**Planning Application**"), which authorized Mouldy to subdivide the Cabot Town Center Property into separate parcels, pending submittal and City approval of a final parcel map (the "**Final Parcel Map**"). The separate parcels to be created on the Cabot Town Center Property are identified and

depicted on Exhibit B, which is attached hereto and incorporated herein by reference, as "**Parcel 1**," "**Parcel 2**," and "**Parcel 3**," respectively. Recordation of this Declaration is an express condition of approval of the City Planning Agency's approval of the Planning Application.

E. It is Mouldy's intent that this Declaration does and shall constitute and create (i) an agreement enforceable by the City; (ii) a binding covenant and servitude running with the land for the benefit of the City and/or any successor in interest to that portion of Cabot Road abutting the Cabot Town Center Property; (iii) reciprocal easements, covenants, and servitudes binding all current and future owners of Parcel 1, Parcel 2, and/or Parcel 3, all as more particularly set forth below. The current and/or future fee owner(s) of Parcel 1, Parcel 2, and Parcel 3 are referred to herein for convenience as the "**Parcel 1 Owner**," the "**Parcel 2 Owner**," and the "**Parcel 3 Owner**," respectively. For purposes of convenience, the City, Mouldy, the Parcel 1 Owner, the Parcel 2 Owner, and the Parcel 3 Owner are separately referred to herein as "**Party**" and collectively referred to herein as "**the Parties**."

NOW, THEREFORE, in consideration of the foregoing and of the benefits and burdens relative to the Cabot Town Center Property and Cabot Road created hereby, Mouldy hereby declares, covenants, and agrees by and for itself, its heirs, successors, and assigns, and all persons claiming under or through it, that the Cabot Town Center Property be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth:

1. **Mouldy Covenant and Reservation of Reciprocal Easements.**

1.1 **Reciprocal Access and Circulation Between Parcels 1, 2, and 3.** Mouldy hereby covenants and agrees, and hereby reserves and creates reciprocal easements for pedestrian and vehicular access and circulation over, across, and through Parcel 1, Parcel 2, and Parcel 3, respectively, as follows:

(a) Pedestrian and vehicular ingress, egress, access, and travel between Parcel 1, Parcel 2, and Parcel 3 shall be permitted over, across, and through the drive aisles identified on Exhibit B and the Final Map for "**Reciprocal Pedestrian and Vehicular Access Between Parcels 1, 2 & 3**," and/or any future drive aisles constructed on any portion of the Cabot Town Center Property.

(b) Reasonable pedestrian access between the buildings located on Parcel 1, Parcel 2, and Parcel 3 shall be maintained.

(c) No permanent walls, fences or barriers of any sort or nature shall be constructed or erected on or around Parcel 1, Parcel 2, Parcel 3, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements set forth herein, or the free access and movements of vehicular and pedestrian traffic within and between Parcel 1, Parcel 2, and Parcel 3, or ingress from or egress to Cabot Road; provided, however, that curb stops and other reasonable traffic controls, including without limitation, direction markers and parking stops, as may be reasonably necessary to guide and control the orderly flow of traffic may be installed so long as the common drive aisles are not closed or effectively blocked.

1.2 Reciprocal Parking Between Parcels 2 and 3. Mouldy hereby covenants and agrees, and hereby reserves and creates reciprocal easements for vehicular parking over, across, and through Parcel 2 and Parcel 3, respectively, as follows:

(a) All areas and facilities located on Parcel 2 and Parcel 3 designated for use as automobile parking shall be used and available for the non-exclusive general use, convenience and benefit of all owners/tenants of Parcel 2 and Parcel 3, from time to time, and their respective customers, guests, licensees, invitees, subtenants, employees, agents and patrons ("Common Area Parking"). Neither the Parcel 2 Owner, nor the Parcel 3 Owner, shall grant any exclusive parking rights in the Common Area Parking, without the prior written consent and approval of both (i) the City and (ii) the Parcel 3 Owner or Parcel 2 Owner, as applicable.

(b) Any alteration or change of use of any structure on either Parcel 2 or Parcel 3 that impacts the available Common Area Parking shall be subject to review and approval of the City.

(c) This Subsection 1.2 and the reciprocal easements for vehicular parking created hereby shall not apply to Parcel 1.

1.3 Common Utilities. Mouldy hereby covenants and agrees, and hereby reserves and creates reciprocal easements for common electric, telephone, communication, water, gas, sanitary sewer, and drainage lines and facilities (collectively, "**Common Utility Facilities**") over, under, across, and through Parcel 1, Parcel 2, and Parcel 3, respectively, as follows:

(a) Whenever any Common Utility Facilities located on either Parcel 1, Parcel 2, or Parcel 3 serve either or both of the other two parcels, then the owners/tenants of each parcel, or portion thereof, served by such Common Utility Facilities (i) shall be entitled to the full use and enjoyment of those portions of the Common Utility Facilities which serve such owner's/tenant's parcel, and (ii) shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain such Common Utility Facilities as and when necessary. The foregoing rights shall be subject to payment of the reasonable proportionate cost of the use and maintenance of such Common Utility Facilities attributable to the parcel served by the Common Utility Facilities.

2. Term and Effective Date; Termination of 2012 Joint Parking Agreement.

2.1 The term of this Declaration shall commence on the date the Final Map is recorded in the Official Records of Orange County, California and shall remain in full force and effect until terminated in accordance with Section 3.10, below.

2.2 This Declaration shall replace the 2012 Joint Parking Agreement, and the 2012 Joint Parking Agreement shall terminate and become of no further force and effect on the date the Final Map is recorded in the Official Records of Orange County, California.

3. General Provisions.

3.1 Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift, exaction, or dedication for public use of all or any portion of the Cabot Town Center Property to the general public or for any public purpose whatsoever, it being the intention of Mouldy that this Declaration shall be strictly limited to and solely for the purposes expressly set forth in this Declaration.

3.2 Covenants Run With the Land. Each of the restrictions, obligations, easements, and covenants set forth herein (collectively, the "Covenants") shall be covenants running with the land pursuant to California Civil Code Section 1468. Such Covenants shall also be mutual equitable servitudes upon the Cabot Town Center Property and each part thereof (including Parcel 1, Parcel 2, and Parcel 3), burdening, appurtenant to, and benefitting each and every other part thereof (including Parcel 1, Parcel 2, and Parcel 3). Such Covenants shall also constitute covenants and equitable servitudes for the benefit of Cabot Road.

3.3 Successors and Assigns. This Declaration and each of the Covenants shall inure to the benefit of and be binding upon Mouldy and its heirs, personal representatives, successors and assigns. This Declaration and each of the Covenants shall be binding upon and benefit any person or entity acquiring an interest in the Cabot Town Center Property (including Parcel 1, Parcel 2, and/or Parcel 3), including, without limitation, all tenants, lessees, licensees, subtenants and/or occupants of the Parcel 1, Parcel 2, and/or Parcel 3, whether by operation of law or otherwise. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Cabot Town Center Property is and shall be conclusively deemed to have consented and agreed to the Covenants contained herein, whether or not any reference to this instrument is contained in the instrument by which such person or entity acquired their right, title or interest in such property. Notwithstanding the foregoing, if Mouldy or any successor owner sells or conveys its interest in Parcel 1, Parcel 2, and/or Parcel 3, Mouldy or such successor owner shall thereupon be released and discharged from any and all obligations arising under this Declaration as the owner of the property sold or conveyed after the date of the sale or conveyance, but shall remain liable for all obligations arising under this Declaration prior to such date and/or as owner of any remaining interest in any portion of the Cabot Town Center Property. The successor to the party shall be liable for all obligations arising under this Declaration after the date of any sale or conveyance.

3.4 Enforcement of Declaration by City; Waiver. The City shall have the right, but not the obligation, to enforce this Declaration by a proceeding at law or in equity against any person or persons violating or attempting to violate any Covenant provided for herein, either to restrain or enjoin such violation or to recover damages. Violation of this Declaration by Mouldy and/or its successors or assigns shall also constitute a violation of the conditions of approval to the Planning Application, enforceable by City by any legal or administrative proceeding authorized by law. The failure of the City to insist upon the strict performance of any Covenant contained in this Declaration shall not be deemed a waiver of any right or remedy that City may have or a waiver of any subsequent breach or default in the performance of any Covenant contained in this Declaration.

3.5 Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any other similar relationship between Mouldy, the City, the Parcel 1 Owner, the Parcel 2 Owner, and/or the Parcel 3 Owner, each of which shall be considered a separate party and neither of which shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

3.6 Third Party Beneficiary Rights. Except for City, this Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person or entity not expressly included herein.

3.7 Lienholder Protection. This Declaration and the rights, privileges, covenants, agreements and easements hereunder with respect to the Cabot Town Center Property (including Parcel 1, Parcel 2, and Parcel 3) shall be superior and senior to any lien placed upon the Cabot Town Center Property (including Parcel 1, Parcel 2, and Parcel 3), including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust encumbering the Cabot Town Center Property (including Parcel 1, Parcel 2, and Parcel 3), and made in good faith and for value, but all the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Declaration shall be binding upon and effective against any person (including, but not limited to, any mortgagee or beneficiary under a deed of trust) who acquires title to Cabot Town Center Property (including Parcel 1, Parcel 2, and Parcel 3) or any portion thereof by foreclosure, sale, deed in lieu of foreclosure or otherwise.

3.8 Choice of Law. This Declaration shall be governed by the laws of the state of California.

3.9 Severability. If any term, covenant, condition or provision of this Declaration, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Declaration, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

3.10 Amendment or Termination. This Declaration may not be modified, amended, removed, extinguished, rescinded or terminated, in whole or in part, except by written instrument executed by each of the Parcel 1 Owner, the Parcel 2 Owner, the Parcel 3 Owner, and the City Manager of the City, and recorded in the Official Records of Orange County, California.

3.11 Manner of Giving Notice. All notices and demands which any Party is required or desires to give to the other Party shall be given in writing by facsimile, personal delivery, express courier service or certified mail, return receipt requested, to the address set forth in a notice provided by each Party to all other Parties, provided that if any Party gives notice of a change of name or address, notices to that Party shall thereafter be given as demanded in that notice. For purposes of this notice provision, the initial addresses of Mouldy and the City are set forth below. All notices and demands given by facsimile, personal delivery or by express courier

service shall be effective upon receipt by the party to whom the notice or a demand is being given. All notices given by mail shall be effective on the third (3rd) business day after mailing.

To Mouldy: Mouldy, LLC
c/o D.W. A. Smith & Company Inc.
Mr. Donald W.A. Smith
1300 Quail Street, Suite 106
Newport Beach, California 92660
Facsimile: (949) 851-1804

With Copy to: William B. Brinckloe, Jr., Esq.
9841 Irvine Center Drive, Suite 220
Irvine, California 92618-4316
Facsimile: (949) 475-6999

To the City: City of Laguna Hills
Planning Division
24035 El Toro Road
Laguna Hills, California 92653
Facsimile: (949) 707-2633

With Copy to: Gregory E. Simonian, Esq.
Woodruff Spradlin & Smart, PC
555 Anton Blvd Ste 1200
Costa Mesa, CA 92626
Facsimile: (714) 835-7787

3.12 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

3.13 Corporate Authority. Each of the undersigned represents and warrants that (i) Mouldy is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Declaration on behalf of Mouldy, (iii) by so executing this Declaration, Mouldy is formally bound to the provisions of this Declaration, and (iv) the execution and recording of this Declaration does not violate any provision of any other agreement, easement, or real property covenant to which Mouldy is bound.

[SIGNATURES ON THE FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, Mouldy has made this Declaration, Covenant and Agreement Establishing Reciprocal Access, Circulation, Parking, and Utility Easements as of the date first written above.

MOULDY:

MOULDY LLC, a California limited liability company

By: J&W FAMILY LIMITED PARTNERSHIP, LP, a
California limited partnership

Member

By: _____
Franklin L. Barnes, III
General Partner

By: Scott T. Barnes
Scott T. Barnes
General Partner

By: BLANCHARD VALLEY ASSOCIATES, LP, a
California limited partnership

Member

By: MATHIS FAMILY TRUST CREATED U.D.T.
DATED NOVEMBER 13, 1996

General Partner

By: _____
Glenn E. Mathis, Jr.
Co-Trustee

By: _____
Marion C. Mathis
Co-Trustee

APPROVED BY CITY LAGUNA HILLS

CITY OF LAGUNA HILLS

Date: _____

By: _____
Bruce E. Channing,
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Gregory E. Simonian,
City Attorney

By: _____
Peggy J. Johns,
City Clerk

ACKNOWLEDGMENT

State of California)
County of ORANGE)

On JUNE 18, 2013, before me, Joy L. Goffin Notary Public
(insert name of notary)

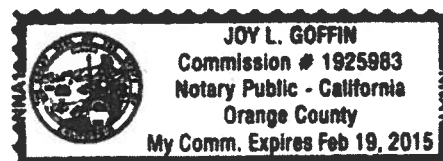
Notary Public, personally appeared SCOTT T. BARNES,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their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

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

WITNESS my hand and official seal.

Signature Joy L. Goffin

(Seal)



IN WITNESS WHEREOF, Mouldy has made this Declaration, Covenant and Agreement Establishing Reciprocal Access, Circulation, Parking, and Utility Easements as of the date first written above.

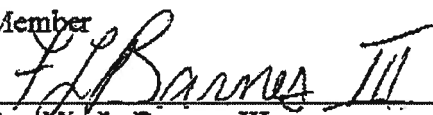
MOULDY:

MOULDY LLC, a California limited liability company

By: J&W FAMILY LIMITED PARTNERSHIP, LP, a
California limited partnership

Member

By:



Franklin L. Barnes, III
General Partner

By:

Scott T. Barnes
General Partner

By: BLANCHARD VALLEY ASSOCIATES, LP, a
California limited partnership

Member

By: MATHIS FAMILY TRUST CREATED U.D.T.
DATED NOVEMBER 13, 1996

General Partner

By:

Glenn E. Mathis, Jr.
Co-Trustee

By:

Marion C. Mathis
Co-Trustee

APPROVED BY CITY LAGUNA HILLS

CITY OF LAGUNA HILLS

Date: _____

By: _____

Bruce E. Channing,
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____

Gregory E. Simonian,
City Attorney

By: _____

Peggy J. Johns,
City Clerk

ACKNOWLEDGMENT

Alaska)
 State of ~~California~~)
 County of ~~First Judicial District~~)

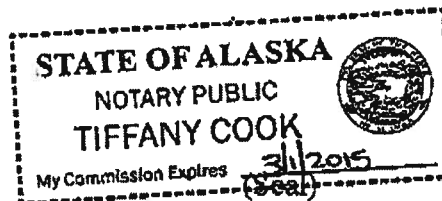
On June 19, 2013, before me, Tiffany Cook,
(insert name of notary)

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

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

WITNESS my hand and official seal.

Signature 



IN WITNESS WHEREOF, Mouldy has made this Declaration, Covenant and Agreement Establishing Reciprocal Access, Circulation, Parking, and Utility Easements as of the date first written above.

MOULDY:

MOULDY I.I.C., a California limited liability company

By: **J&W FAMILY LIMITED PARTNERSHIP, I.P.**, a
California limited partnership

Member

By: _____
Franklin L. Barnes, III
General Partner

By: _____
Scott T. Barnes
General Partner

By: **BLANCHARD VALLEY ASSOCIATES, I.P.**, a
California limited partnership

Member

By: **MATHIS FAMILY TRUST CREATED U.D.T.**
DATED NOVEMBER 13, 1996

General Partner

By: _____
Glefin E. Mathis, Jr.
Co-Trustee

By: _____
Marion C. Mathis
Co-Trustee

ACKNOWLEDGMENT

State of California)
County of Colusa)

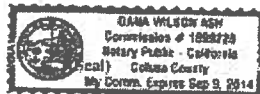
On June 18, 2013, before me, Dana Wilson Ash

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

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

WITNESS my hand and official seal.

Signature Dana Wilson Ash



ACKNOWLEDGMENT

State of California)
County of Colusa)

On June 15, 2013, before me, Dana Wilson Ash

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

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

WITNESS my hand and official seal.

Signature Dana Wilson Ash



EXHIBIT A

LEGAL DESCRIPTION OF CABOT TOWN CENTER PROPERTY

REAL PROPERTY IN THE CITY OF LAGUNA HILLS, COUNTY OF ORANGE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF LA PAZ ROAD AS SHOWN ON A MAP OF TRACT NO. 5641, RECORDED IN BOOK 204, PAGES 1 THROUGH 9 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, BOUNDED NORTHEASTERLY BY THE CENTERLINE OF SAID LA PAZ ROAD SHOWN ON SAID MAP AS HAVING A BEARING OF NORTH 26° 51' 56" WEST AND BOUNDED SOUTHWESTERLY, WESTERLY AND NORTHWESTERLY BY THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN SAID CENTERLINE ON A DIFFERENT BASIS OF BEARING, DISTANT THEREON SOUTH 26° 51' 03" EAST 107.76 FEET FROM THAT CERTAIN CURVED LINE HAVING A RADIUS OF 633.00 FEET, AN ARC LENGTH OF 47.60 FEET DESCRIBED IN THE EXCEPTION AND RESERVATION OF CERTAIN ACCESS RIGHTS IN A DEED CONVEYED BY THE STATE OF CALIFORNIA RECORDED DECEMBER 17, 1968 IN BOOK 8818, PAGE 880 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE NORTH 44° 30' 05" WEST 68.49 FEET TO A TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 35.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 77° 47' 22" AN ARC DISTANCE OF 47.52 FEET TO THE SOUTHWESTERLY EXTENSION OF SAID CURVE HAVING A RADIUS OF 633.00 FEET; THENCE NORTHEASTERLY ALONG LAST SAID CURVE FROM A TANGENT THAT BEARS NORTH 45° 48' 18" EAST, THROUGH A CENTRAL ANGLE OF 00° 27' 34" AN ARC DISTANCE OF 5.08 FEET TO SAID CENTERLINE.

EXCEPTING THEREFROM THOSE PORTIONS OF FRACTIONAL SECTIONS 1 AND 2, TOWNSHIP 7 SOUTH, RANGE 8 WEST, S.B.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN COURSE DESCRIBED IN PARCEL 2 OF THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 5035, PAGE 383 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS HAVING A BEARING AND DISTANCE OF "SOUTH 74° 19' 33" EAST 165.77 FEET"; THENCE ALONG SAID CERTAIN COURSE SOUTH 73° 36' 30" EAST 15.04 FEET TO A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 1468.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE FROM A TANGENT BEARING NORTH 59° 04' 18" WEST, THROUGH AN ANGLE OF 5° 46' 41", AN ARC DISTANCE OF 148.04 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 80° 20' 31" WEST 83.34 FEET TO A POINT IN A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY HAVING A RADIUS OF 633.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 51° 26' 10" WEST; THENCE SOUTHWESTERLY ALONG SAID CURVE 80.00 FEET THROUGH A CENTRAL ANGLE OF 7° 14' 28" TO THE BEGINNING OF A REVERSE CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF

27.00 FEET; THENCE SOUTHERLY ALONG SAID REVERSE CURVE 42.56 FEET THROUGH A CENTRAL ANGLE OF 90° 18' 23"; THENCE SOUTH 44° 30' 05" EAST, TANGENT TO SAID CURVE, 75.82 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 840.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE 87.96 FEET THROUGH A CENTRAL ANGLE OF 6° 00' 00"; THENCE LEAVING SAID CURVE NORTH 45° 29' 55" EAST 226.02 FEET TO A POINT IN THE ARC OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 1468.00 FEET, SAID POINT BEING 154.72 FEET SOUTHEASTERLY ALONG SAID CURVE FROM THE TRUE POINT OF BEGINNING; THENCE NORTHWESTERLY ALONG SAID CURVE 154.72 FEET THROUGH A CENTRAL ANGLE OF 6° 02' 19" TO SAID TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION BEING CONVEYED TO CITY OF LAGUNA HILLS, A MUNICIPAL CORPORATION, AS MORE FULLY DESCRIBED IN GRANT DEED RECORDED APRIL 3, 2001 AS INSTRUMENT NO. 01-194834 OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM THAT PORTION OF SAID LAND INCLUDED WITHIN TRACT NO. 5641, IN BOOK 204, PAGES 1 TO 9 OF MISCELLANEOUS MAPS, FIFTY PERCENT OF ALL RIGHTS TO OIL, GAS AND OTHER HYDROCARBON AND MINERAL SUBSTANCES LYING UNDER OR THAT MAY BE PRODUCED FROM THE ABOVE DESCRIBED LAND, TOGETHER WITH FIFTY PERCENT OF ALL RIGHTS TO THE PROCEEDS THEREFROM AND FIFTY PERCENT OF ALL RENTS, BONUSES AND PROFITS ACCRUING THERETO; WITHOUT THE RIGHT TO USE OR OCCUPY OR TO ENTER UPON ANY PORTION OF THE SURFACE AND FIVE HUNDRED FEET BELOW THE SURFACE, MEASURED VERTICALLY FROM THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DRILLING FOR, CAPTURING, PRODUCING, EXTRACTING, STORING, TREATING OR OTHERWISE HANDLING OR UTILIZING SUCH OIL, GAS OR OTHER HYDROCARBON OR MINERAL SUBSTANCES OR FOR THE PURPOSE OF EXERCISING RIGHTS THERETO, AS RESERVED BY DEED RECORDED JULY 15, 1964 IN BOOK 7134, PAGE 254 OF OFFICIAL RECORDS.

ALSO EXCEPTING FROM THAT PORTION OF SAID LAND INCLUDED WITHIN TRACT NO. 5641, IN BOOK 204, PAGES 1 TO 9 OF MISCELLANEOUS MAPS, THE REMAINING INTEREST OF THE GRANTOR, IN AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS, NATURAL GAS RIGHTS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFOR AND REMOVING THE SAME FROM SAID LAND OR ANY OTHER LAND INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE HEREINABOVE DESCRIBED, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES, WITHOUT, HOWEVER, THE RIGHT TO DRILL, MINE, EXPLORE AND OPERATE THROUGH THE SURFACE OR THE

UPPER 100 FEET OF THE SUBSURFACE OF THE LAND HEREINABOVE DESCRIBED OR OTHERWISE IN SUCH MANNER AS TO ENDANGER THE SAFETY OF ANY HIGHWAY THAT MAY BE CONSTRUCTED ON SAID LANDS, AS RESERVED IN THE DEED FROM UNION OIL COMPANY OF CALIFORNIA, RECORDED JUNE 6, 1967 IN BOOK 8271, PAGE 330 OF OFFICIAL RECORDS.

TOGETHER WITH THAT PORTION OF LOTS 1 AND 2 OF SECTION 1, TOWNSHIP 7 SOUTH, RANGE 8 WEST, TOGETHER WITH THAT PORTION OF LOT 1 OF SECTION 2, TOWNSHIP 7 SOUTH, RANGE 8 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT FILED IN THE DISTRICT LAND OFFICE, MARCH 29, 1879, BOUNDED AS FOLLOWS:

NORTHEASTERLY BY THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN PARCEL 2 OF THE DEED TO THE STATE OF CALIFORNIA RECORDED DECEMBER 30, 1959 IN BOOK 5035, PAGE 383 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA,

SOUTHWESTERLY BY THE CENTERLINE OF LA PAZ ROAD AS DESCRIBED IN BOOK 149, PAGE 57, RECORDED MARCH 26, 1928 IN SAID OFFICIAL RECORDS,

NORTHWESTERLY BY THE SOUTHEASTERLY LINE OF TRACT NO. 5641, AS SHOWN ON A MAP RECORDED IN BOOK 204, PAGES 1 THROUGH 9 OF MISCELLANEOUS MAPS, RECORDS OF SAID ORANGE COUNTY, AND

EASTERLY BY THE WESTERLY LINE OF THE LAND DESCRIBED IN THE DEED TO SAN BERNARDINO AND SAN DIEGO RAILWAY COMPANY RECORDED DECEMBER 17, 1886 IN BOOK 187, PAGE 17 OF DEEDS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED JANUARY 9, 1968 IN BOOK 8652, PAGE 975 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE CITY OF LAGUNA HILLS, RECORDED JULY 5, 1996 AS INSTRUMENT NO. 96-341843 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED TO THE CITY OF LAGUNA HILLS RECORDED OCTOBER 25, 1996 AS INSTRUMENT NO. 96-541716 OF SAID OFFICIAL RECORDS.

EXCEPTING THEREFROM PARCEL "A" AS SHOWN ON TENTATIVE PARCEL MAP NO. 2011-115, DATED MAY 21, 2013.

EXHIBIT B

DEPICTION OF CABOT TOWN CENTER PROPERTY





City of Laguna Hills City Council Meeting Agenda Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

**ISSUE: PUBLIC HEARING AND RECEIPT OF 2013 WEED ABATEMENT COST
REPORT**

**RECOMMENDATION: THAT THE CITY COUNCIL: (1) CONDUCT A PUBLIC
HEARING; AND (2) RECEIVE AND FILE THE 2013 WEED ABATEMENT COST
REPORT.**

SUMMARY:

In accordance with Government Code Section 39560, et seq., this is the time and place that has been fixed by Resolution of the City Council of a noticed Public Hearing to receive and consider an accounting of the costs associated with weed abatement on each separate parcel of land where removal work has been performed by City authorities. The City Council is required by law to conduct a Public Hearing to receive public comments, complaints, or objections from any property owners liable to be assessed for costs incurred by the City in connection with the FY 2012-2013 Weed Abatement Program. Due to favorable public response and City Staff's extensive efforts, all of the private properties identified in the 2013 Weed Abatement List have been cleared. The City has not performed any abatement activities on the subject properties, and has not incurred any related costs. Therefore, there are no abatement costs to assess under the 2013 Weed Abatement Program. It is recommended that the City Council conduct the Public Hearing and receive and file this report.

BACKGROUND:

The objective of the Weed Abatement Program is to declare by Resolution as a public nuisance and abate all weeds, rubbish, refuse, and dirt upon the streets, sidewalks, parkways, or private property in the City, as identified and described in the 2013 Weed Abatement List. This is done for the purpose of health and safety, management of fire hazards, and to provide a reasonable degree of fire safety to both improved and unimproved properties. The Weed Abatement Program is administered by the Public

Services Department under the direction of the Director of Public Services/City Engineer. The City Council adopted Resolution Nos. 2013-04-23-1 and 2013-05-28-2 in April and May of this year, respectively, which authorized the annual Weed Abatement Program.

The owners of properties identified as containing materials needing abatement under this program were notified by letter in April 2013, to clear their properties by June 3, 2013. Extensive public relations efforts were made by City Staff to reduce the number of properties to be cleared by the City contractor. All affected properties were also contacted by a door hanger to further encourage voluntary abatement compliance. Staff's extensive efforts to assure private property compliance, in addition to the good public response this year, have eliminated the need for the City to perform weed removal work on private parcels. All of the identified private properties have been cleared, and there are no abatement costs to assess under the 2013 Weed Abatement Program.

The City has completed its annual weed abatement on public properties in the City. In addition, the City will continue the removal of pampas grass groves along the north side of the La Paz Road open space. These pampas grass removals have occurred incrementally over the past few years with each annual weed abatement program under the contract with the City's current weed abatement contractor, Igi's Landscape Services, Inc. It is anticipated that these pampas grass removals will be completed by next year.

FISCAL IMPACT:

The total 2013 Weed Abatement Program costs are budgeted in Fiscal Year 2012-2013 for \$40,000.00 to cover both the abatement of private and public properties. Due to the fact that the City contractor has not performed any removal work on private parcels, there are no private weed abatement costs to be assessed by the City. Weed abatement on public parcels has proceeded in accordance with the budget.

ATTACHMENTS:

- Weed Abatement Cost Report

2013 Weed Abatement Cost Report (Privately Owned Parcels)

<u>AP Number:</u> N/A	<u>Address:</u> N/A	<u>Area Size:</u> N/A	<u>Hand Work Cleared (sf):</u> None	<u>Mow Work Cleared (sf):</u> None	<u>Admin Fee:</u> None	<u>Mowing Charges:</u> None	<u>Hand Charges:</u> None	<u>Total Charged:</u> None	<u>City/District Code:</u> None
--------------------------	------------------------	------------------------------	--	---	---------------------------	------------------------------------	----------------------------------	-----------------------------------	--

*** The City has not incurred any private abatement costs in connection with the 2013 Weed Abatement Program



City of Laguna Hills City Council Meeting Agenda Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: BRUCE E. CHANNING
CITY MANAGER

ISSUE: EMPLOYMENT CLASSIFICATIONS, SALARY RANGES AND BENEFITS
FOR MANAGEMENT, CONFIDENTIAL AND PART-TIME CLASSES OF
EMPLOYMENT WITH THE CITY

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION
ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA
HILLS, CALIFORNIA, REGARDING EMPLOYMENT AND ESTABLISHING SALARY
RANGES AND BENEFITS FOR MANAGEMENT, CONFIDENTIAL, AND PART-TIME
CLASSES OF EMPLOYMENT WITH THE CITY AND RESCINDING RESOLUTION
NO. 2011-07-12-2."

SUMMARY:

It has been the City's practice to adopt a Salary and Benefits Resolution in conjunction with the adoption of the Biennial Budget to govern employment related issues for the ensuing two years and in a manner consistent with the adopted budget. This time around, the proposed Resolution is different in that it doesn't cover full-time and extended part-time employees who are members of the Laguna Hills City Employees Association. Those employees are covered by the three-year Memorandum of Understanding. Still, it is necessary for the City Council to adopt a Resolution that will establish salary ranges and benefits for management, confidential and part-time classes of employment. Staff has prepared a Resolution for the City Council's consideration and recommends adoption.

BACKGROUND:

Prior to November 27, 2012, all employment classifications, positions, salaries and benefits were governed by a salary and benefits resolution that was typically adopted biennially in conjunction with the City's Biennial Budget cycle. However, on November 27, 2012, the City Council approved a Memorandum of Understanding (MOU) with Laguna Hills City Employees Association (LHCEA); the exclusive bargaining representative for all

regular full-time, and extended part-time non-management and non-confidential employees. All issues related to employment, including salary and benefits, as they pertain to represented employees, are exclusively governed by the terms of the MOU. The City's current Salary and Benefits Resolution No. 2011-07-12-2 no longer applies to represented employees. It does continue to apply to all unrepresented (management, confidential and part-time) employees. It has therefore become necessary for the City Council to rescind Resolution No. 2011-07-12-2 and adopt a new resolution that eliminates all references to represented full-time and extended part-time employees and to make other changes to salaries, pay and benefits as deemed appropriate.

Attached to this report is staff's proposed Salary and Benefits Resolution for the 2013-15 Biennial Budget cycle. In some ways it is similar to the MOU, but there are some important differences. In addition to eliminating all references to employees covered by the MOU, the attached Resolution, like the MOU, proposes changes in salary, PERS retirement and medical insurance premiums.

Salaries and Compensation

Since February of 2011, management compensation has been available for the public's inspection on the City's web site. There are three years of compensation data on the web site: 2010, 2011 and 2012. The compensation report is updated annually by the end of February of each year. Staff has performed an analysis of this data and included compensation from calendar year 2009. Using total regular compensation as listed in the online compensation report, comparisons reveal that overall management compensation has decreased significantly. Using 2009 as a base year and adjusting for inflation, overall management compensation was reduced by about \$39,000 in 2010, \$125,000 in 2011, and \$184,000 in 2012. Over the past three years, reductions in management compensation have saved the City a total of \$347,000. These savings are primarily the result of following factors:

- Since July 1, 2008, there has been only one cost-of-living adjustment (COLA) in management salary ranges. Pursuant to Resolution No. 2011-07-12-2, management, along with all other non-management and extended part-time employees, received a 1.3% COLA on July 1, 2012.
- The City Manager has not received a bonus since 2009.
- In 2011, The City Council defunded the City's Management Incentive Program whereby managers could earn up to 10% performance pay.
- The City changed medical insurance programs effective July 1, 2011 which yielded significant savings in medical insurance premiums.
- The former Community Development Director retired in December of 2011 after 11 years of service. The new Community Development Director started at a lower place in the salary range and doesn't receive certain benefits afforded to employees with longer tenure.

Clearly, the City Council and the City Manager have taken a number of measures to reduce total management costs. Attachment A to this report shows total personnel costs from fiscal year 2005-06 through fiscal year 2015-16. Management costs as a percentage of total personnel costs will decline from a high of 41% in 2005-06 to a projected low of 32% in 2015-16. Attachment B to this report focuses exclusively on total management costs and shows that, after adjusting for inflation, management costs have decreased by 17.79% from 2005-06 through the end of 2012-13, the most recently completed fiscal year. By the end of 2015-16, management costs are projected to decrease over \$500,000, or 24.21% when compared to the 2005-06 base year. As a percentage of the total budget appropriations approved last meeting by the City Council, management costs for the 2013-15 Biennial Budget cycle are 7% of all appropriations.

Staff performed another analysis of management salaries (which included the salary of the City's only designated confidential employee, the Administrative Assistant to the City Manager). The maximum point in the Laguna Hills monthly salary range was compared to the maximum average monthly salary among the City's list of comparator agencies. The table below shows the results.

	Laguna Hills 2012-13 Maximum <u>Monthly Salary</u>	Comparator Agencies 2012-13 Maximum Average <u>Monthly Salary</u>	Laguna Hills as a % of Comparator Agencies <u>Average</u>
Admin. Asst. - City Manager	\$6,387.00	\$6,098.00	104.74%
Assistant City Manager	\$16,317.00	\$15,873.00	102.80%
City Clerk	\$10,312.00	\$10,344.00	99.69%
City Engineer/Public Works Director	\$14,325.00	\$14,414.00	99.38%
City Manager	\$19,719.00	\$18,864.00	104.53%
Community Development Director	\$13,722.00	\$13,919.00	98.58%
Deputy CM/Community Services Dir.	\$11,478.00	\$13,150.00	87.29%

None of the positions in the table above are at, or above the City's traditional practice of paying 5% above the comparator city's average. In fact, four of the management positions are below the average. Without adjustments to salary, all of these positions will continue to lose ground as COLA's and base salary increases are granted throughout cities in Orange County.

Based on the fact that management compensation has been both significantly reduced and contained, especially over the last three years, and given that management salaries have generally eroded over the past five years and will continue to erode over the next two years unless salaries are increased, staff is proposing that all management and confidential employees receive a 3.5% increase effective July 1, 2013. The salaries in the

attached Resolution, Section 2, include this proposed increase. In addition, staff is recommending that the City Council approve a COLA of 3.5% to be effective July 1, 2014. The Council will recall that the MOU with the LHCEA requires the City to pay salaries at 5% above the comparator agencies average and guarantee a minimum salary adjustment of 3.5% with a maximum of 5% over the three years of the MOU.

Retirement –PERS

As stated above, represented employees can receive annual salary adjustments up to 5% over three years to ensure that they maintain their positions at 5% above the comparator agencies average. This agreement was in part to compensate for the LHCEA agreeing to phase in participation in PERS and future increases in medical insurance premiums. Since there is no commitment to pay management at 5% above the comparator agencies average, and since four of the six management staff are currently below the average, staff is recommending that current management staff not participate in PERS cost sharing. Instead, recognizing that it is important to ultimately achieve employee participation in retirement costs, and since five of the employees in the above table are likely to retire within the next six years, staff is recommending that any newly hired or promoted management employee be required to pay the full 7% employee portion of the PERS contribution. To accomplish this, staff has created a Tier 2 for newly hired or promoted management and confidential employees and a Tier 3 for those employees who are defined new to the PERS retirement system.

Medical Insurance Premiums

Staff is recommending that management and confidential employees and members of the City Council begin to share in future increases in medical insurance premiums starting January 1, 2014. The cost sharing arrangement is proposed to be identical to the one agreed to in the MOU with the LHCEA with cost increases in premiums being shared 50-50 between the City and employees, including elected members, up to a maximum of 4% annually for employees and elected members.

Other Changes

The only other substantive change that affects management and confidential employees in the Resolution is to Section IV.A and IV.B where staff is recommending that management and confidential employees be granted an additional 8 hours of holiday time to accommodate the closing of City Hall for Veteran's Day as agreed to in the MOU with the LHCEA.

Over the past few years, Community Services staff has had some difficulty in recruiting and retaining part-time Community Services Leaders. Following a survey of other cities, staff is proposing that the range for the Leader I be changed from \$9.00 - \$11.00 to \$10.00 - \$12.50 and the Leader II range be changed from \$11.50 - \$14.50 to \$12.50 - \$15.00. These ranges have not been changed by the City Council since July 1, 2007.

FISCAL IMPACT:

Total personnel costs budgeted for 2013-14 are \$4,681,742. Staff has analyzed the fiscal impact of the proposed Resolution along with known salary adjustments for all employees. The impact is about \$8,000 below budget. For fiscal year 2014-15, the impact is about \$17,000 below budget.

ATTACHMENTS:

- Attachment A – Total Personnel Costs: 205-06 through 2015-16
- Attachment B – Management Costs Adjusted for Inflation
- Resolution



Total Personnel Costs- FY 05/06 Through FY 15/16

FISCAL YEAR	OPERATING BUDGET	PERSONNEL COSTS	% of Total Operating Budget	MANAGEMENT PERSONNEL COSTS	% of Personnel Costs	NON-MGMT PERSONNEL COSTS	% of Personnel Costs	Total Personnel Cost Annual Increase
2005-06	15,262,007	4,006,504	26.3%	1,645,283	41%	2,361,221	59%	
2006-07	16,032,718	4,172,589	26.0%	1,652,314	40%	2,520,275	60%	4.15%
2007-08	17,223,854	4,340,258	25.2%	1,737,077	40%	2,603,181	60%	4.02%
2008-09	17,554,792	4,397,332	25.0%	1,629,576	37%	2,767,756	63%	1.31%
2009-10	16,474,969	4,457,968	27.1%	1,661,572	37%	2,796,396	63%	1.38%
2010-11	17,156,944	4,543,284	26.5%	1,647,285	36%	2,895,999	64%	1.91%
2011-12	16,923,152	4,434,067	26.2%	1,534,037	35%	2,900,030	65%	-2.40%
2012-13*	17,464,481	4,562,211	26.1%	1,592,078	35%	2,970,133	65%	2.89%
2013-14*	17,327,545	4,681,742	27.0%	1,585,187	34%	3,096,555	66%	2.62%
2014-15*	17,792,484	4,910,074	27.6%	1,662,367	34%	3,247,707	66%	4.88%
2015-16*	18,412,466	4,903,463	26.6%	1,573,020	32%	3,330,443	68%	-0.13%

*Projected

ATTACHMENT A



FY 05/06 Management Costs Adjusted for Inflation

Fiscal Year	Management Costs	CPI	Adjusted for Inflation	Amount Over/(Under)	Percentage Difference
2005-06	1,645,283	3.60%	1,645,283	-	0.00%
2006-07	1,652,314	5.20%	1,730,838	(78,524)	-4.54%
2007-08	1,737,077	2.90%	1,781,032	(43,955)	-2.47%
2008-09	1,629,576	5.40%	1,877,208	(247,632)	-13.19%
2009-10	1,661,572	-2.20%	1,835,909	(174,337)	-9.50%
2010-11	1,647,285	0.90%	1,852,432	(205,147)	-11.07%
2011-12	1,534,037	2.90%	1,906,153	(372,116)	-19.52%
2012-13*	1,592,078	1.60%	1,936,651	(344,573)	-17.79%
2013-14*	1,585,187	2.00%	1,975,384	(390,197)	-19.75%
2014-15*	1,662,367	2.50%	2,024,769	(362,402)	-17.90%
2015-16*	1,573,020	2.50%	2,075,388	(502,368)	-24.21%

*Projected

RESOLUTION NO. 2013-07-09-X

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, REGARDING EMPLOYMENT AND ESTABLISHING SALARY RANGES AND BENEFITS FOR MANAGEMENT, CONFIDENTIAL, AND PART-TIME CLASSES OF EMPLOYMENT WITH THE CITY AND RESCINDING RESOLUTION NO. 2011-07-12-2.

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

SECTION 1. This Resolution establishes the official plan of compensation for the City for positions designated as management, confidential, and part-time in the Employer-Employee Relations Resolution No. 2012-02-14-3. The plan of compensation for all other employees is set forth in the current Memorandum of Understanding between the City and the Laguna Hills City Employees Association.

SECTION 2. The following salary ranges are assigned to the classes of employment, which hereby designated as management, confidential, and part-time. Unless specified otherwise herein, the provisions of this Resolution only apply to the following classifications:

FULL-TIME POSITIONS – CONFIDENTIAL	MONTHLY RANGE	
Administrative Assistant –City Manager (1)	\$5,438	\$6,611

FULL-TIME POSITIONS – MANAGEMENT		
Assistant City Manager (1)	\$13,893	\$16,889
City Clerk (1)	\$ 8,780	\$10,673
City Engineer/Public Works Director (1)	\$12,198	\$14,826
City Manager (1)	\$20,409	\$20,409
Community Development Director (1)	\$11,685	\$14,202
Deputy City Manager (1)	\$ 9,774	\$11,880

PART-TIME POSITIONS		
Administrative Intern	\$15.00	\$15.00
Code Enforcement Officer	\$25.00	\$25.00
Community Services Leader I	\$10.00	\$12.50
Community Services Leader II	\$12.50	\$15.00

Management and confidential employees shall receive a 3.5% cost of living adjustment effective July 1, 2014.

SECTION 3. The City shall provide the following benefits to the categories of employees specified herein:

I. RETIREMENT

A. The City shall participate in the California Public Employees Retirement System's (Cal PERS). Effective January 1, 2013, the City shall have three tiers of benefits as follows:

1. Tier 1 (Employees hired before July 1, 2013): 2% @ 60 Program and pay all employees' contributions to PERS as deferred income. Additional benefits provided through Cal PERS shall include the following:

One-Year Final Compensation

Post-Retirement Survivor Allowance

Pre-Retirement Survivor Allowance

1959 Survivor Benefits, including Third Level Benefits

2. Tier 2 (Employees hired on or after July 1, 2013 who have participated in a public retirement system within the six months prior to being hired, or employees hired before July 1, 2013, but promoted on or after July 1, 2013): 2% @ 60 Program with employee paying 100% of the employees' contributions to PERS.

3. Tier 3 (Employees hired on or after January 1, 2013 who have not been members of a public retirement system within the six months prior to employment with the City): 2% @ 62 with 3 year Final Compensation and with employee paying 100% of the employees' contribution to PERS.

B. The City shall provide a supplemental retirement program as established in Resolution No. 99-05-04-1.

C. The City shall provide a retiree health savings plan as established in Resolution No. 2001-12-11-2.

D. The City shall make available to all management and confidential employees the ICMA Retirement Corporation's Section 457 Deferred Compensation Plan. This is a voluntary program and will be funded at the sole cost of each participating employee.

E. The City shall provided to part-time employees an alternative retirement plan as established in Resolution No. 2000-06-27-5.

II. INSURANCE

- A. The City shall pay for the full cost of medical insurance coverage for full-time management, confidential employees, and elected members, including their dependents as defined by the City's medical insurance program. Beginning January 1, 2014, the City will pay the full cost of the lower of either the PPO or HMO program in a given year for full-time employees, including elected members, and their dependents. Beginning January 1, 2014, cost increases in medical insurance premiums will be shared 50-50 between the City and full-time employees, including elected members, up to a maximum of 4% annually for full-time management and confidential employees, including elected members.
- B. The City shall provide and pay for a dental insurance plan for all full-time management, confidential employees, and elected members, including their dependents.
- C. The City shall provide and pay for a vision insurance plan for all full-time management, confidential employees, and elected members, including their dependents.
- D. The City shall provide and pay for a group life and accidental death and dismemberment insurance plan to all full-time management and confidential employees on the basis of 100% of the employee's annual salary to the next highest \$1,000.00 increment up to a maximum of \$200,000.
- E. The City shall provide and pay for a short and long-term disability plan for all full-time management and confidential employees.

III. VACATION

- A. Full-time non-management, confidential employees accrue vacation leave according to the following schedule:

Years of Service	Rate
0-3	10 days/year or 6.667 hours/month
4-9	15 days/year or 10 hours/month
10+	20 days/year or 13.334 hours/month

- B. Full-time management employees accrue vacation leave according to the following schedule:

Years of Service	Rate
0-3	15 days/year or 10 hours/month
4+	20 days/year or 13.334 hours/month

- C. Upon termination or retirement, all employees shall be compensated at their current pay scale for their accrued vacation leave balance. No employee shall be allowed to carryover more than 320 hours of vacation leave from one fiscal year to the next.
- E. For management employees, upon completion of ten years of full-time employment with the City, the City shall make a one-time allotment of 40 hours of vacation leave to the employee's vacation leave balance.

IV. HOLIDAYS

- A. The City shall provide full-time management and confidential employees 104 paid hours per fiscal year for holidays.
- B. The City shall observe certain fixed holidays during which City Hall will be closed. These include:

New Year's Day
Presidents Day
Memorial Day
Independence Day
Labor Day
Veteran's Day
Thanksgiving
Day After Thanksgiving
Christmas Day

- C. Full-time employees shall receive 8 hours pay for these holidays. In order to receive holiday pay, an employee must have received pay for all of both the regularly scheduled work assignment immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday.
- D. Holidays falling on Sunday shall be observed on the following Monday. Holidays falling on Saturday shall be observed on the preceding Friday unless this, too, is a holiday and then one day sooner.
- E. In lieu of closing City Hall for the observation of Columbus Day, and Martin Luther King Day, employees will be able to use their remaining holiday time from Section IV.A above for discretionary, floating holiday time subject to their supervisor's approval.
- F. Holiday hours must be taken during each fiscal year and cannot be carried over to the succeeding fiscal year.

V. LEAVES OF ABSENCE

- A. All full-time employees shall accrue annual sick leave at a rate of 8 hours per month.
- B. All management and confidential full-time employees prior to completing ten years of service as full-time employees, (hereafter, "ten—year anniversary") shall be eligible, if they so desire, each quarter (October 1, January 1, April 1, and July 1) to convert unused personal sick leave in excess of 160 hours at a rate of 8 hours of vacation for every 24 hours of personal sick leave. Upon retirement or resignation from the City prior to their ten-year anniversary, a full-time employee who has personal sick leave in excess of 160 hours may convert the excess hours to vacation at a rate of eight hours of vacation for every 24 hours of personal sick leave. In this situation, the vacation accrual limits under Section III.D above can be exceeded to a maximum of 480 hours.
- C. For all management and confidential full-time employees who have completed their ten-year anniversary, sick leave accumulation and balances will be governed by Resolution No. 2001-12-11-2. As part of the Retirement Health Services (RHS) plan, employees upon ten years of service may convert any vacation hours over 80 hours to sick leave on a 1 to 1 basis.
- D. All full-time management and confidential employees shall receive 3 days bereavement leave for absence necessitated by the death of immediate family members. An immediate family member shall be defined as the spouse, children, parents, brothers, sisters, grandparents, parents-in-law, or other individuals whose relationship to the employee is that of a dependent or near dependent. Where such death has occurred and upon request of the Assistant City Manager, the employee shall furnish satisfactory evidence of such death.

VI. ADDITIONAL COMPENSATION

- A. The following positions, at the discretion of the City Manager, may be eligible for a monthly automobile allowance in lieu of mileage reimbursement:

City Engineer/Director of Public Services	-	\$ 650
Community Development Director	-	\$ 600
City Clerk	-	\$ 300

All other employees shall be reimbursed at the prevailing standard mileage rates established by the IRS.

- B. The City's Management Incentive Program for management employees has been defunded.

SECTION 4. MISCELLANEOUS PROVISIONS

- I. The City Manager may authorize special adjustments to avoid or eliminate inequities resulting from the strict application of any provision of this Resolution.
- II. The City Manager is authorized to issue written administrative personnel regulations designed to augment or clarify the provisions of this Resolution.
- III. In the event of any conflict between the provisions of the City Manager's Employment Agreement or the Assistant City Manager's Employment Agreement and this Resolution, the Agreements prevail.

SECTION 5. EFFECTIVE DATE

- I. Except as otherwise specified to the contrary in this Resolution, all provisions set forth herein shall be effective July 1, 2013.

SECTION 6. Resolution No. 2011-07-12-2 is hereby rescinded and replaced with this Resolution.

PASSED, APPROVED, AND ADOPTED this 25th day of July 2013.

BARBARA D. 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 is a true and correct copy of Resolution No. 2013-07-09-X adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 9th day of July 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

PEGGY J. JOHNS, CITY CLERK



City of Laguna Hills City Council Meeting Agenda Staff Report

DATE: JULY 9, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

**ISSUE: APPROVAL OF THE PLANS AND SPECIFICATIONS AND AUTHORIZATION
TO ADVERTISE FOR BIDS FOR THE LA PAZ OPEN SPACE
IMPROVEMENTS, MOULTON PARKWAY TO ALAMEDA AVENUE, CIP
NO. 615A**

**RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PLANS AND
SPECIFICATIONS ON FILE WITH THE OFFICE OF THE CITY CLERK AND
AUTHORIZE THE ADVERTISEMENT FOR BIDS OF THE LA PAZ OPEN SPACE
IMPROVEMENTS, MOULTON PARKWAY TO ALAMEDA AVENUE, CIP NO. 615A.**

SUMMARY:

City Council approved the La Paz Open Space Preferred Concept Plan for the area on the northerly side of La Paz Road from Moulton Parkway to Alameda Avenue on February 26, 2013. The plans and specifications for this project have now been completed by the Landscape Architecture firm of Richard Fisher Associates and are on file with the office of the City Clerk. During the design process, several refinements of the details in the Preferred Concept Plan were made to improve the overall project. Staff will discuss each of these revisions as a part of the presentation of the final plans. Approval of the Plans and Specification and authorization to advertise the project for bids is recommended.

BACKGROUND:

The La Paz Open Space project Preferred Concept Plan, on the northerly side of La Paz Road from Moulton Parkway to Alameda Avenue, CIP No. 615A, was presented to, and approved by, the City Council on February 26, 2013. The Preferred Concept Plan is attached for reference. The City Council approval included specific direction on the issues of placement of a bench, the use of lighting along the trail and the trail alignment. The Landscape Architecture firm of Richard Fisher Associates has completed the plans and specifications for the project. During the design process, several refinements to the Preferred Concept Plan were developed to further improve the plan and these details are

provided for City Council information as listed below, as shown on the Modified Preferred Concept Plan and as shown on the noted attachments.

1. The Preferred Concept Plan anticipated the need for three long ADA compatible access ramps with handrails due to the grades of the open space. Through modifications in grading within the open space area, the Construction Plans have eliminated the need for two of the proposed ramps. The one remaining ramp is just easterly of the Shopping Center.
2. The alignment of the Multi-Use Trail has been modified to provide a greater separation in areas where the Multi-Use Trail and the Equestrian Trail alignments were close together. However, at the location where the Multi-Use Trail was closest to the residential back yards, no adjustments to the alignment were made.
3. The Equestrian Trail alignment, westerly of the La Paz Road vehicle entrance to the Shopping Center, has been modified to accommodate the placement of the Shopping Center approved signage.
4. The Multi-Use Trail pavement has been modified to include grooved concrete panels intermittently along the Trail to discourage skate board activities on the Multi-Use Trail.
5. The location of a Bench with Trash Receptacle has been placed at the top end of the one ramp described in item 1 above.
6. The "Equestrian Stock Tank and Hitching Post" has been modified in its location and layout. The location has been moved further towards Moulton Parkway, adjacent to the La Paz Road vehicle entry to the Shopping Center which is a distance of 75 feet further from the potential outdoor eating area at the Shopping Center Building 'D'. The layout of the facility has been expanded based upon input from equestrians and a meeting with the Nellie Gail Ranch Owners Association. The facility is now a fenced corral which will accommodate up to six horses at any one time. Please see the attached equestrian exhibit. In addition, the Shopping Center development plans have also been coordinated to provide an immediately-adjacent Bench and Trash Receptacle for riders to use for lunch activities and to monitor their horses.
7. Multi-use Trail Lighting is being provided by eight inch diameter by 42 inch tall Light Bollards. Please see the attached Light Bollard Detail. The domed cap is bronze-colored die-cast aluminum and the bollard shaft is brown concrete. The LED lamps mounted in each Light Bollard direct the lighting onto the trail surface. The back of the light is shielded to avoid illumination toward the residential properties. The light bollards occur at approximately every 90 feet of linear distance.

8. Permanent illumination within the La Paz Road Tunnel and the Moulton Parkway Tunnel are being provided.

The plans and specifications for this project have been completed and are on file in the office of the City Clerk. The Landscape Architect's estimated construction cost for the project is \$1,133,000, without a contingency. The favorable bidding environment is expected to result in bids at a lower value than this estimate and within budget.

The project schedule anticipates the beginning of work in late September 2013 with substantial completion by January 2014, well in advance of the planned opening of the expanded adjacent Shopping Center, subject to any weather related delays.

FISCAL IMPACT:

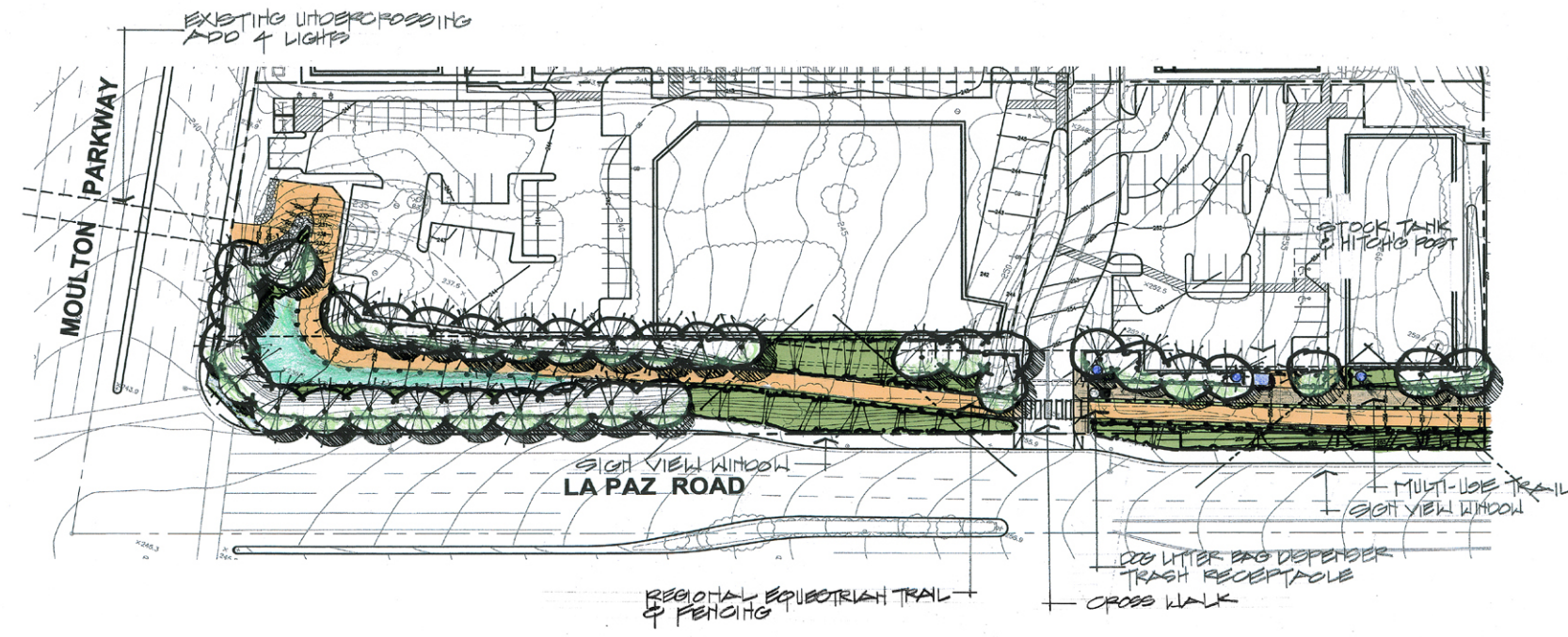
The La Paz Open Space Improvements, Moulton Parkway to Alameda Avenue, CIP No. 615A, is included in the current fiscal year Capital Improvement Program Budget in the amount of \$1,200,000.

ATTACHMENTS:

- Preferred Concept Plan
- Modified Preferred Concept Plan
- Equestrian corral exhibit
- Bollard Light detail

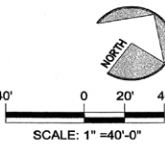
LA PAZ OPEN SPACE
CITY OF LAGUNA HILLS

JANUARY 2013



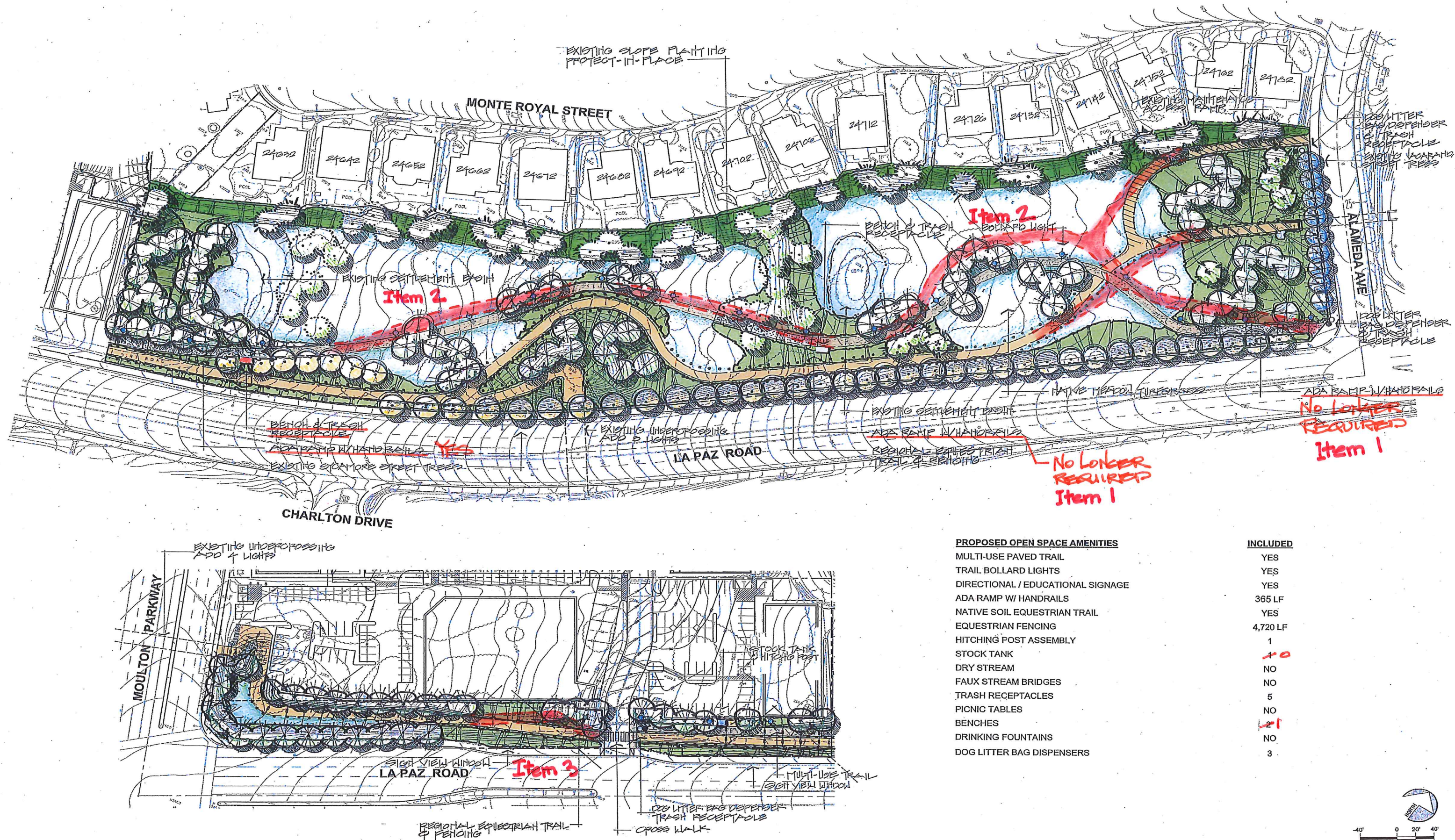
PROPOSED OPEN SPACE AMENITIES

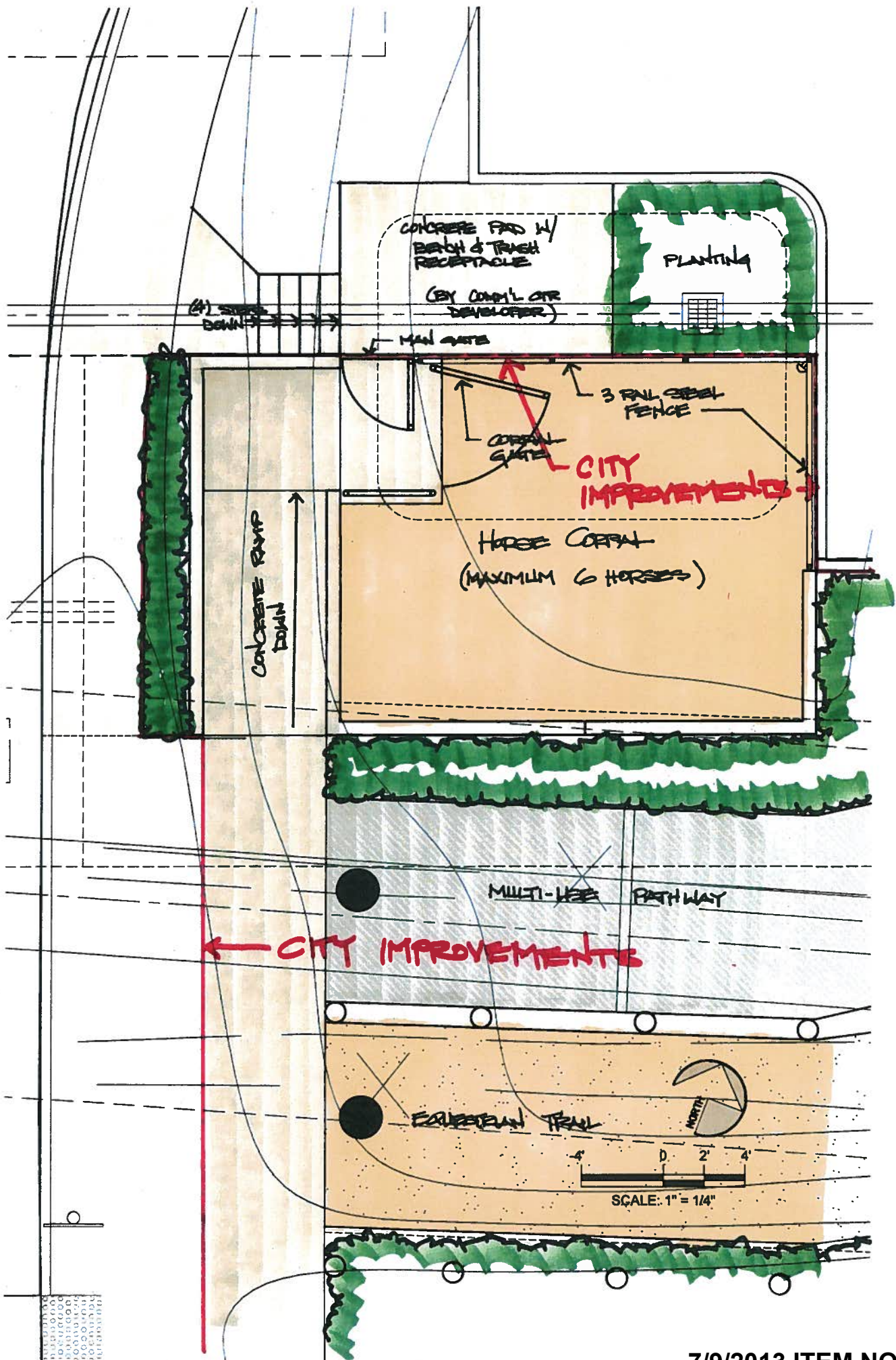
PROPOSED OPEN SPACE AMENITIES	INCLUDED
MULTI-USE PAVED TRAIL	YES
TRAIL BOLLARD LIGHTS	YES
DIRECTIONAL / EDUCATIONAL SIGNAGE	YES
ADA RAMP W/ HANDRAILS	365 LF
NATIVE SOIL EQUESTRIAN TRAIL	YES
EQUESTRIAN FENCING	4,720 LF
HITCHING POST ASSEMBLY	1
STOCK TANK	1
DRY STREAM	NO
FAUX STREAM BRIDGES	NO
TRASH RECEPTACLES	5
PICNIC TABLES	NO
BENCHES	2
DRINKING FOUNTAINS	NO
DOG LITTER BAG DISPENSERS	3



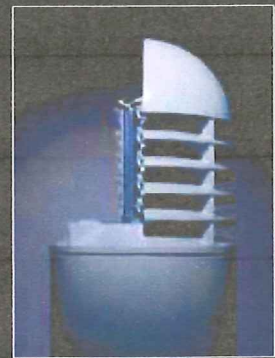
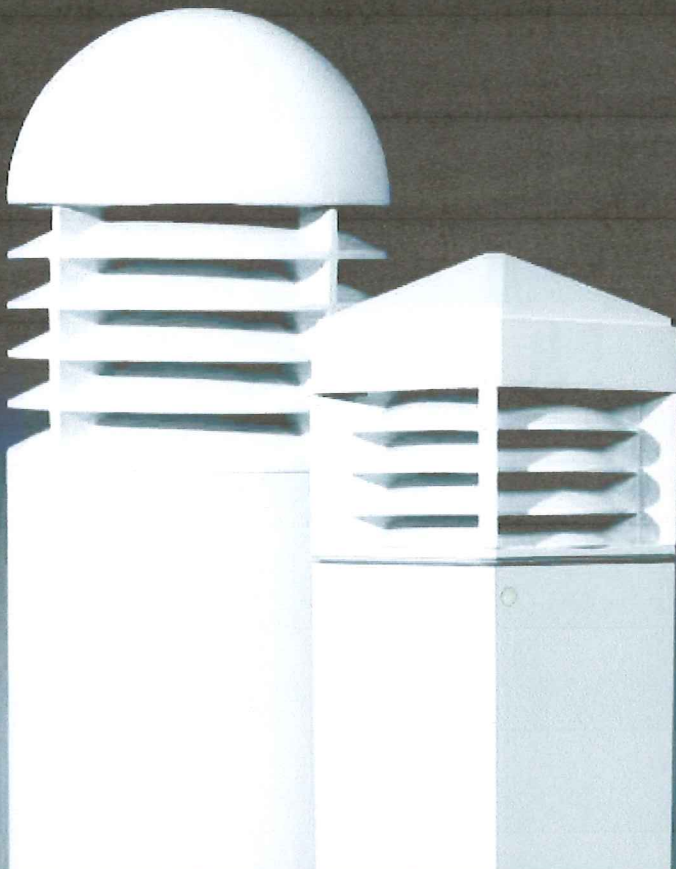
PREFERRED CONCEPT PLAN

JANUARY 2013





Vandal Resistant Bollard LED Series



Unique LED design complements louvers ensuring broad, even illumination.

Vandal Resistant Bollard LED

Rugged construction suitable for public areas where vandalism may occur. VRB's round form complements curvilinear Kim site luminaires while VSB complements rectilinear Kim luminaires. Full high-angle louvers provide low fixture brightness with broad light distribution. Concrete shaft models available with complementary unlighted barrier model.

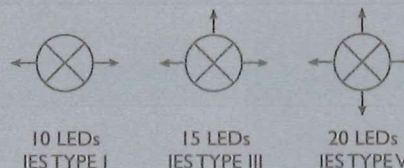
ORDERING INFORMATION

1 FIXTURE	2 MODE	3 FINISH	4 CONCRETE RISER*
VRB1	10L3KUV	BL Black	CH-C Charcoal
VRB1C	10L5KUV	DB Dark Bronze	BR-C Brown
VRB2	15L3KUV	LG Light Gray	NG-C Natural Gray
VRB2C	15L5KUV	SG Stealth Gray	WH-C White
VRB3	20L3KUV	PS Platinum Silver	* For VRB1C, VRB2C, VRB3C and VRB4C concrete shaft
VRB3C	20L5KUV	WH White	
VRB4			
VRB4C			
VSB1			
VSB1C			
VSB2			
VSB2C			

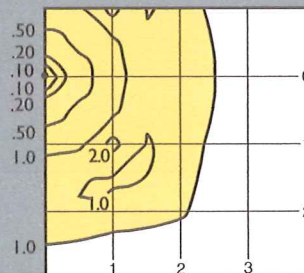
EXAMPLE: VRB1C / 10L5KUV / BL / NG-C

L = LEDs / 3K = 3500K / 5K = 5100K / UV = Universal Voltage

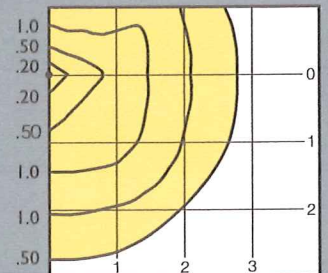
DISTRIBUTION TYPE



VRB1 LED PHOTOMETRY



VSB2 LED PHOTOMETRY



Typical Quarter for 20 LEDs, Isofootcandle Lines of Horizontal Illumination, 42" Bollard, 3.5' Mounting Ht., Longitudinal and Transverse Distances in Units of Mounting Ht.

