CITY OF LAGUNA HILLS
CITY COUNCIL/PLANNING AGENCY
REGULAR MEETING AGENDA
MAY 14, 2013

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

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

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

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

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

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 LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON

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

1.2 CERTIFICATE OF RECOGNITION, LAGUNA HILLS AYSO REGION 1422 GOLD AWARD WINNER

RECOMMENDATION: THAT MAYOR KOGERMAN PRESENT A CERTIFICATE OF RECOGNITION TO LAGUNA HILLS AYSO REGION 1422.

1.3 LAGUNA HILLS 3/5 MARINE SUPPORT COMMITTEE

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AN ORAL PRESENTATION FROM COMMITTEE CHAIR MIKE BLAND.

1.4 PRESENTATION FROM ORANGE COUNTY FIRE AUTHORITY ON POOL SAFETY AND KITCHEN FIRE PREVENTION PROGRAMS

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AN ORAL PRESENTATION FROM ORANGE COUNTY FIRE AUTHORITY REGARDING POOL SAFETY AND KITCHEN FIRE PREVENTION PROGRAMS.

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, APRIL 23, 2013

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MINUTES OF THE APRIL 23, 2013, REGULAR MEETING.

3.2 ADJOURNED REGULAR MEETING, MAY 7, 2013

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE MINUTES OF THE MAY 7, 2013, ADJOURNED 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 MAY 14, 2013

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $444,567.26.

4.3 APPROVE PROPOSED LEASE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 210, AND THE PROPOSED LEASE TERMINATION AGREEMENT FOR SUITE 220 WITH CARNO & CARLTON, LLP

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED LEASE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 210, LAGUNA HILLS, CALIFORNIA, AND THE LEASE TERMINATION AGREEMENT FOR SUITE 220 WITH CARNO & CARLTON, LLP, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE PROPOSED LEASE AGREEMENT AND THE LEASE TERMINATION AGREEMENT.

4.4 AMENDMENT NO. 1 TO AGREEMENT NO. D08-010 TO EXTEND THE ROAD MAINTENANCE AND OPERATIONS CONTRACT WITH THE COUNTY OF ORANGE FOR ONE YEAR

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE AMENDMENT NO. 1 TO AGREEMENT NO. D08-010 TO EXTEND THE ROAD MAINTENANCE AND OPERATIONS CONTRACT WITH THE COUNTY OF ORANGE FOR ONE YEAR AND AUTHORIZE THE MAYOR TO SIGN AMENDMENT NO. 1 AND THE CITY CLERK TO ATTEST THERETO.

4.5 AUTHORIZATION TO ADVERTISE FOR BIDS FOR THE RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172, AND THE EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, SLPPL-5468 (007), AND APPROVAL OF A COOPERATIVE AGREEMENT WITH THE CITY OF LAKE FOREST FOR COST SHARING

RECOMMENDATION: THAT THE CITY COUNCIL: (1) APPROVE THE PLANS AND SPECIFICATIONS AND AUTHORIZE THE ADVERTISEMENT FOR BIDS FOR THE RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172, AND THE EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, SLPPL-5468 (007); AND (2) APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE COST SHARING AND COOPERATIVE AGREEMENT FOR EL TORO ROAD PAVEMENT REHABILITATION PROJECT WITH THE CITY OF LAKE FOREST.

4.6 PROGRESS PAYMENT NO. 4 FOR COMMUNITY CENTER BUILDING REFURBISHMENT, CIP NO. 513A

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 4, IN THE NET AMOUNT OF $84,147.10, TO N.S. CONSTRUCTION & PAINTING, FOR COMMUNITY CENTER BUILDING REFURBISHMENT, CIP NO. 513A.

4.7 PROGRESS PAYMENT NO. 1, FINAL, FOR CIVIC CENTER IMPROVEMENTS - PAINTING

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 1, FINAL, IN THE NET AMOUNT OF $14,178.75, TO U.S. NATIONAL CORP. DBA JIMENEZ PAINTING COMPANY, FOR CIVIC CENTER IMPROVEMENTS – PAINTING, AUTHORIZE THE FILING OF THE NOTICE OF COMPLETION AND THE SUBSEQUENT RELEASE OF RETENTION IN 35 DAYS, IF NO LIENS HAVE BEEN FILED.

4.8 PROGRESS PAYMENT NO. 4 FOR CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-H

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 4, IN THE NET AMOUNT OF $23,065.65, TO ALL AMERICAN ASPHALT, FOR CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-H.

4.9 NO RIGHT TURN ON RED REGULATION FOR SOUTHERLY BOUND AVENIDA DE LA CARLOTA AT PASEO DE VALENCIA

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING A NO RIGHT TURN ON RED PROHIBITION ON SOUTHERLY BOUND AVENIDA DE LA CARLOTA AT PASEO DE VALENCIA.”

4.10 APPLICATION FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM (ECP), TIER 1 GRANT

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE GRANT APPLICATION FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM, TIER 1 GRANT AND ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING AN APPLICATION FOR FUNDS FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM, TIER 1 GRANT UNDER ORANGE COUNTY LOCAL TRANSPORTATION ORDINANCE NO. 3 FOR THE LAGUNA HILLS DEBRIS GATES PROJECT, PHASE III."

4.11 THIRD QUARTER FINANCE AND TREASURER'S REPORT (FY 2012/13)

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AND FILE THE THIRD QUARTER FINANCIAL AND TREASURER'S REPORT FOR FISCAL YEAR 2012-13.

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, APRIL 23, 2013

RECOMMENDATION: THAT THE PLANNING AGENCY APPROVE THE MINUTES OF THE APRIL 23, 2013, REGULAR MEETING.

5.4 PLANNING AGENCY PUBLIC HEARINGS

PLANNING AGENCY ADJOURNMENT

6. CITY COUNCIL PUBLIC HEARINGS

7. ADMINISTRATIVE REPORTS

7.1 City Manager

7.2 Deputy City Manager/Community Services

7.2.1 2013 MEMORIAL DAY RACE: EVENT UPDATE

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AN ORAL PRESENTATION REGARDING THE 2013 CITY OF LAGUNA HILLS MEMORIAL DAY HALF MARATHON, 5K, AND 10K, HONORING THE USMC DARK HORSE BATTALION.

7.2.2 2013 FOURTH OF JULY CELEBRATION AND FIREWORKS DISPLAY

RECOMMENDATION: THAT THE CITY COUNCIL: (1) RECEIVE A PRESENTATION ON THE 2013 FOURTH OF JULY CELEBRATION; AND (2) APPROVE THE FIREWORKS DISPLAY AGREEMENT WITH PYRO ENGINEERING, INC., AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT.

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

9. CITY COUNCIL MEMBER COMMENTS

ADJOURNMENT

The next Regular Meeting of the City Council will be May 28, 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 May 10, 2013, at 5:00 PM.

Peggy J. Johns

PEGGY J. JOHNS, CITY CLERK

May 10, 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: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: PEGGY J. JOHNS
CITY CLERK

ISSUE: CERTIFICATE OF RECOGNITION, LAGUNA HILLS AYSO REGION 1422 GOLD AWARD WINNER

RECOMMENDATION: THAT MAYOR KOGERMAN PRESENT A CERTIFICATE OF RECOGNITION TO LAGUNA HILLS AYSO REGION 1422.

SUMMARY:

It is the practice of the City Council to recognize significant accomplishments of Laguna Hills' athletes. The Laguna Hills AYSO Region 1422 was recently recognized by AYSO National as a Gold Award Winner for a program called the Regional Assessment Program (RAP).

The Regional Assessment Program is designed to recognize regions for their successful implementation of AYSO programs in their local communities. AYSO Region 1422 has actively supported AYSO philosophies and policies this past year. It is significant to note that this is the first time that the Laguna Hills AYSO Region 1422 has won the Gold Award.

A Certificate of Recognition will be presented to Laguna Hills AYSO Region 1422 and the following members will be present to accept the Certificate: Kevin Gramling (Regional Commissioner), Jennifer Miller (Division Manager Coordinator), Jeff Ricciardi (Referee Administrator), Van Hoang (Webmaster) and Joel Lautenschleger (Safety Director).

ATTACHMENTS:

- Certificate of Recognition

CERTIFICATE OF RECOGNITION

LAGUNA HILLS AYSO REGION 1422
Regional Assessment Program Gold Award

WHEREAS, *participation in organized athletic pursuits helps to build character and teaches a wholesome sense of fair play and good sportsmanship among our City's youth; and*

WHEREAS, *the AYSO Regional Assessment Program is designed to recognize Regions for their successful implementation of AYSO programs in their local communities, to recognize those Regions that strive for constant improvement and demonstrate a commitment to training its volunteers, and for supporting AYSO philosophies and policies; and*

WHEREAS, *the Laguna Hills AYSO Region 1422 was recently recognized by AYSO National as a first time Gold Award Winner.*

NOW, THEREFORE, *I, Barbara Kogerman, Mayor, on behalf of the City Council of the City of Laguna Hills, California, commend Laguna Hills AYSO Region 1422 for its accomplishment in winning the Regional Assessment Program Gold Award.*

Dated this 14th day of May 2013

____

BARBARA D. KOGERMAN, MAYOR

CITY OF LAGUNA HILLS, CALIFORNIA
CITY COUNCIL/PLANNING AGENCY REGULAR MEETING
MINUTES
APRIL 23, 2013

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

1. PRESENTATIONS AND PROCLAMATIONS

1.1 LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON

THE CITY COUNCIL RECEIVED AN ORAL REPORT FROM LAGUNA HILLS HIGH SCHOOL STUDENT LIAISON AMANDA JAFFE.

1.2 TEN YEAR ANNIVERSARY AWARD

MAYOR KOGERMAN RECOGNIZED LISA HERNANDEZ, ACCOUNTANT I, FOR TEN YEARS OF SERVICE TO THE CITY OF LAGUNA HILLS AND PRESENTED A CERTIFICATE OF RECOGNITION AND GIFT.

1.3 UPDATE ON THE SOUTH COUNTY ANIMAL SHELTER COALITION

THE CITY COUNCIL RECEIVED AN ORAL PRESENTATION FROM TOM EPPERSON, JAMES VAUGHN, AND VALERIE BROMBERG, MEMBERS OF THE SOUTH COUNTY ANIMAL SHELTER COALITION, REGARDING THE STATUS OF THEIR OUTREACH EFFORTS TO DATE.

Joel Lautenschleger, Laguna Hills, spoke on the update on the South County Animal Shelter Coalition.

2. PUBLIC COMMENTS

There were no Public Comments.

3. MINUTES

3.1 REGULAR MEETING, APRIL 9, 2013

MOTION TO APPROVE THE MINUTES OF THE APRIL 9, 2013, REGULAR MEETING, BY M/COUNCIL MEMBER CARRUTH, S/MAYOR PRO TEMPORE BLOUNT.
APPROVED BY A VOTE OF 5-0.

3.2 ADJOURNED REGULAR MEETING, APRIL 16, 2013

MOTION TO APPROVE THE MINUTES OF THE APRIL 16, 2013, ADJOURNED REGULAR MEETING, BY M/COUNCIL MEMBER CARRUTH, S/MAYOR PRO TEMPORE BLOUNT.
APPROVED BY A VOTE OF 5-0.

4 CONSENT CALENDAR

MOTION TO APPROVE THE CONSENT CALENDAR, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER GILBERT.
APPROVED BY A VOTE OF 5-0.

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 APRIL 23, 2013

THE CITY COUNCIL APPROVED THE WARRANT REGISTER IN THE AMOUNT OF $845,610.10.

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 7:41 PM.

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

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

5.2 PUBLIC COMMENTS

There were no Public Comments.

5.3 MINUTES

5.3.1 REGULAR MEETING, APRIL 9, 2013

MOTION TO APPROVE THE MINUTES OF THE APRIL 9, 2013, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/AGENCY MEMBER GILBERT.
APPROVED BY A VOTE OF 5-0.

5.4 PLANNING AGENCY PUBLIC HEARINGS

There were no Public Hearings.

PLANNING AGENCY ADJOURNMENT

Mayor Kogerman reconvened the City Council meeting at 7:42 PM. All Council Members were present.

6. CITY COUNCIL PUBLIC HEARINGS

There were no City Council Public Hearings.

7. ADMINISTRATIVE REPORTS

7.1 City Manager

The City Manager made no reports.

7.2 Assistant City Manager

7.2.1 CITY VIEWS AND COMMUNITY SERVICES ACTIVITY GUIDE

Brian Lochrie, Faubel Public Affairs representative, spoke on City Views and Community Services Activity Guide.

Meg Gorham, Laguna Hills, spoke on City Views and Community Services Activity Guide.

THE CITY COUNCIL APPOINTED AN AD HOC COMMITTEE COMPRISED OF COUNCIL MEMBER GILBERT AND COUNCIL MEMBER BRESSETTE TO STUDY PUBLISHING OPTIONS REGARDING THE CITY VIEWS AND

COMMUNITY SERVICES ACTIVITY GUIDE, AND TO RETURN TO CITY COUNCIL WITH A REPORT ON PUBLICATION OPTIONS/ALTERNATIVES; THE AD HOC COMMITTEE HAS THE OPTION TO SOLICIT PUBLIC OPINION, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER BRESSETTE. APPROVED BY A VOTE OF 5-0.

7.3 Public Services Director/City Engineer

7.3.1 2013 WEED ABATEMENT PROGRAM

THE CITY COUNCIL ADOPTED RESOLUTION NO. 2013-04-23-1, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DECLARING WEEDS AND RUBBISH ON SPECIFIED PRIVATE PROPERTY TO BE A PUBLIC NUISANCE, COMMENCING PUBLIC PROCEEDINGS, AND SETTING A PUBLIC HEARING FOR MAY 28, 2013, BY M/COUNCIL MEMBER BRESSETTE, S/COUNCIL MEMBER CARRUTH. APPROVED BY A VOTE OF 5-0.

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

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

9. CITY COUNCIL MEMBER COMMENTS

MAYOR PRO TEMPORE BLOUNT

Mayor Pro Tempore Blount thanked the South County Animal Coalition members for their presentation.

COUNCIL MEMBER GILBERT

Council Member Gilbert indicated that his family would be participating in the Memorial Day Half Marathon 5K and 10 K Event.

COUNCIL MEMBER CARRUTH

Council Member Carruth thanked the Parks and Recreation staff for the great job on the Earth Day Event held Saturday, April 20, 2013.

MAYOR KOGERMAN

Mayor Kogerman reported that at one of her “Meet the Mayor” sessions, a girl scout troup had approached her and asked about City service projects. Mayor Kogerman had recommended the girl scouts consider attending Earth Day. Mayor Kogerman was pleased to have the girl scounts participate in this year’s event.

10. CLOSED SESSION

Mayor Kogerman recessed the meeting into Closed Session at 8:20 PM.

10.1 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8

Property:	24031 El Toro Road, Suite 210, Laguna Hills, California
Agency Negotiator:	Bruce Channing, City Manager, and Don White, Assistant City Manager
Negotiating parties:	City of Laguna Hills and Anna Carno, Carno, & Carlton, LLP
Under Negotiation:	Price and Terms of Lease Payment

10.2 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to paragraph (1) of subdivision (d) of Government Code Section 54956.9
Name of Case: Test Claim with the Commission on State Mandates TC #09-TC-11, San Diego Region Water Permit,
California Water Quality Control Board, San Diego Region, Order No. R9-2009-0002 (Claimant: County of Orange, Orange County
Flood Control District, Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, and San Juan Capistrano)

Mayor Kogerman reconvened the meeting at 8:44 PM. All Council Members were present.

City Attorney Simonian indicated that no reportable action was taken by the City Council in Closed Session.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Kogerman declared the meeting adjourned at 8:45 PM.

PEGGY J. JOHNS, CITY CLERK

ATTEST:

BARBARA D. KOGERMAN, MAYOR

APPROVED AT MEETING OF _______________.

CITY OF LAGUNA HILLS, CALIFORNIA
CITY COUNCIL ADJOURNED REGULAR MEETING
MINUTES
MAY 07, 2013

CALL TO ORDER

Mayor Kogerman called the Adjourned Regular Meeting of the City Council of the City of Laguna Hills, California, to order at 5:00 PM in the Laguna Hills City Council Chamber, 24035 El Toro Road, Laguna Hills.

PLEDGE OF ALLEGIANCE: COUNCIL MEMBER BRESSETTE

ROLL CALL OF CITY COUNCIL MEMBERS

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

PUBLIC COMMENTS

There were no Public Comments.

1. 2013-2015 BIENNIAL BUDGET AND SIX-YEAR CAPITAL IMPROVEMENT PLAN STUDY SESSION

City Manager Channing gave opening statements and indicated this was the second study session related to the FY 2013-2015 Biennial Budget. This meeting would consolidate the two study sessions that would have typically covered the Proposed Operating Budget and proposed Six Year Capital Improvement Program. City Manager Channing discussed the proposal to change the City's financial ratios.

Assistant City Manager White gave a PowerPoint overview on FY 2013-2015 budget, proposed revisions to the City's financial policies, assumptions for the next two-year budget cycle, and assumptions for the 8-year Resource Allocation Plan.

Mayor Kogerman recessed the meeting at 6:32 PM and reconvened the meeting at 7:01 PM, all Council Members were present.

Each department head presented their major plans, work programs, and significant changes to their budget line items.

IT WAS THE CONSENSUS OF THE CITY COUNCIL TO DIRECT STAFF TO BRING BACK A REPORT ON THE UTILIZATION OF MOTORCYCLE OFFICERS IN THE CITY OF LAGUNA HILLS.

Public Services Director Rosenfield presented a PowerPoint giving a brief history of the City's CIP project investment, a summary of FY 2013-2015 CIP projects, and community requested projects.

Patric Barry, Laguna Hills, spoke on the need for increased street lighting on Highwood Circle for safety reasons.

IT WAS THE CONSENSUS OF THE CITY COUNCIL TO DIRECT STAFF TO BRING BACK A REPORT ON POSSIBLE INSTALLATION OF ADDITIONAL STREET LIGHTING FOR THE FOLLOWING RESIDENTIAL STREETS: CHELSEA LANE, MANDEVILLE DRIVE, AND HIGHWOOD CIRCLE.

Public Services Director Rosenfield continued his presentation by discussing the possible funding of new projects for Year 4-8.

Tom Epperson, Laguna Hills, spoke on his preference to keep the City's conservative reserve ratio at 40%.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Kogerman declared the meeting adjourned at 10:22 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: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE, ASSISTANT CITY MANAGER

ISSUE: APPROVAL OF WARRANT REGISTER FOR PERIOD ENDED MAY 14, 2013.

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE WARRANT REGISTER IN THE AMOUNT OF $444,567.26.

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

5-9-13
DATE

FISCAL IMPACT:

The warrant register total is $444,567.26.

ATTACHMENTS:

1. **Warrant Register**

CITY OF LAGUNA HILLS
WARRANT REGISTER
May 14, 2013

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
PREPAID WARRANTS:			
ALICEA, MIA	*Contract Instructor Fee, Dancing Spring Session, Community Services*	8805208	$ 11,607.40
AT&T	*Communication Expense, Administrative Services Fax Line, Apr '13*	8805229	70.64
AT&T- CALNET 2	*Communication Expense, Alarm System, 2-Way Line, Switchboard, Modem, T-1 Line and Traffic Control, Apr '13*	8805260	2,042.61
CHEVRON	*Vehicle Fuel, Apr '13*	8805230-234	1,878.69
COUNTY CLERK-RECORDER	*Document Recording Fee, Encroachment Agreement, Apr '13*	8805209	60.00
COX COMMUNICATION	*Communication Expense, Traffic Control, Apr '13*	8805210	179.00
COX COMMUNICATION	*Wi-Fi Service, Community Center, May '13*	8805235	130.00
CYBERSOURCE CORPORATION	*eCommerce Payment Gateway Service, Online Permits, Community Development, Mar '13*	8805211	29.00
ECHEVARRIA, LUCY	*Mileage Reimbursement, Community Services, Jan - Mar '13*	8805236	92.66
ERAM, RICK	*Refund, CPMI Fees, CR# 45925*	8805237	312.50
EVERBANK COMMERCIAL FINANCE	*Lease - Copier, City Hall, Apr '13*	8805238	221.55
GILROY, MATT	*Mileage Reimbursement, Community Services, Mar - May '13*	8805283	9.61
GORMAN, RON	*Contract Instructor Fee, Guitar Spring Session, Community Services*	8805212	126.00
HEART OF GOLD FOUNDATION, INC.	*Contract Instructor Fee, Cooking Class Spring Session, Community Services*	8805213	168.00
HSBC BUSINESS SOLUTIONS	*Program Supplies, Community Services, Mar '13*	8805214	112.64
IRVINE RANCH WATER DISTRICT	*Water Usage, Parks, Mar '13*	8805215	125.52
JULES MUSIC 4 KIDS	*Program Expense - Deposit, Community Services, May '13*	8805239	150.00
LUCY, STEVEN	*Program Expense, Community Services, Mar '13*	8805216	650.00
MARTIN-RUSK, DINA	*Contract Instructor Fee, Zumba Spring Session, Community Services*	8805217	327.60
MIGLIACCIO, JENNIFER	*Contract Instructor Fee, Early Childhood Spring Session, Community Services*	8805218	4,333.00
MOBILE MINI, INC.	*Storage Rental Fee, Community Services, Apr '13*	8805240	83.16
MOLLOY, JULIE	*Mileage Reimbursement, Planning, Mar - Apr '13*	8805219	42.94
MOULTON NIGUEL WATER DISTRICT	*Water Usage, Parks, Mar - Apr '13*	8805297	9,269.59
MYERS, JOHN	*Contract Instructor Fee, Tennis Classes Spring Session, Community Services*	8805220	416.00

CITY OF LAGUNA HILLS
WARRANT REGISTER
May 14, 2013

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
OC SHERIFF'S ADVISORY COUNCIL	*Meeting Expense, Public Safety*	8805241	700.00
ORANGE COUNTY JUMPERS, LLC	*Program Expense, Community Services, May '13*	8805303	230.00
OROS CONSULTING SERVICES, LLC	*Professional Services, Computer Consulting Services, Apr '13*	8805305	5,167.50
RALPHS GROCERY COMPANY	*Program Supplies, Community Services, Mar '13*	8805242	207.97
RAMIREZ, CHRISTINA	*Mileage Reimbursement, Administrative Services, Feb - Apr '13*	8805221	7.15
REFUND, COMMUNITY SVCS PROGRAM	*D. Hughes, V# 2002748.002*	8805222	63.00
REFUND, FACILITY RENTAL DEPOSIT	*C. Gutierrez, V# 2002749.002*	8805245	500.00
REFUND, FACILITY RENTAL DEPOSIT	*M. Duran, V# 2002757.002*	8805246	500.00
REFUND, FACILITY RENTAL DEPOSIT	*S. Roberts, V# 2002759.002*	8805309	50.00
REFUND, FACILITY RENTAL DEPOSIT	*N. Sarraf, V# 2002762.002*	8805310	250.00
REYES, JANICE MATEO	*Petty Cash Replenishment, Departmental Operating Expenditures, Apr '13*	8805247	640.15
SAN DIEGO GAS & ELECTRIC	*Electric Usage, Street Lights and Traffic Control, Mar '13*	8805223	207.11
SAN DIEGO GAS & ELECTRIC	*Electric Usage, Community Center, Traffic Control and Street Lights, Mar '13*	8805249	22,644.75
SMART & FINAL	*Program Supplies, Community Services, Mar '13*	8805224	39.11
SOCAL OFFICE TECHNOLOGIES	*Lease - Copier, Community Services, Apr '13*	8805250	700.37
SOUTHERN CALIFORNIA EDISON	*Electric Usage, Street Lights and Traffic Control, Mar '13*	8805225	470.77
SOUTHERN CALIFORNIA EDISON	*Electric Usage, Street Lights, Mar '13*	8805251	572.00
SOUTHERN CALIFORNIA EDISON	*Electric Usage, Street Lights and Traffic Control, Apr '13*	8805317	1,149.14
SPARKLETTS	*Operating Supplies, Community Services, Apr '13*	8805318	62.10
SPRINT	*Communication Expense, Community Services, Mar '13*	8805226	151.45
STAPLETON, VIVIAN	*Contract Instructor Fee, Early Childhood Music Spring Session, Community Services*	8805227	650.13
TOTALFUNDS BY HASLER	*Postage, Meter Replenishment, Mar '13*	8805252	1,000.00
U.S. POSTAL SERVICE	*Postage, Community Mailing, Weed Abatement*	8805253	137.00
VERIZON WIRELESS	*Communication Expense, Mar '13*	8805228	714.73
	Total Prepaid Warrants:		**$ 69,252.54**

CITY OF LAGUNA HILLS
WARRANT REGISTER
May 14, 2013

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
REGULAR WARRANTS:			
A. C. LANDSCAPE, INC.	*Water Management Services, Back Flow Devise Repairs, Apr '13*	8805254	$ 100.00
ALL AMERICAN ASPHALT	*Progress Payment #4, Annual Street Maintenance CIP # 101-H*	8805255	23,065.65
ALL CITY MANAGEMENT, INC.	*Crossing Guard Services, 03/24/13 - 04/20/13*	8805256	5,256.00
APWA	*Micro Paver Software Upgrade, Apr '13*	8805257	550.00
ART TO GROW ON	*Contract Instructor Fee, Art Classes Spring Session, Community Services*	8805258	630.00
ATHALYE CONSULTING ENGINEERING	*Professional Services, La Paz Widening @ I-5 CIP # 159*	8805261	360.00
BALLOONS SOUND GREAT	*Program Supplies - Deposit, 1/2 Marathon and 5K Event, Community Services, May '13*	8805262	865.50
BLUEPRINT TECHNOLOGIES	*Communication Maintenance Agreement, City Hall and Community Center, Apr '13 - Mar '14*	8805263	6,206.50
BRAME, MARILYN	*Contract Instructor Fee, Drawing Spring Session, Community Services*	8805264	294.00
BUREAU VERITAS NORTH AMERICA	*Professional Services, Community Center Renovation # 513 and On-Call Inspections, Mar '13*	8805265	9,025.00
C & A ATHLETICS	*Program Supplies, Community Services, Apr '13*	8805266	711.72
C&D ELECTRIC, INC.	*Program Expense, Community Services, Lighting Repairs and Inspections, Parks, Mar - Apr '13*	8805267	1,615.76
C2 REPROGRAPHICS	*Printing Expense, Engineering and El Toro Road Pavement Rehabilitation CIP # 179*	8805268	349.01
CALIFORNIA YELLOW CAB	*Dial-a-Taxi Senior Transportation Program, Mar '13*	8805269	690.00
CDW GOVERNMENT, INC.	*Computer Software and Hardware Wi-Fi Project, Apr '13*	8805270	1,137.60
CHARLES ABBOTT ASSOCIATES, INC.	*Professional Services, Plan Checking and Building & Safety Services, Mar '13*	8805271	10,639.68
CODE PUBLISHING COMPANY, INC.	*Online Municipal Code Update, City Clerk, Apr '13*	8805272	68.85
COMMUNITY BANK	*Retention Deposit, All American Asphalt, Progress Payment # 4, Annual Street Maintenance CIP # 101-H*	8805273	2,562.85
COMPETITOR SC	*Event Promotional Services, 1/2 Marathon and 5K Event, Community Services, Apr '13*	8805274	880.00
COMPLETE OFFICE OF CALIFORNIA	*Office, Operating and Computer Supplies, Community Center, Apr '13*	8805275	527.77
DATA TICKET, INC.	*Parking Citation Processing Fee, Nov '12 - Mar '13*	8805276	288.03
DELL COMPUTER CORPORATION	*Computer Hardware, City Clerk, Apr '13*	8805277	5,616.00
ECONOMICS, INC.	*Professional Services, Recycling Program, Mar '13*	8805278	3,397.92
EISENBERG, DALE	*Contract Instructor Fee, Aikido Spring Session, Community Services*	8805279	336.00

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
ELKINS, CHRISTINA	*Contract Instructor Fee, Dancing Spring Session, Community Services*	8805280	171.50
FAUBEL PUBLIC AFFAIRS	*Professional Svcs, Combined Issue, City Views/Community Services Summer 2013 Activity Guide*	8805281	743.75
GEMINI TIMING	*Program Expense, 1/2 Marathon and 5K Event, Community Services, May '13*	8805282	700.00
GOVPARTNER	*Hosting Fees, Request Partner, Apr '13*	8805284	500.00
GRC ASSOCIATES, INC.	*Professional Services, Aliso Meadows Rehabilitation Project, Nov '12 - Mar '13*	8805285	6,942.00
GREEN MART, INC.	*Operating Supplies, Parks, Apr '13*	8805286	1,026.00
HARTZOG & CRABILL, INC.	*Professional Services, Traffic Engineering Services, Mar - Apr '13*	8805287	9,329.77
JAMEY CLARK, INC.	*Miscellaneous Park Repairs, Graffiti Removal and Safety Inspections, Mar - Apr '13*	8805288	3,152.37
JOE A. GONSALVES & SON	*Professional Services, Legislative Services, May '13*	8805289	2,900.00
JUDICATE WEST	*Professional Services, Claims, Legal Fees, Mar '13*	8805290	2,445.00
K F STUDIOS	*Event Promotional Services, 1/2 Marathon and 5K Event, Community Services, Apr '13*	8805291	480.00
KNIGHT, LORNA ANGELA	*Contract Instructor Fee, Yoga Spring Session, Community Services*	8805292	2,910.60
MEDLOCK, GEORGE	*Contract Instructor Fee, Drumming Spring Session, Community Services*	8805294	34.30
MITY-LITE, INC.	*Furniture Replacement, Community Center*	8805295	1,209.76
MOSS, LEVY & HARTZHEIM LLP	*Professional Services, Financial Audit Services, Final Payment, FY 11/12*	8805296	5,404.00
N. S. CONSTRUCTION & PAINTING	*Progress Payment #4, Community Center Building Refurbishment CIP # 513*	8805298	84,147.10
NIEVES LANDSCAPE, INC.	*Other Assorted Landscape Services, Apr '13*	8805299	535.00
OFFICE SOLUTIONS	*Office and Operating Supplies, Apr '13*	8805301	1,052.07
ORANGE COUNTY JUMPERS, LLC	*Program Expense, 1/2 Marathon and 5K Event, Community Services, May '13*	8805302	800.00
ORANGE COUNTY REGISTER	*Subscription, Community Center, 5/2/13 - 6/27/13*	8805304	101.95
ORANGE COUNTY TREASURER	*Public Safety 800 MHZ Cost Allocation 4th Qtr 12/13, Communication Charge 3rd Qtr 12/13*	8805293	6,250.88
ORANGE COUNTY TREASURER	*Parking Fee Surcharge, Mar '13*	8805306	1,164.63
ORANGE COUNTY TREASURER	*Road Maintenance, Mar '13*	8805313	56,790.58
PRICE, LEAANNE	*Referee Fees, Volleyball, Community Services*	8805307	72.00
PRICE, ROBIN	*Referee Fees, Volleyball, Community Services*	8805308	72.00
RENEGADE RACING	*Event Management Services, 2013 1/2 Marathon and 5K Event, Partial Payment*	8805311	16,000.00

5/14/2013 ITEM NO. 4.2

CITY OF LAGUNA HILLS
WARRANT REGISTER
May 14, 2013

VENDOR	DESCRIPTION	CHECK NO.	AMOUNT
RICHARD FISHER ASSOCIATES	*Professional Services, La Paz Open Space Riparian Habitat CIP # 615*	8805312	19,978.20
SHARPS COMPLIANCE, INC.	*Hazardous Waste Containers, Recycling Program, Feb '13*	8805314	226.13
SIGNATURE CONTRACTORS	*Retention Payment, Sports Complex Renovations CIP # 514*	8805315	12,798.60
SOCAL OFFICE TECHNOLOGIES	*Usage - Copier, Community Center and Printer, Maintenance and Supplies, Feb - May '13*	8805316	2,770.84
STATE WATER RESOURCES CONTROL	*Storm Water Permit, Apr '13 - Mar '14*	8805319	543.00
STRAIGHT 78	*Program Expense Deposit, 4th of July Event, Community Services*	8805320	500.00
STV INCORPORATED	*Professional Services, Paseo de Valencia Widening CIP # 145*	8805321	8,615.16
SUNSET PROPERTY SERVICES	*Street Sweeping, Apr '13*	8805322	11,453.68
TAB PRODUCTS COMPANY	*Office Supplies, City Clerk, Apr '13*	8805323	352.76
TRAUMA INTERVENTION PROGRAMS	*Community Program, TIP, Apr - Jun '13*	8805324	910.32
WATKINS, CRAIG	*Umpire Fees, Adult Softball, Community Services*	8805325	90.00
WEST COAST ARBORISTS, INC.	*Tree Planting, Urban Reforestation, CIP # 320 and Tree Trimming, Mar '13*	8805326	713.00
WOODRUFF, SPRADLIN & SMART	*Professional Services, Legal, Mar '13*	8805327	35,546.80
XEROX CORPORATION	*Lease - Copier, City Hall, Apr '13*	8805328	486.63
YOUNG REMBRANDTS	*Contract Instructor Fee, Drawing Spring Session, Community Services*	8805329	220.50
	Total Regular Warrants:		**375,314.72**
	*****WARRANT REGISTER TOTAL*****		**$ 444,567.26**

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: APPROVE PROPOSED LEASE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 210, AND THE PROPOSED LEASE TERMINATION AGREEMENT FOR SUITE 220 WITH CARNO & CARLTON, LLP

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE PROPOSED LEASE AGREEMENT FOR 24031 EL TORO ROAD, SUITE 210, LAGUNA HILLS, CALIFORNIA, AND THE LEASE TERMINATION AGREEMENT FOR SUITE 220 WITH CARNO & CARLTON, LLP, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE PROPOSED LEASE AGREEMENT AND THE LEASE TERMINATION AGREEMENT.

SUMMARY:

Staff has negotiated a five year lease for Suite 210 with the law firm of Carno & Carlton, LLP. This firm has been a long time tenant at the Civic Center and currently occupies Suite 220. The current lease for Suite 220 expires on September 30, 2013 and the new lease commences on June 1, 2013. As a result, in addition to approving the new 5-year lease for Suite 210, it is necessary for the City Council to approve the Lease Termination Agreement for Suite 220. Both the new lease for Suite 210 and the Lease Termination Agreement for Suite 220 are attached to this report. The total upfront capital costs to the City, inclusive of tenant improvements and leasing commission is $12,968. The tenant has signed both the lease and the Lease Termination Agreement and staff is recommending that the City Council authorize the City Manager to execute both documents on behalf of the City.

FISCAL IMPACT:

This lease will generate $203,737 in rental income over the next five years.

ATTACHMENTS:

- Lease for 24031 El Toro Road, Suite 210, Laguna Hills, California.
- Lease Termination Agreement with Carno & Carlton, LLP for Suite 220.

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 May 14, 2013, is made by and between The City of Laguna Hills ("**Lessor**") and Carno and Carlton, LLP ("**Lessee**"), (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) 210, 2nd floor(s), consisting of approximately 1,966 rentable square feet and approximately 1,660 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**: 5 years and 0 months ("**Original Term**") commencing June 1, 2013 ("**Commencement Date**") and ending May 31, 2018 ("**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**: $3,440.50 per month ("**Base Rent**)", payable on the First day of each month commencing June 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**: 3.78% percent (3.78%) ("**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**: $3,440.50 for the period August 1-31, 2013

(b) **Security Deposit**: $3,896.25 ("**Security Deposit**"). (See also Paragraph 5)

(c) **Parking**: $N/A for the period N/A

(d) **Other**: $167.05 for One time rental payment

(e) **Total Due Upon Execution of this Lease**: $7,503.80

1.8 **Agreed Use**: GENERAL OFFICE, LAW FIRM (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):

☐ ______ represents Lessor exclusively ("**Lessor's Broker**");

☑ Essex Realty Management, Inc. 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 Lase shall be guaranteed by N / A ("**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 7 ;

☑ 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. Lessee shall be permitted to park a black Dodge truck in a perimeter parking space over night.

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~~ Sections 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 $25 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 8.3(a)~~, Sections 8.1 and 8.2 of this Lease(See Addendum, Paragraph 3), 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 8.6.~~ Section 8.3 of this Lease (See Addendum, Paragraph 3).

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. Lessee's right to sublease or assign interest in the Lease or the Premises shall not be unreasonably withheld.

(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) ~~8.3~~ 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) <u>Lessor's Agent.</u> 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: <u>To the Lessor:</u> A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. <u>To the Lessee and the Lessor:</u> 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) <u>Lessee's Agent.</u> 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. <u>To the Lessee:</u> A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. <u>To the Lessee and the Lessor:</u> 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) <u>Agent Representing Both Lessor and Lessee.</u> 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. **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 one time $7,500.00 tenant improvement allowance to be used to improve the Premisis.

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 COMMERCIALLY 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	Executed at: 24031 El Toro Road, Suite 220
On:	On:
By LESSOR:	**By LESSEE:**
The City of Laguna Hills	Carno and Carlton, LLP
By:	By:
Name Printed: Bruce E Channing	Name Printed: Anna Carno
Title: City Manager	Title: Partner
By:	By:
Name Printed: Peggy Johns	Name Printed: Andrew Carlton
Title: City Clerk	Title: Partner
Address: 24031 El Toro Road, Suite 200	Address: 24031 El Toro Road, Suite 220
Laguna Hills, CA 92653	Laguna Hills, CA 92653
Telephone:(___)	Telephone:(___)
Facsimile:(___)	Facsimile:(___)
Federal ID No.	Federal ID No.

LESSOR'S BROKER:	LESSEE'S BROKER:
Essex Realty Management Inc.	
Attn: Sandi Montez	Attn:
Address: 111 Corporate Drive, Suite 110	Address:
Ladera Ranch, CA 92694	
Telephone:(949) 218-3801	Telephone:( )
Facsimile:(949) 218-3804	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.

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 May 14, 2013, between The City of Laguna Hills ("Lessor"), and Carno and Carlton, 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:

6/1/13 – 7/31/13	2/mo Free
8/1/13 – 5/31/14	\$3,440.50/mo+\$167.05 one time charge
6/1/14 – 6/30/14	1/mo Free
7/1/14 – 5/31/15	\$3,674.32/mo
6/1/15 – 6/30/15	1/mo Free
7/1/15 – 5/31/16	\$3,713.55/mo
6/1/16 – 6/30/16	1/mo Free
7/1/16 – 5/31/17	\$3,811.85/mo
6/1/17 – 5/31/18	\$3,896.25/mo

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. Compliance Improvements. In the event any governmental agency(ies) require(s) that the premises be improved or upgraded in any respect, except for the alterations to the kitchen area and the wall installed by the Lessee, the Lessor shall be responsible for the cost of any improvements or upgrades required by said governmental agency(ies).

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"

Carno and Carlton, LLP

By:______________________
Anna Carno

Its: Partner

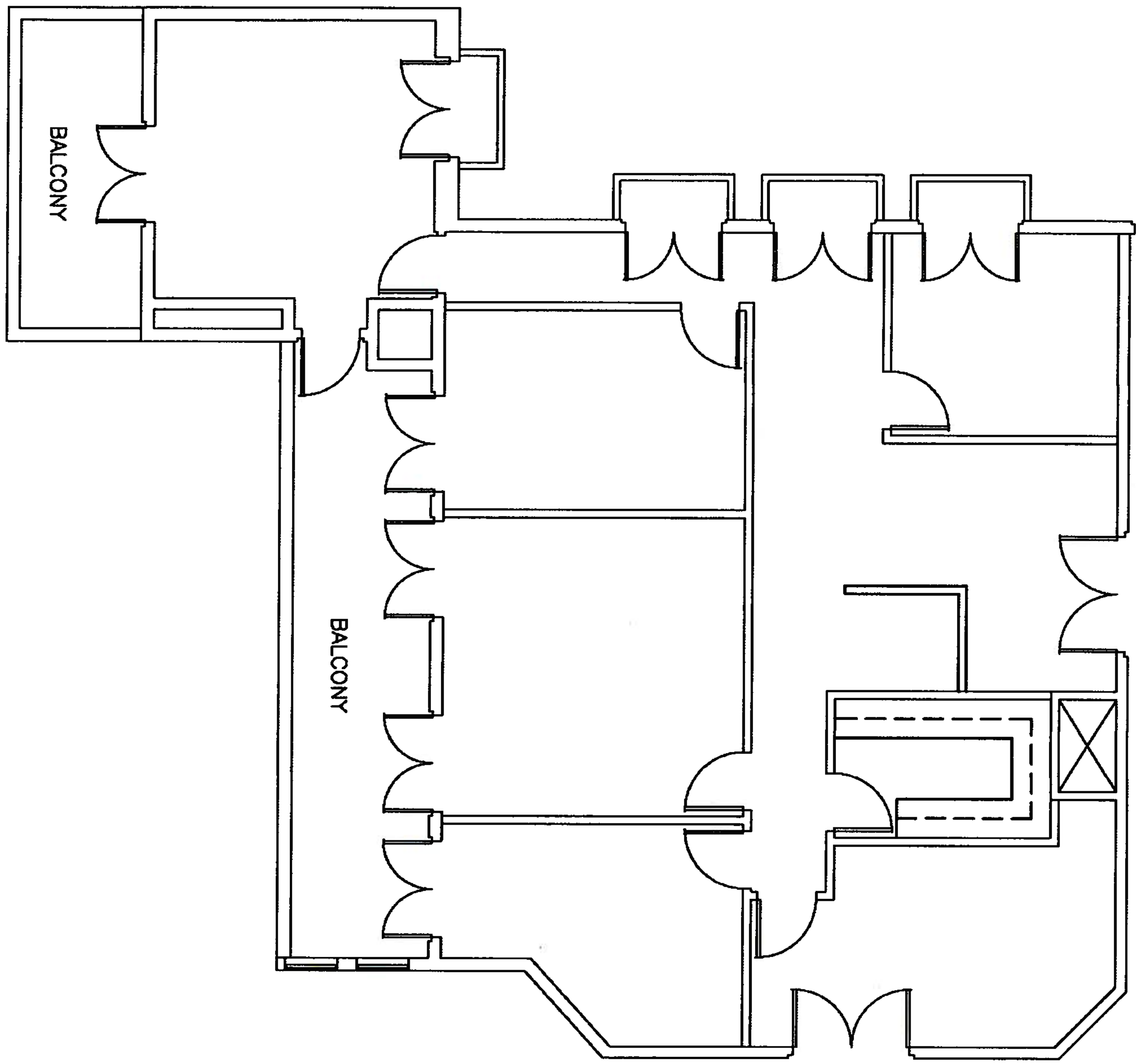
Carno and Carlton, LLP

By:______________________
Andrew Carlton

Its: Partner

LAGUNA HILLS CIVIC CENTER

EXHIBIT "A"



24031-210 El Toro Road
Laguna Hills, CA 92653
± 1,966 Square Feet

For Leasing Information:

Sandi Montez
smontez@essexrealty.com

Jessica Heer
jheer@essexrealty.com

(949) 218-3801

Managed by:

ESSEX | Management Investment Development

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 or 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 (commending with Section 1230.010) of Part 3 of the California Code of Civil Procedure), the Relocation Statutes and Regulations set forth in Chapter 16 (commending 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.

LEASE TERMINATION AGREEMENT

This Lease Termination Agreement ("Agreement") is made as of May 9, 2013 (the **"Effective Date"**), by and between **The City of Laguna Hills** (**"Lessor"**), and **South County Regional Chambers of Commerce,** (**"Lessee"**).

Lessor and Lessee are parties to that certain Multi-Lessee Office Lease with an Effective Date of August 23, 2010 (the **"Lease"**), and amended on October 14, 2010 (the **"Term Confirmation Amendment"**) pursuant to which Lessor leased to Lessee those certain premises known as 24031 El Toro Road, Suite 220, Laguna Hills, CA 92653, as more particularly described in the Lease. All capitalized terms not defined in this Agreement shall have the meanings given them in the Lease.

Lessor and Lessee have now agreed to terminate the Lease in accordance with the terms of this Agreement. Accordingly, in consideration of the mutual covenants and promises of the parties set forth in this Agreement, Lessor and Lessee agree as follows:

1. <u>Termination</u>. The Lease shall be terminated effective as of **May 31, 2013** (the "**Termination Date**") as if that were the originally scheduled expiration date of the Lease. Lessee shall continue to make all payments of rent and other amounts owing under the Lease up to the Termination Date. Except as otherwise provided in this Agreement, from and after the Termination Date neither Lessor nor Lessee shall have any further rights or obligations pursuant to the Lease, and Lessor and Lessee shall each be fully and unconditionally released and discharged from their respective obligations arising with respect to the Lease, whether accrued prior to or after the Termination Date. Without in any way limiting the foregoing, there shall be no reconciliation of operating costs or taxes after the Termination Date. Lessor and Lessee also release and discharge each other from any claims or causes of action related to or arising out of the Lease, the Premises or the Building. The foregoing shall not, however, prevent either party from enforcing its rights under this Agreement.

2. <u>Surrender of Premises</u>. Lessee agrees to surrender the Premises to Lessor, and vacate the Premises, on the termination Date; and Lessor agrees to accept Lessee's surrender of the Lease and of the Premises. Lessee shall return the space in broom clean condition, with no further restoration required.

3. <u>Costs and Expenses</u>. Each party shall be responsible for paying its own costs and expenses (including attorneys' fees) with respect to the negotiation and preparation of this Agreement.

4. <u>Entire Agreement</u>. There are no oral or side agreements between Lessor and Lessee affecting this Agreement and this Agreement contains the entire agreement of the parties with respect to the subject matter herein contained. This Agreement may not be modified or amended except by a writing executed by Lessor and Lessee. In the event of any conflict between the terms of the Lease and the terms of this Agreement, the terms of this Agreement shall prevail. This Agreement may be executed in counterparts, all of which shall constitute one and the same

agreement and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

5. Consents. Lessor represents and warrants that it has obtained all necessary consents to this Agreement, including any consents required by Lessor's lenders.

6. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns.

DATED as of the day and year first above written.

LESSOR: The City of Laguna Hills

By: ____________________
Bruce Channing, City Manager

By: ____________________
Peggy J. Johns, City Clerk

Approved as to Form:

By: ____________________
Gregory E. Simonian, City Attorney

LESSEE:

Carno & Carlton, LLP

By: ____________________________

By: ______________________________

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: AMENDMENT NO. 1 TO AGREEMENT NO. D08-010 TO EXTEND THE ROAD MAINTENANCE AND OPERATIONS CONTRACT WITH THE COUNTY OF ORANGE FOR ONE YEAR

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE AMENDMENT NO. 1 TO AGREEMENT NO. D08-010 TO EXTEND THE ROAD MAINTENANCE AND OPERATIONS CONTRACT WITH THE COUNTY OF ORANGE FOR ONE YEAR AND AUTHORIZE THE MAYOR TO SIGN AMENDMENT NO. 1 AND THE CITY CLERK TO ATTEST THERETO.

SUMMARY:

The City contracts with the County of Orange, through the "Contract for Road Maintenance and Operations," Agreement No. D08-010, for routine Public Works maintenance services. The current agreement for these services is set to expire on June 30, 2013. Staff has requested a one-year extension of the agreement in order to align the expiration date with another County Contract related to Traffic Signal Maintenance Services. Staff proposes to then evaluate the potential use of private contractors for these services over the course of Fiscal Year 2013-14. Approval of the Amendment No. 1 is recommended.

BACKGROUND:

The City extensively utilizes contracted services as needed to serve the operational needs of the City. Following the incorporation of the City, the County of Orange was retained in order to provide general Public Works maintenance and operations services. The County has provided good quality Public Works maintenance and operations services in accordance with the current five-year contract that will expire on June 30, 2013. A few private companies now offer Public Works maintenance and operations services to public agencies and staff plans to evaluate these services over the course of the next year. Accordingly, staff has requested a one-year extension of the "Contract for Road

Maintenance and Operations," County Agreement No. D08-010, with the County of Orange to allow for this evaluation work effort.

The County, through a separate agreement that expires on June 30, 2014, also provides the City with traffic signal maintenance services. Staff desires to also explore the potential use of private contractors for this service. The one-year extension of the Road Maintenance and Operations Contract with the County will allow for these two services to be aligned and evaluated during Fiscal Year 2013-14.

Attached is the proposed Amendment No. 1 to Agreement No. D08-010 with the County of Orange. Also, attached is a copy of the current Contract for Road Maintenance and Operations. Approval of Amendment No. 1 is recommended.

FISCAL IMPACT:

Public Works Maintenance and Operations funding is included in the 2012-13 Fiscal Year Public Services Department Budget in the amount of $650,000. The proposed one-year extension of the agreement for these services with the County of Orange will continue the services within the current budget.

ATTACHMENTS:

- Amendment No. 1
- Agreement No. D08-010

AMENDMENT NO. 1 TO
AGREEMENT NO. D08-010

THIS AMENDMENT TO ROAD MAINTENANCE AND OPERATIONS AGREEMENT NO. D08-010 is made and effective as of July 1, 2013, by and between the CITY OF LAGUNA HILLS, a municipal corporation, hereinafter referred to as "CITY" and the COUNTY OF ORANGE, a political subdivision of the State of California, specifically the OC Public Works Department through its Operations & Maintenance Division, hereinafter referred to as "COUNTY". In consideration of the mutual promises and covenants contained herein, the parties hereto mutually agree as follows:

1. This Amendment No. 1 is made and entered into with respect to the following facts:
   a) On June 24, 2008, City and County entered into that certain agreement entitled "Road Maintenance and Operation Agreement" in which County agreed to provide certain services for City (hereinafter "Agreement")
   b) City and County desire to make certain modifications to the Agreement as set forth in this Amendment.
2. Page CA-2, section B, of the Agreement is hereby amended to read as follows:

   The term of the Agreement shall be for one (1) additional year commencing on July 1, 2013, through June 30, 2014, unless otherwise terminated by either Party as provided in section C of the Agreement.
3. Except as otherwise specifically provided in this Amendment No. 1, all other terms and provisions of the Agreement shall remain in full force and effect.

By ______________________________
Chairman of the Board of Supervisors

Date: __________________

____
Barbara Kogerman, Mayor

Date: __________________

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD

By ______________________________
DARLENE J. BLOOM
Clerk of the Board of Supervisors of
Orange County, California

Date: __________________

Attest:

____
Peggy J. Johns, City Clerk

Date: __________________

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By ______________________________
Deputy

Approved as to Form:

____
Gregory E. Simonian City Attorney

///

///

///

///

///

CONTRACT FOR

ROAD MAINTENANCE AND OPERATION

THIS CONTRACT FOR ROAD MAINTENANCE AND OPERATION (hereinafter "Agreement") is made and entered into this 24 th day of JUNE, 2008, by and between the City of Laguna Hills, a municipal corporation, hereinafter referred to as "CITY" and the County of Orange, a political subdivision of the State of California, hereinafter referred to as "COUNTY," which may hereinafter be referred to individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, CITY and COUNTY entered into contract number D02-137 for COUNTY to provide certain road maintenance and operation functions for the public streets located within the CITY limits for the term of July 1, 2003 through June 30, 2008; and,

WHEREAS, CITY desires COUNTY to continue to provide those services; and,

WHEREAS, COUNTY is willing to continue to perform certain road maintenance and operation functions for those public streets located within the CITY as set forth herein, as well as any new public streets accepted by CITY and accept payment from CITY for the cost of those services; and

WHEREAS, the Parties are desirous of entering into an agreement to continue such services and supersede agreement number D02-137.

AGREEMENT

NOW, THEREFORE, CITY and COUNTY, the Parties, mutually agree as follows:

A. DEFINITIONS

1. Work Plan: For the purposes of this Agreement, the term Work Plan shall mean that annual fiscal year's Work Plan and Budget developed by October 1 of the preceding year. The Work Plan and Budget ("Work Plan") consist of specific work activities, equipment, materials, labor, and estimated cost to perform such activities.

2. Force Account: For the purpose of this Agreement, the term Force Account shall mean in house County labor resources.

B. TERM

The term of this Agreement shall be for five (5) years commencing on July 1, 2008, through June 30, 2013, unless otherwise terminated by either Party as provided in section C below. In the event that COUNTY or CITY desires to renew or extend this Agreement past the initial 5-year term ending on June 30, 2013, that Party shall notify the other Party in writing by July 1, 2012.

C. TERMINATION

Either Party may at any time, for any reason, with or without cause terminate this Agreement, or any portion, by serving upon the non-terminating Party a written Notice of Termination at least six (6) months prior to the date of termination. The terminating Party shall not be obligated to explain its reasons for termination. Upon receipt of said notice, the non-terminating Party shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the terminating Party terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement.

D. COMPENSATION

1. CITY agrees that the total for all work performed under this Agreement shall not exceed $750,000 for the first fiscal year (FY 2008-09). Total cost for each subsequent fiscal year after 2008-09 shall be in accordance with the annual Work Plan and Budget, as annually revised and updated, attached hereto and incorporated in this Agreement as Exhibit "A," which shall not increase or decrease by more than 10% of the preceding year without mutual consent of the Parties as set forth in a signed written amendment to this Agreement. County shall not exceed the total not to exceed compensation amount approved herein without prior written City approval. However, in the event the COUNTY provides emergency maintenance services, beyond anticipatable emergency services necessitated by accidents, storms, or other weather conditions, or CITY requests additional services on a time and materials basis, COUNTY shall be compensated by CITY for the work at the prices, rates, and fees set forth in the annual Work Plan regardless of the total not to exceed compensation amount set forth herein.

The COUNTY may also provide services to the CITY beyond the level of specific work activities set forth in the annual Work Plan, but within the not to exceed amount, based on a written request from the CITY and the availability of COUNTY work force or contract capability.

2. The CITY may reduce or revise the level of Force Account services provided under this Agreement during the year to not less than 75% of the projected Force Account portion of Exhibit "A" to accommodate changes in the CITY budget and may utilize alternative source or sources for services beyond the level of service in the projected plan.

E. INDEMNIFICATION

COUNTY agrees to indemnify, defend with counsel approved in writing by CITY, protect, and hold harmless the CITY, its officers, elected or appointed officials, employees, and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the CITY, its officers, elected or appointed officials, employees, and volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of COUNTY's negligent or wrongful acts or omissions in performing under the terms of this Agreement. COUNTY shall defend, at its expense, including attorney fees, CITY, its officers, agents, employees, independent contractors, and volunteers in any legal action or claim of any kind based upon such alleged acts or omissions. The COUNTY shall not be liable in any way or indemnify the CITY for CITY's negligence or the negligence of CITY's officers, officials, employees, or volunteers.

CITY agrees to indemnify, defend with counsel approved in writing by COUNTY, protect, and hold harmless the COUNTY, its officers, elected or appointed officials, employees, and volunteers from and against any and all claims, demands, losses, defense cost or expenses, or liability of any kind or nature which the COUNTY, its officers, elected or appointed officials, employees, or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons or damage to property arising out of the CITY's negligent or wrongful acts or omissions in performing under the terms of this Agreement. The CITY shall not be liable in any way or indemnify the COUNTY for COUNTY's negligence or the negligence of COUNTY's officers, elected or appointed officials, employees, or volunteers.

If judgment is entered against CITY and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of CITY and COUNTY, CITY and COUNTY agree that liability will be apportioned as determined by the Court. Neither party shall request a jury apportionment.

Each Party agrees to fully cooperate with the other and assist the other Party hereto in all matters relating to losses covered by the terms of this Agreement, and more specifically but not being limited thereby, each Party will:

1. Give prompt notification of all occurrences covered or likely to be covered by the terms hereof, together with the particulars thereof the other part hereto;

2. If claim is made, or suit is brought against a Party on occurrences covered or likely to be covered by the terms hereof, such party shall immediately forward every claim, demand, notice, summons, or other process received by it to the other Party hereto.

CITY may, at its own expense, participate in the defense of any suit, or in the prosecution of any appeal affecting matters herein involved where the duty of defense or prosecution is imposed on COUNTY, and where COUNTY has consented thereto.

F. NOTICES

Any and all notices permitted or required to be given hereunder shall be deemed duly given 1) upon actual delivery, if delivery is by hand; or 2) upon delivery by the United States Mail if delivery is by postage paid registered or certified return receipt requested mail. Each such notice shall be sent to the respective Party at the address indicated below:

FOR CITY: City of Laguna Hills
Attention: City Manager
24035 El Toro Road
Laguna Hills, CA 92653

FOR COUNTY: County of Orange
Attention: City Contract Manager
1750 S. Douglass Road 2301 Glassell ST.
Anaheim, CA 92806 Orange, CA 92865

///

G. PROJECT MANAGER

The CITY shall appoint a Project Manager to act as liaison between the COUNTY and CITY during the term of this Agreement. The CITY's Project Manager shall coordinate the activities of the CITY staff assigned to work with COUNTY. COUNTY shall appoint a Contract Administrator. COUNTY's Contract Administrator shall direct the COUNTY's efforts in fulfilling COUNTY's obligations under this Agreement.

H. ENTIRE AGREEMENT

This Agreement, along with each fiscal year's revised and updated annual Work Plan, which shall be attached hereto as Exhibit "A" and incorporated herein by this reference, contains the entire agreement between the Parties with respect to the matters contained herein.

I. GOVERNING LAW AND VENUE

The CITY and COUNTY understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.

J. AMENDMENTS

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties, no oral understanding or agreement not incorporated herein shall be binding on either of the Parties, and no exceptions, alternatives, substitutes, or revisions are valid or bind on the COUNTY unless authorized by COUNTY in writing. All Work Plans for each fiscal year and the terms, prices, rates, and fees set forth therein shall be attached hereto as Exhibit "A" and incorporated herein by this reference.

K. ASSIGNMENT

Neither Party shall assign its performance of this Agreement, nor any part thereof, without the prior written consent of the non-assigning Party. Any attempt by either Party to assign this Agreement or any portion thereof without the express written consent of the non-assigning Party shall be invalid and shall constitute a breach of this Agreement.

L. CONSENT TO BREACH NOT WAIVER

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

M. FORCE MAJEURE

COUNTY shall not be assessed with damages or penalties for unsatisfactory performance during any delay in the performance of any work under this Agreement caused by any act of God, war, civil disorder, employment strike, or other cause beyond its reasonable control, provided COUNTY gives written notice of the cause of the delay to the CITY within 24 hours of the start for the delay.

N. HEADINGS

The various heading and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise effect the meaning hereof.

O. CALENDAR DAYS

Any reference to the word “day” or “days” shall mean calendar day or calendar days respectively, unless otherwise expressly provided.

P. ATTORNEY FEES

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

Q. INTERPRETATION

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

R. SEVERABILITY

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

S. DISPUTE

If a dispute arises, the Parties' respective designated representatives shall attempt to resolve the issue. If such issue cannot be promptly resolved by the City's Project Manager and the City Contracts Manager, the Parties shall discuss and endeavor to resolve such issue within twenty (20) working days. In the event the City's Project Manager and the City Contracts Manager have failed to resolve the issue within twenty (20) working days after the referral of the issue to them, the Parties shall refer the issue to the City's Director of Public Services/City Engineer and RDMD Operations Manager for resolution.

T. AUTHORITY TO EXECUTE THIS AGREEMENT

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

CITY AND COUNTY RESPONSIBILITIES:

U. COUNTY SHALL:

1. Each fiscal year develop an annual Work Plan for manpower, equipment, materials, and contracts for CITY to provide normal maintenance and operation activities utilizing COUNTY's Maintenance Management System (MMS).

2. Develop a preliminary annual Work Plan to provide field operations, contract effort, and support operations required to provide the level of maintenance requested by the CITY and within the "not to exceed" amount established by this Agreement. The preliminary Work Plan will include estimates for manpower and equipment. This Work Plan will be based on the historical maintenance workload in the CITY, discussions with CITY staff of future priority and emphasis, and changes in the composition of the COUNTY work force and contract capability. COUNTY shall submit the preliminary annual Work Plan to CITY for review by August 1 of each year for the next fiscal year scheduled to begin July 1. The annual Work Plan shall be finalized by October 1, consistent with CITY recommendations and available resources. The Work Plan shall include an allowance for miscellaneous work to provide anticipatable emergency services based upon historic experience. The final annual Work Plan for each fiscal year shall be incorporated into and attached as part of this Agreement as Exhibit "A".

3. Perform road maintenance and operation functions in accordance with: (1) the annual Work Plan based upon specific work orders of required maintenance activities issued by City staff; (2) written requests from CITY staff for other specific work; and, (3) call-out by CITY staff or the Orange County Sheriff's Department ("OCSD") for emergency road maintenance services. Road maintenance services may be performed by COUNTY either by Force Account or contract, or a combination of the two.

4. On City's behalf, in response to the Orange County Sheriff's Department call-out, or request by City staff, provide emergency response inspections and road maintenance services including after regular business hours emergency or special road maintenance and operation functions necessitated by accidents, storms, or other weather conditions, slides, settlements, or other unusual or unexpected damage to a roadway, structure, or facility.

5. Be and is hereby designated as project engineer, contract, and construction agent to do and perform all things necessary in order to design and accomplish road maintenance tasks by contract in

accordance with the Work Plan.

6. Prepare general and specific work schedules. General schedule shall indicate work to be accomplished by contract and work to be accomplished by Force Account. Provide copy of specific work schedule for COUNTY Force Account work to CITY on a biweekly basis including the two-week schedule to address the CITY service requests.

7. Submit monthly progress updates to the CITY in the form of activity status reports, contract status, and backlog reports. Meet periodically with CITY to discuss the annual Work Plan and services being provided. Notify CITY in advance of cost overruns associated with deviations from the Work Plan and work with CITY to implement strategies for budget and/or service level adjustments commensurate with available funding.

8. Provide support operations required for providing normal maintenance operations in accordance with the annual Work Plan. This includes the following operations and functions:

a. Provide inspection of road facilities within CITY, preparation of standard Maintenance Inspection Reports (MIR) to initiate maintenance work, investigation of complaints from the public and CITY representatives, and routine investigation of the Public Works maintenance aspects of claims made against the CITY.

b. Provide scheduling services for preparation of work assignments based upon inspection reports and/or input from CITY in accordance with the annual Work Plan. Develop and maintain a backlog report for activities for the CITY area to track work performed, and prepare reports of project costs for those projects where special reimbursement is possible.

c. Provide all routine service, supplies, and logistical support for performance of maintenance and operations functions for COUNTY crews in accordance with its standard warehouse operating procedures.

d. Provide contract administration services for maintenance work performed by contract in CITY at COUNTY direction.

e. Provide logistical support COUNTY crews including contract administration of specialty contractors, support contracts, special materials and services.

9. Include CITY requested special road maintenance work (i.e., slurry seal or overlay – with associated subgrade repairs/surface preparation work) in formally bid COUNTY contracts for slurry seal and asphalt/ concrete overlay work on County-owned roads and streets. This includes the following:

a. Provide contract design, preparation, and administration inspection service.

b. Submit plans and specifications for contract work to CITY for review and approval by the CITY engineer or designee, hereinafter referred to as "CITY ENGINEER," for contracts with CITY portion estimated to exceed $25,000. Plans and specifications are submitted for approval of design and construction features.

c. During the period of construction, have jurisdiction over the construction area for the limited purpose of road maintenance.

d. Obtain the written concurrence of CITY ENGINEER prior to issuing contract change orders affecting contract design.

e. Request the CITY to participate in the final inspection of contract work; consider the CITY comments on the quality and quantity of contract work prior to COUNTY filing the Notice of Completion.

f. Furnish and deliver to CITY, if requested, all documents required in connection with the construction and completion of the contract.

10. Provide all supervision and management required for the annual Work Plan.

11. For the fiscal year July 1, 2008 through June 30, 2009, perform all of the work as requested by CITY listed on annual Work Plan for the 2008-09 fiscal years. The Work Plan is a schedule of specific activities for street maintenance and repair that the CITY intends to have accomplished during fiscal year on which is stated the quantities of particular activities that are required to accomplish the road maintenance and repair. Each fiscal year's annual Work Plan shall have the prices, rates, and fees set forth charges incurred by the CITY during that fiscal year based upon the projected

material, labor, burden, overhead, equipment, and contracted services for the upcoming fiscal year. In addition to the prices, rates, and fees set forth in the annual Work Plan, the COUNTY shall charge CITY an additional four percent (4%) of all billed costs for Risk Management Services. The COUNTY is self insured. Therefore this additional cost will cover liability issues arising from any claims pursuant to terms listed in section E of this Agreement. In addition, COUNTY shall prepare a report, subject to review and approval of the CITY's Director of Public Services/City Engineer, which describes each of the activities listed on the annual Work Plan and provides guidelines for the performance of each activity in accordance with County's usual and customary procedures described in the County's RDMD Field Operations Manual, as may be periodically updated.

12. The Parties specifically understand and agree that the COUNTY is under no duty and has no obligation whatsoever under this Agreement to independently inspect any public streets located within the CITY for the purpose of identifying maintenance and/or repair needs, nor does the COUNTY have a recurring duty to inspect any public streets located within the CITY, except (1) as may otherwise be provided in the annual Work Plan, (2) as otherwise specifically requested in writing by CITY staff for specific work, and/or (3) as otherwise may be requested by CITY staff or OCSD call-out for emergency road maintenance services.

V. CITY SHALL:

1. Review service levels contained within County's preliminary annual Work Plan, and make adjustments by October 1, based upon CITY's budget and desired service levels and consistent with available COUNTY resources and contract capability.

2. Meet periodically with COUNTY to discuss the annual Work Plan and services being provided. Review with COUNTY cost overruns associated with deviations from the Work Plan and develop strategies for budget and/or service levels commensurate with available funding.

3. Notify COUNTY of priority service requests to be included within the following two-week work schedule. Review work schedule for force account and contract work.

4. Designate an individual or individuals authorized to submit service and designate that the

individual or individuals authorized to review and approve contract documents as the CITY ENGINEER.

5. Pay COUNTY for entire total cost incurred by COUNTY for maintenance, operation, support and contract functions performed within CITY by COUNTY staff or COUNTY administered contract to include all costs for labor, equipment, materials, service contracts, special maintenance contracts, repair contracts, and all applicable overhead and supervisory expenses in accordance with established COUNTY prices, rates, fees and charges at the time work is performed.

6. Pay COUNTY invoiced costs by payment due date. Payment due dates are invoice date plus thirty days.

7. Pay late charges for invoices not paid within thirty (30) days after receipt in accordance with the following schedule:

a. Over-the-counter payments will be assessed a late charge if any payment is not received by the COUNTY by the payment due date.

b. Payments transmitted to the COUNTY via the U.S. Mail that have payer's postage meter mark will be assessed a late charge if any payment is not received by the COUNTY by the payment due date plus one day.

c. Payments transmitted to the COUNTY via the U.S. Mail that have a U.S. Post Office postmark dated after the payment due date will be assessed a late charge.

d. The late charge assessed in each of these situations shall be three-quarters of one percent (0.75%) of the payment due and unpaid plus $100.00 for late payments made within thirty (30) days of the payment due date. An additional charge of three-quarters of one percent (0.75%) of said payment shall be added for each additional thirty (30) day period that the payment remains unpaid. Late charges shall be added to the payment and invoiced to the contracting entity.

8. Serve as liaison with individual homeowners, homeowner association's citizen groups and other concerning performance of work and levels of service provided under this Agreement.

///

///

IN WITNESS WHEREOF, CITY has caused this Agreement to be executed by its Mayor and attested by its Clerk, and COUNTY has caused this Agreement to be executed by the Chairman of its Board of Supervisors and attested by its Clerk, all thereunto duly authorized by the CITY Council and the Board of Supervisors, respectfully.

COUNTY OF ORANGE

By ____________________
Chairman of the Board of Supervisors

Date: 6-24-08

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD

By ____________________
DARLENE J. BLOOM
Clerk of the Board of Supervisors of
Orange County, California

Date: 6-24-08

APPROVED AS TO FORM
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By ____________________
Deputy

CITY OF LAGUNA HILLS

____
L. Allan Songstad, Mayor

Date: May 13, 2008

Attest:

Peggy J. Johns
____
Peggy J. Johns, City Clerk

Date: May 13, 2008

Approved as to Form:

____
Gregory E. Simonian City Attorney

///

///

///

///

///

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: AUTHORIZATION TO ADVERTISE FOR BIDS FOR THE RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172, AND THE EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, SLPPL-5468 (007), AND APPROVAL OF A COOPERATIVE AGREEMENT WITH THE CITY OF LAKE FOREST FOR COST SHARING

RECOMMENDATION: THAT THE CITY COUNCIL: (1) APPROVE THE PLANS AND SPECIFICATIONS AND AUTHORIZE THE ADVERTISEMENT FOR BIDS FOR THE RIDGE ROUTE DRIVE PAVEMENT REHABILITATION PROJECT, CIP NO. 172, AND THE EL TORO ROAD PAVEMENT REHABILITATION PROJECT, CIP NO. 179, SLPPL-5468 (007); AND (2) APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE COST SHARING AND COOPERATIVE AGREEMENT FOR EL TORO ROAD PAVEMENT REHABILITATION PROJECT WITH THE CITY OF LAKE FOREST.

SUMMARY:

The Plans and Specifications for the pavement rehabilitation of Ridge Route Drive from Avenida de la Carlota to Moulton Parkway, CIP No. 172, and of El Toro Road from Paseo de Valencia to Bridger Road, CIP No. 179, have been completed by Wolfe Engineering & Design, Inc., and are on file with the City Clerk. These individual projects are proposed to be implemented through one construction contract (hereinafter “Project”). Approval of the Plans and Specifications and authorization to advertise the Project for bids is recommended. A small portion of the El Toro Road pavement rehabilitation is in the City of Lake Forest and that City has agreed to share in the cost through a Cooperative Agreement. Approval of the Agreement and authorization for the City Manager to execute the Agreement is also recommended.

BACKGROUND:

As a part of the City’s commitment to maintain its infrastructure in good condition, it is time to refurbish the pavements of two segments of the City’s arterial highways. The Plans and Specifications for the pavement rehabilitation of Ridge Route Drive from Avenida de la Carlota to Moulton Parkway, CIP No. 172, and of El Toro Road from Paseo de Valencia to

Bridger Road, CIP No. 179, have been completed by Wolfe Engineering & Design, Inc. and are on file in the Office of the City Clerk. These individual projects are proposed to be implemented through one construction contract (hereinafter “Project”). The construction sequencing of the Project will be established such that the Ridge Route Drive pavement rehabilitation work will be constructed during daytime construction hours due to the proximity of residences and the El Toro Road pavement rehabilitation work will be constructed during nighttime construction hours to reduce area traffic impacts. The Engineer’s Estimate of the Project construction cost is $1,100,000. Approval of the Plans and Specifications and authorization to advertise the Project for bids is recommended.

The El Toro Road pavement rehabilitation work includes a portion of work area within the boundary of the City of Lake Forest. This location is from the centerline of Interstate 5 to Bridger Road. The City of Lake Forest has agreed to pay for their portion of these improvements and the attached Cooperative Agreement to implement this arrangement has been prepared. Approval of the Cooperative Agreement and authorization for the City Manager to execute the Agreement is recommended. The City of Lake Forest is scheduled to also approve the Agreement this month.

The Ridge Route Drive pavement rehabilitation work includes a very small portion of work area within the boundary of the City of Laguna Woods near Moulton Parkway. The City of Laguna Woods, by letter to the Orange County Transportation Authority (OCTA), previously contributed a share of their allocation of Proposition 1B State Local Partnership Program (SLPP) funding toward the City of Laguna Hills funding allocation for the Ridge Route Drive pavement rehabilitation work. Please see the Fiscal Impact.

It is anticipated that the award of contract for this Project, depending upon satisfactory bids, will be made at the June 25, 2013, City Council meeting. Construction is anticipated to begin in August 2013.

FISCAL IMPACT:

The funding for the pavement rehabilitation construction work for both Ridge Route Drive and for El Toro Road is included in the Fiscal Year 2013-14 Capital Improvement Program Budget in the combined amount of $1,280,000. This funding consists of $343,000 of SLPP grant funds administered by OCTA. The SLPP funding is a $318,000 allocation to the City of Laguna Hills and a $25,000 allocation to the City of Laguna Woods. The City of Laguna Woods allocation was transferred to the City of Laguna Hills. The City of Lake Forest is anticipated to fund $75,000 towards the El Toro Road portion of the work. The remaining funding is from Measure M-2 Turnback Funds in the amount of $343,000 and General Funds in the amount of $519,000.

CEQA FINDINGS:

The project has been determined to be Categorically Exempt as existing facilities per Section 15301

ATTACHMENTS:

- Cooperative Agreement

COST SHARING AND COOPERATIVE AGREEMENT FOR

EL TORO ROAD

PAVEMENT REHABILITATION PROJECT

THIS AGREEMENT ("Agreement") is made and entered into this _______ day of ________________, 2013, by and between the CITY OF LAGUNA HILLS, a municipal corporation of the State of California, hereinafter referred to as "LAGUNA HILLS," and the CITY OF LAKE FOREST, a municipal corporation of the State of California, hereinafter referred to as "LAKE FOREST."

WHEREAS, LAGUNA HILLS and LAKE FOREST desire to rehabilitate El Toro Road, which street is located partially in LAGUNA HILLS and partially in LAKE FOREST, hereinafter referred to as the "El Toro Road Pavement Rehabilitation Project" or "PROJECT;" and

WHEREAS, LAGUNA HILLS and LAKE FOREST desire to acknowledge that costs for the design and construction of the PROJECT will be shared by LAGUNA HILLS and LAKE FOREST and funded through State Local Partnership Program, Gas Tax and General Fund funds; and

WHEREAS, LAKE FOREST agrees that LAGUNA HILLS should act as lead agency for environmental clearance, design, engineering and administration of the construction contract for project efficiency; and

WHEREAS, LAKE FOREST and LAGUNA HILLS wish to define areas of responsibility for design, engineering and construction of the PROJECT;

NOW THEREFORE, IT IS AGREED by the parties as follows:

A. LAGUNA HILLS shall be designated as Lead Agency for environmental clearance, design, engineering, procurement and PROJECT construction.

B. LAGUNA HILLS will design the PROJECT and prepare construction documents, including, but not limited to, plans, specifications and procurement documents and shall obtain the approval of LAKE FOREST's City Engineer (hereinafter "LAKE FOREST ENGINEER") of the Plans and Specifications for all facilities to be constructed in LAKE FOREST (hereinafter, the "LAKE FOREST PORTION"). LAKE FOREST shall provide, at no cost to LAGUNA HILLS, any LAKE FOREST permits required for PROJECT.

C. LAGUNA HILLS is designated as PROJECT engineer, contracting and construction agent, hereinafter referred to as "ENGINEER," for the parties to do and perform all things necessary in order to construct PROJECT in accordance with the approved plans and specifications and to execute and deliver all documents required in connection with the construction and completion of PROJECT, including its Notice of Completion and final accounting report.

D. LAGUNA HILLS and LAKE FOREST shall share in the total cost of the PROJECT by providing local funds as necessary to complete the PROJECT. The estimated cost for PROJECT is $579,000.00. LAGUNA HILLS and LAKE FOREST shall pay a pro rata share of total design and contracted construction costs based upon the percentage of the cost of improvements incurred for work done within each city's respective city limits. The estimated cost for the LAKE FOREST portion of the PROJECT is $106,000.00.

E. LAGUNA HILLS shall require its contractor to name LAKE FOREST, its elected officials, officers and employees as an additional insureds and to indemnify LAKE FOREST, its elected officials, officers and employees to the same extent that the contractor is required to indemnify LAGUNA HILLS, its elected officials, officers and employees.

F. LAGUNA HILLS shall obtain the written concurrence of the LAKE FOREST ENGINEER or his designee, for any contract change order of PROJECT which would affect the PROJECT design or increase the estimated cost for the LAKE FOREST portion of the PROJECT.

G. Prior to accepting improvements under the contract for PROJECT, LAGUNA HILLS shall obtain LAKE FOREST ENGINEER's written approval of the construction as it affects the operation and maintenance of PROJECT within the LAKE FOREST PORTION. Approval shall be withheld only for work not completed per the approved plans and specifications for PROJECT.

H. LAGUNA HILLS shall furnish LAKE FOREST ENGINEER with one set of reproducible mylar or acetate "Record" construction drawings for PROJECT and a copy of the Notice of Completion.

I. LAKE FOREST shall at all times during the progress of construction of PROJECT within the LAKE FOREST portion, have access to the work thereon for the purpose of inspection and, should LAKE FOREST ENGINEER deem any remedial measures to be necessary, LAKE FOREST ENGINEER shall notify LAGUNA HILLS ENGINEER thereof for communication to the contractor.

J. LAKE FOREST shall fund any special features or changes or additions to the PROJECT outside the scope of the approved plans and specifications, including but not limited to special features or changes or additions to the design, right-of-way, construction and contract administration for the LAKE FOREST portion.

K. LAKE FOREST shall deposit with LAGUNA HILLS the estimated costs of any special features or changes or additions as described in Section J prior to the start of the appropriate phase (design or construction).

L. After award of a construction contract by LAGUNA HILLS, LAKE FOREST shall, within thirty (30) days of being invoiced by LAGUNA HILLS, deposit with LAGUNA HILLS their share of total PROJECT costs. Within 120 days after filing of the Notice of Completion by LAGUNA HILLS, LAGUNA HILLS shall prepare for review and approval by LAKE FOREST ENGINEER, a final cost accounting for any additional work performed outside the scope of the approved plans and specifications that is the responsibility of LAKE FOREST. Within 60 days after receipt of this final accounting, it shall be reviewed for approval by the LAKE FOREST ENGINEER. Upon approval, LAKE FOREST shall transfer to LAGUNA HILLS any necessary funds, if any, or LAGUNA HILLS shall transfer to LAKE FOREST any necessary funds, if any, to balance PROJECT's expenditures.

M. Upon approval and acceptance of the improvements by LAKE FOREST ENGINEER, LAKE FOREST shall resume maintenance responsibility for PROJECT within the LAKE FOREST portion.

N. Neither party to this Agreement nor any officer, agent or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by any other party under or in connection to any work, authority or jurisdiction delegated to such other party under this Agreement. It is also understood and agreed that pursuant to Government Code Section 895.4, with regard to any work authority or jurisdiction delegated to a party under this Agreement, such party shall fully indemnify, defend and hold the other party harmless from any liability imposed for injury (as defined by Government Code Section 810.8), occurring by reason of anything done or omitted to be done under or in connection with such delegated work, authority or jurisdiction. Notwithstanding and in addition to the foregoing, LAGUNA HILLS shall defend, indemnify and hold LAKE FOREST harmless for liability imposed by reason of a release of Hazardous Materials (as defined in the construction contract) caused by LAGUNA HILLS's sole negligence or willful misconduct in administering the construction contract. This indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

O. The terms of this Agreement may be amended at any time by either party by supplemental agreement based upon mutual written consent of both parties.

P. LAGUNA HILLS and LAKE FOREST shall comply with all applicable federal, state, and local laws, statutes, ordinances and regulations of any governmental authority having jurisdiction over the PROJECT.

Q. If any term, provisions, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each remaining term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

R. All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered, or certified mail and addressed as follows:

To: LAGUNA HILLS

City of Laguna Hills
Attn: Bruce E. Channing
City Manager
24035 El Toro Road
Laguna Hills, CA 92653

To: LAKE FOREST

City of Lake Forest
Attn: Robert C. Dunek
City Manager
25550 Commerce Center Drive
Lake Forest, CA 92630

S. This Agreement may be executed and delivered in any number of counter parts, each of which, when executed and delivered shall be deemed an original and all of which together shall constitute the same agreement. Facsimile or electronic signatures will be permitted.

T. Neither this Agreement, nor any of the parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either party without the prior written consent of the other party in its sole and absolute discretion. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

U. The laws of the State of California and applicable local and federal laws, regulations, and guidelines shall govern this Agreement.

V. Should litigation arise out of this Agreement or the performance thereof, each party shall be responsible for its own costs and expenses, including attorneys' fees.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Cost Sharing and Cooperative Agreement to be executed by their respective City Managers and attested by their respective City Clerks, all thereunto duly authorized by their respective City Councils.

CITY OF LAKE FOREST	**CITY OF LAGUNA HILLS**
By: ______________________________	By: ______________________________
Robert C. Dunek	Bruce E. Channing
City Manager	City Manager
ATTEST:	ATTEST:
By: ______________________________	By: ______________________________
Stephanie Smith	Peggy J. Johns
City Clerk	City Clerk
APPROVED AS TO FORM:	APPROVED AS TO FORM:
By: ______________________________	By: ______________________________
Scott C. Smith	Gregory E. Simonian
City Attorney	City Attorney

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: PROGRESS PAYMENT NO. 4 FOR COMMUNITY CENTER BUILDING REFURBISHMENT, CIP NO. 513A

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 4, IN THE NET AMOUNT OF $84,147.10, TO N.S. CONSTRUCTION & PAINTING, FOR COMMUNITY CENTER BUILDING REFURBISHMENT, CIP NO. 513A.

SUMMARY:

Work on the Community Center Building Refurbishment, CIP No. 513A, began on December 17, 2012, and is being performed by N.S. Construction & Painting. Work performed in March included mobilization, unclassified removals, resilient flooring, and carpet and wall cover installation. The work is substantially complete and is in the "punchlist" phase. The contractor has submitted the fourth progress payment request for approval.

BACKGROUND:

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

ITEM #	DESCRIPTION	QUANTITY	UNIT	$	AMOUNT
1	Mobilization	.05	LS	$12,000.00	$ 600.00
2	Unclassified Removals	.05	LS	$ 3,000.00	$ 150.00
3	Resilient Flooring	1	LS	$ 3,900.00	$ 3,900.00

4	Sheet Carpet	1	LS	$29,800.00	$29,800.00
5	Modular Tile Carpet	1	LS	$26,950.00	$26,950.00
8	Fabric Wall Covering	.80	LS	$ 8,000.00	$ 6,400.00
10	Partition Wall Covering	.80	LS	$12,950.00	$10,360.00
CCO No. 1		1	LS	$10,415.90	$10,415.90

Total To Date	$188,365.90	
Less Prior Billing	$ 99,790.00	
Total This Period	$ 88,575.90	$88,575.90
Less 5% Retention		$(4,428.80)
		$84,147.10

FISCAL IMPACT:

The progress payment is within the Capital Improvement Program Budget for the Community Center Building Refurbishment, CIP No. 513A.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: PROGRESS PAYMENT NO. 1, FINAL, FOR CIVIC CENTER IMPROVEMENTS - PAINTING

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 1, FINAL, IN THE NET AMOUNT OF $14,178.75, TO U.S. NATIONAL CORP. DBA JIMENEZ PAINTING COMPANY, FOR CIVIC CENTER IMPROVEMENTS – PAINTING, AUTHORIZE THE FILING OF THE NOTICE OF COMPLETION AND THE SUBSEQUENT RELEASE OF RETENTION IN 35 DAYS, IF NO LIENS HAVE BEEN FILED.

SUMMARY:

Work on Civic Center Improvements – Painting, began on April 20, 2013, and is being performed by U.S. National Corp., dba Jimenez Painting Company. Work performed in April included mobilization, painting, 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 first and final progress payment request for approval.

BACKGROUND:

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

ITEM #	DESCRIPTION	QUANTITY	UNIT	$	AMOUNT
1	Mobilization	1	LS	$ 800.00	$ 800.00
2	Interior Paint	1	LS	$13,175.00	$13,175.00
3	Clean the Site	1	LS	$ 950.00	$ 950.00
	Total To Date	$14,925.00			
	Less Prior Billing	$ 0			
	Total This Period	$14,925.00			$14,925.00
	Less 5% Retention				$(746.25)
					$14,178.75

The project is complete and it is appropriate to file the Notice of Completion.

FISCAL IMPACT:

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

ATTACHMENTS:

- Notice of Completion

Recording Requested by and
When Recorded Mail to:

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

No Fee Exempt per GC§27383

By: ____________________________

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 May 14, 2013.

Description of Improvements

Civic Center Improvements – Painting: consists of painting interior walls, ceilings, and vaulted ceilings.

General Location

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

Owner of Property Address	Contractor
City of Laguna Hills 24035 El Toro Road Laguna Hills, CA 92653	U.S. National Corp. dba Jimenez Painting Company Mr. Fred Jimenez 14416 Chase Street #4929 Panorama City, CA 91412

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: May 14, 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: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: PROGRESS PAYMENT NO. 4 FOR CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-H

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE PROGRESS PAYMENT NO. 4, IN THE NET AMOUNT OF $23,065.65, TO ALL AMERICAN ASPHALT, FOR CITYWIDE PAVEMENT REHABILITATION PROJECT, CIP NO. 101-H.

SUMMARY:

Work on the Citywide Pavement Rehabilitation Project, CIP No. 101-H, began on July 16, 2012, and is being performed by All American Asphalt. The work has been substantially completed pending the completion of “punchlist” and City requested extra work. Work performed for this payment included clearing and grubbing, utility adjustments, sidewalk removal and replacement, driveway removal and replacement, curb and gutter replacement, and ramp removal and replacement. The contractor has submitted the fourth progress payment request for approval.

BACKGROUND:

A routine monthly action for capital improvement projects is the submission, review, and approval of the contractor’s invoice. Procedurally, field staff verifies the contractor’s quantities and matches them with the submitted invoice. The unit prices and total costs of the project are confirmed by the office staff and a progress payment is then processed. A ten-percent (10%) retention is withheld from each payment to assure final performance of the work. The contractor for the project, All American Asphalt, has submitted the fourth progress payment for the subject project as follows:

ITEM #	DESCRIPTION	QUANTITY	UNIT	$	AMOUNT
1	Clearing & Grubbing	.10	LS	$27,000.00	$ 2,700.00

5	Adjust Manhole	6	EA	$ 285.00	$ 1,710.00
6	Adjust Water Valve	47	EA	$ 250.00	$ 11,750.00
7	R&R 4” PCC Sidewalk	50	SF	$ 5.10	$ 255.00
8	R&R 6” PCC Driveway	50	SF	$ 7.85	$ 392.50
10	R&R Curb & Gutter	147	LF	$ 43.00	$ 6,321.00
11	R&R PCC Ramp	1	EA	$ 2,000.00	$ 2,000.00
Extra Work	T/C for Alicia Parkway Ramp	1	LS	$500.00	$ 500.00

Total To Date	$1,753,428.51	
Less Prior Billing	$1,727,800.01	
Total This Period	$ 25,628.50	$ 25,628.50
Less 10% Retention		$(2,562.85)
		$ 23,065.65

FISCAL IMPACT:

The progress payment is within the Capital Improvement Program Budget for the Citywide Pavement Rehabilitation Project, CIP No. 101-H.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: **MAY 14, 2013**

TO: **MAYOR AND COUNCIL MEMBERS**

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

ISSUE: **NO RIGHT TURN ON RED REGULATION FOR SOUTHERLY BOUND AVENIDA DE LA CARLOTA AT PASEO DE VALENCIA**

RECOMMENDATION: THAT THE CITY COUNCIL ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING A NO RIGHT TURN ON RED PROHIBITION ON SOUTHERLY BOUND AVENIDA DE LA CARLOTA AT PASEO DE VALENCIA."

SUMMARY:

The City was contacted by a Laguna Woods resident concerning the potential need to install a "No Right Turn on Red" sign on southerly bound Avenida de la Carlota at Paseo de Valencia (I-5 off-ramp) for sight distance reasons. Upon staff's review, it has been determined that the location justifies the establishment of a "No Right Turn on Red" regulation. The Traffic Commission, at its meeting of March 20, 2013, approved staff's recommendation. It is recommended that the City Council establish a "No Right Turn on Red" regulation for southerly bound Avenida de la Carlota at Paseo de Valencia.

BACKGROUND:

In February 2013, Ms. Anita Robertson, a resident of Laguna Woods, requested the City of Laguna Hills install a "No Right Turn on Red" sign on southerly bound Avenida de la Carlota at Paseo de Valencia. Her request was triggered by her concern of a potential conflict that could arise from vehicles exiting the I-5 off-ramp with vehicles turning right onto Paseo de Valencia from southerly bound Avenida de la Carlota.

Avenida de la Carlota is a secondary arterial highway with an average daily volume of 17,100 vehicles per day from Ridge Route Drive to Paseo de Valencia. It intersects with the Paseo de Valencia/I-5 off-ramp at a signalized intersection. A horizontal curve of a radius of approximately 230 feet exists at the I-5 southbound off-ramp as it approaches Avenida de la Carlota, please see attached Vicinity Map.

In accordance with the California Manual on Uniform Traffic Control Devices (MUTCD), it was determined that the basis to add a No Right Turn on Red sign would be inadequate sight distance of approaching vehicles. Current conditions for vehicles on southerly bound Avenida de la Carlota turning right onto Paseo de Valencia allow a sight distance of approximately 180 feet for vehicles exiting the I-5 off-ramp due to the curvature of the off-ramp. Utilizing the Highway Design Manual's stopping sight distance on horizontal curves for a 35 mile per hour freeway exit speed; a stopping sight distance of approximately 250 feet was calculated. Based on the current site condition, a driver turning right onto Paseo de Valencia from southerly bound Avenida de la Carlota needs to see a clear distance of at least 250 feet towards the left prior to safely making the right turn. As the current site conditions allow a sight distance of approximately 180 feet, this location is justified for the establishment of a No Right Turn on Red regulation. The Traffic Commission at its meeting of March 20, 2013, approved staff's recommendation for the establishment of this traffic control.

There currently exists a "right-turn overlap" at this intersection. The left-turn green arrow movement from easterly bound Paseo de Valencia to northerly bound Avenida de la Carlota is concurrent with a right-turn green arrow movement from southerly bound Avenida de la Carlota to westerly bound Paseo de Valencia. Due to this condition, the green arrow for southerly bound Avenida de la Carlota turns on while the red bulb is on at the same signal head. This is illustrated on the attached vicinity map. This condition may create some confusion to a motorist if a generic No Right Turn on Red sign is installed. In order to prevent potential confusion, a No Right Turn on Red "blank-out sign" is being proposed for installation. This type of sign is standard in the MUTCD and only turns on in a specific desired phase. If approved, one sign would be installed on the southwest corner of the intersection on the signal pole. The sign will face the southerly bound Avenida de la Carlota right turn lane and will be programmed to turn on when the green light for I-5 southbound off-ramp traffic is on. This will enforce the no right turn regulation when there is a conflicting traffic movement. When not needed, the sign will otherwise be off (blank) when the right-turn movement is allowed.

FISCAL IMPACT:

The installation of a No Right Turn on Red blank-out sign has an estimated cost of $7,500. Funds are available for this work in the Fiscal Year 2012-2013 Public Works Maintenance Budget.

ATTACHMENTS:

- Resolution
  Vicinity Map

RESOLUTION NO. 2013-05-14-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, ESTABLISHING A NO RIGHT TURN ON RED PROHIBITION ON SOUTHERLY BOUND AVENIDA DE LA CARLOTA AT PASEO DE VALENCIA

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

WHEREAS, Paseo de Valencia is a four-lane arterial highway and Avenida de la Carlota is a four-lane arterial highway; and

WHEREAS, Paseo de Valencia and Avenida de la Carlota intersect at a signal controlled intersection which is coincident with the southbound Interstate 5/ El Toro Road off-ramp; and

WHEREAS, a traffic study identified vehicles on southerly bound Avenida de la Carlota executing a right turn onto easterly bound Paseo de Valencia have a potential sight-distance constraint of vehicles exiting Interstate 5; and

WHEREAS, the Traffic Commission, at its March 20, 2013 meeting, recommended the establishment of a No Right Turn on Red regulation on southerly bound Avenida de la Carlota at Paseo de Valencia; and

WHEREAS, California Vehicle Code Section 22101 provides that local jurisdictions may cause official traffic control devices to be placed or erected within or adjacent to intersections to regulate or prohibit turning movements at such intersections and that when right- or left-hand turns are prohibited at an intersection that notice of such prohibition shall be given by erection of a sign; and

WHEREAS, pursuant to California Vehicle Code Section 21100, local authorities may adopt rules and regulations by Resolution with respect to the regulation of traffic by means of official traffic control devices.

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

SECTION 1. At the intersection of Avenida de la Carlota and Paseo de Valencia, it is, and shall be, prohibited to turn right from southerly bound Avenida de la Carlota when the traffic signal indicates red for traffic on Avenida de la Carlota.

SECTION 2. The City Engineer shall cause the installation of a No Right Turn on Red sign to be erected and placed on Avenida de la Carlota at the intersection with Paseo de Valencia.

PASSED, APPROVED, AND ADOPTED this 14th day of May 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. 2013-05-14-__ adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 14th day of May 2013, by the following vote:

AYES:

NOES:

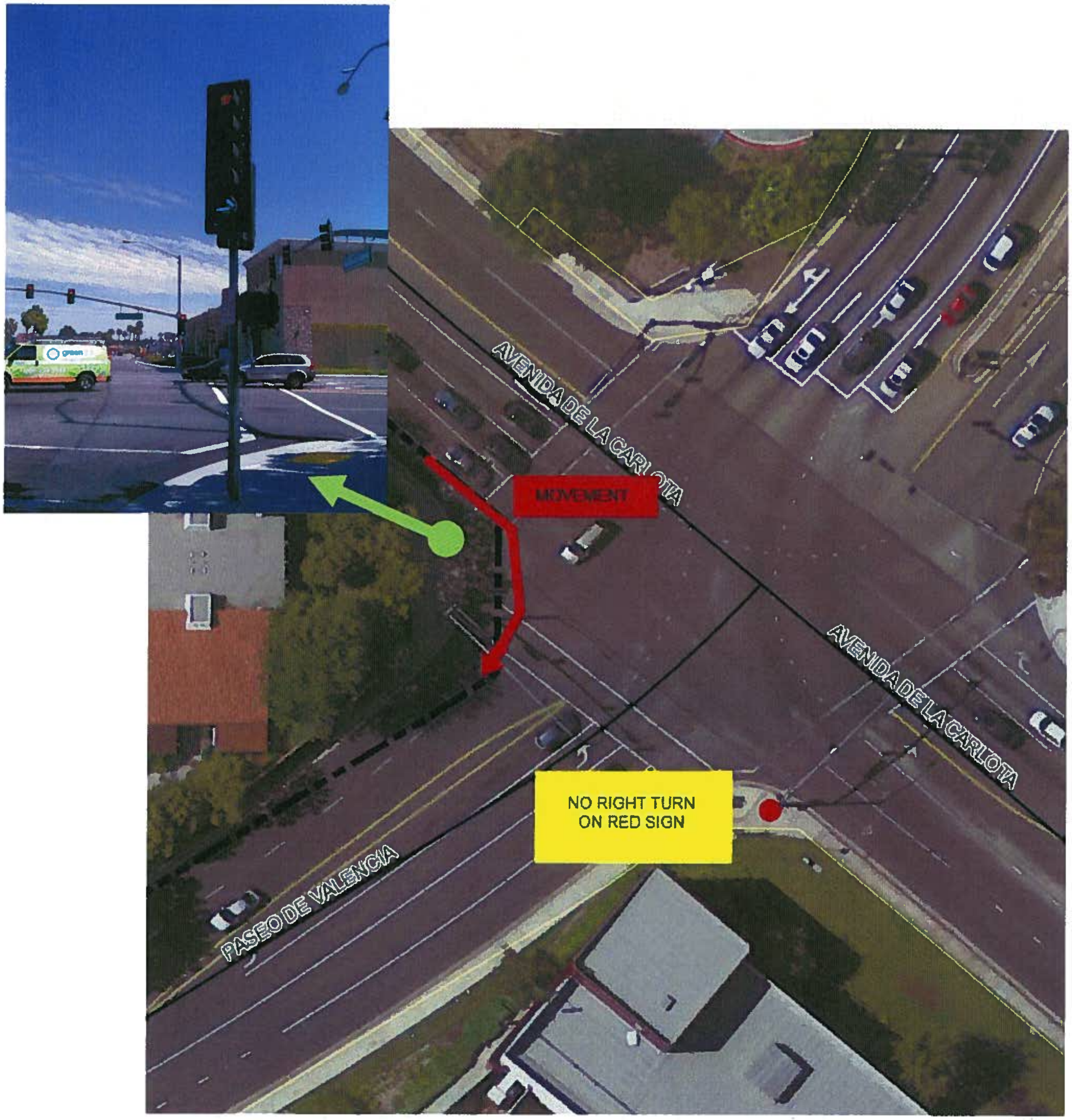
ABSENT:

ABSTAIN:

(SEAL)

PEGGY J. JOHNS, CITY CLERK

VICINITY MAP



City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

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

ISSUE: APPLICATION FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM (ECP), TIER 1 GRANT

RECOMMENDATION: THAT THE CITY COUNCIL APPROVE THE GRANT APPLICATION FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM, TIER 1 GRANT AND ADOPT A RESOLUTION ENTITLED: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING AN APPLICATION FOR FUNDS FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM, TIER 1 GRANT UNDER ORANGE COUNTY LOCAL TRANSPORTATION ORDINANCE NO. 3 FOR THE LAGUNA HILLS DEBRIS GATES PROJECT, PHASE III."

SUMMARY:

Measure M2 provides for two percent of gross revenue to be dedicated to protecting Orange County beaches and waterways from the conveyance of urban runoff associated with transportation-generated pollution. The Measure M2 Environmental Cleanup Program (ECP) Tier 1 Grant ensures that funds will be used on a countywide competitive basis to meet Federal Clean Water Act standards for controlling transportation-generated pollution by funding nationally recognized Best Management Practices (BMPs) for water quality benefits. Staff proposes to submit an application in response to this third call for projects for the installation of debris gates (retractable catch basin screens) on 41 catch basin locations throughout the City. It is recommended that the City Council approve of the submission of an ECP funding application and adopt the required Resolution.

BACKGROUND:

On March 11, 2013, the Orange County Transportation Authority (OCTA) issued the third call for projects for the Measure M2 ECP, Tier 1 Grant. An estimated $2.8 million in Measure M2 funds for Fiscal Year 2013-2014 are being made available to eligible applicants, which include Orange County cities and the County of Orange, on a competitive basis. The maximum grant amount is $200,000 per project, with a $500,000 cap per agency. A total of up to $19.5 million is available for the Tier 1 Grant Program over a seven-year window from Fiscal Year 2011-2012 through Fiscal Year 2017-2018.

The Measure M2 ECP, Tier 1 Grant is designed to mitigate the more visible forms of pollutants, such as litter and debris that collect on the roadways and in the catch basins prior to being deposited into waterways and the ocean. It consists of funding for equipment purchases and installation of screens, filters, and inserts at catch basins. Upon project award by OCTA in Fall 2013, projects must begin construction by June 30, 2014. A minimum match of 25% is required for this program. This match can be provided as cash contributions and/or in-kind services. In-kind services can include salaries and benefits for employees who work directly on the project including ongoing operation and maintenance of the equipment.

Previously, the City was awarded $61,950 for the installation of 69 debris gates from the first call of ECP funding in Fiscal Year 2011-2012, and $70,350 from the second call of this program in Fiscal Year 2012-2013. The first project is complete and the second project is currently under construction with an anticipated completion date of June 2013. Staff recommends applying for an additional $64,915 for 41 new debris gate locations as part of the Fiscal Year 2013-2014 call for projects. The locations of this new work are shown on the May 2, 2013, proposal by G2 Construction, Inc., attached. The minimum 25% matching requirements can be achieved from staff's ongoing inspection and crew maintenance of the proposed debris gates. A Resolution in support of the funding application is required and is attached.

Staff prepared the Measure M2 ECP, Tier 1 Grant application based upon the proposal from G2 Construction, Inc., (formerly U.S Enviro-net Services, Inc.), for its "CAM lock automatic retractable debris gates." A Contractor Services Agreement with G2 Construction, Inc. was approved by the City Council at its May 22, 2012 meeting, for the seven-year ECP cycle. G2 Construction, Inc. has installed debris gates on over 240 catch basins throughout the City. They are currently in the process of installing debris gates at an additional 59 locations throughout the City based upon the Fiscal Year 2012-2013 ECP call program. The debris gate, also known as Automatic Retractable Screen (ARS), remains closed during dry weather to prevent trash, debris, animals, and pollutants from entering the catch basin. The unwanted debris stays next to the curb for the routine street sweeper pickup. During heavy rain events, the gate automatically rises to prevent street flooding without staff assistance. Once the water flow slows down, the gate automatically closes and remains closed when dry. The gates do require occasional maintenances to remain in good working order.

FISCAL IMPACT:

This project is included in the Fiscal Year 2013-2014 Capital Improvement Program Budget, CIP No. 412, in the amount of $70,000. The total project cost is estimated to be $87,219, which will consist of $64,915 of grant funds and a future match requirement of

$22,304. The matching funds for the grant will be provided through in-kind services over a ten-year period within the Public Works Operating Budget through the work of the City's Public Works Supervisor and catch basin cleaning crews.

ATTACHMENTS:

- Resolution
- G2 Construction, Inc. proposal dated 05/02/13

RESOLUTION NO. 2013-05-14-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, AUTHORIZING AN APPLICATION FOR FUNDS FOR THE MEASURE M2 ENVIRONMENTAL CLEANUP PROGRAM, TIER 1 GRANT UNDER ORANGE COUNTY LOCAL TRANSPORTATION ORDINANCE NO. 3 FOR THE LAGUNA HILLS DEBRIS GATES PROJECT, PHASE III

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

WHEREAS, Orange County Local Transportation Ordinance No. 3, dated July 24, 2006, and is known and cited as the Renewed Measure M Transportation Ordinance and Investment Plan, makes funds available through the Environmental Cleanup Program to help protect Orange County beaches and waterways from transportation-generated pollution (urban runoff) and improve overall water quality; and

WHEREAS, the Measure M2 Environmental Cleanup Program (ECP), Tier 1 Grant consists of funding purchases and installation to catch basins with Best Management Practices, such as screens, filters, inserts, and other "street-scale" low flow diversion projects; and

WHEREAS, Orange County Transportation Authority (OCTA) has established the procedures and criteria for reviewing proposals; and

WHEREAS, the City of Laguna Hills possesses authority to nominate water quality improvement projects that have a transportation pollution nexus to finance and construct the proposed project; and

WHEREAS, by formal action the City of Laguna Hills authorizes the nomination of the Laguna Hills Debris Gates Project, Phase III, including all understanding and assurances contained therein, and authorizes the person identified as the official representative of the City of Laguna Hills to act in connection with the nomination and to provide such additional information as may be required; and

WHEREAS, the City of Laguna Hills will maintain and operate the equipment acquired and installed; and

WHEREAS, the City of Laguna Hills will give OCTA's representatives access to and the right to examine all records, books, papers, or documents related to the funded Measure M2 ECP, Tier 1 Grant; and

WHEREAS, the City of Laguna Hills will cause work on the project to be commenced within a reasonable time after receipt of notification from OCTA and that the project will be carried to completion with reasonable diligence; and

WHEREAS, the City of Laguna Hills will comply where applicable with provisions of the California Environmental Quality Act, the National Environmental Policy Act, the American with Disabilities Act, and any other Federal, State, and/or local laws, rules and/or regulations.

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

SECTION 1. The City Council of the City of Laguna Hills hereby authorizes Bruce E. Channing as the official representative of the City of Laguna Hills to submit the grant application and accept funds for the Measure M2 ECP, Tier 1 Grant Program for the Laguna Hills Debris Gates Project, Phase III.

SECTION 2. The City Council of the City of Laguna Hills agrees to fund the City's share of the project costs and any additional costs over the identified programmed amount.

PASSED, APPROVED, AND ADOPTED this 14th day of May 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. 2013-05-14- adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 14th day of May 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

PEGGY J. JOHNS, CITY CLERK

G2 Construction, Inc.
State Contractors License #801253 - A, C8, C60
13331 Garden Grove Blvd. unit "K"
Garden Grove, CA 92843

ARS CL12™ Installation Proposal

(for 2013 OCTA Measure M2 Environmental Cleanup Program, Tier 1)

Customer: **City of Laguna Hills**
24035 El Toro Dr.
Laguna Hills, CA 92653

Prepared: 5/2/2013

Contact: Humza Javed, P.E. - Project Engineer / Manager
Phone: 949-707-2657
Fax 949-707-2633

By: Eric Taylor
Phone: 714.679.2550
etaylor@G2Construction.com

Location: City of Laguna Hills

Mr. Javed, P.E.

Based on your and Mr. Cardona's instructions, G2 is pleased to provide this proposal to the City of Laguna Hills. Please contact me with questions.

Eric Taylor, LEED AP BD+C

This Proposal includes custom fabrication and installation of G2's *ARS-CL12™* device made of stainless steel (approved for OCTA Measure M2 funding, and by LACDPW) . Plus warranty.

Count	Original #	Street	Cross-Street	Intrsctn	Width (ft)	ARS Devices	Installed Price	CB ID#
1	1	Bridlewood	Oso	WS	14	4	$1,410	P/6057
2	2	Bridlewood	Oso	WS	28	8	$2,695	P/6057
3	3	Bridlewood	Oso	ES	28	8	$2,695	P/6056
4	4	Bridlewood 26821	Vista Viejo	WN	28	8	$2,695	P/6055
5	5	Bridlewood	Vista Viejo	EN	28	8	$2,695	P/6053
6	6	Bridlewood	Vista Viejo	EN	14	4	$1,410	P/6053
7	9A	Vista Viejo	Cabot	SW	28	8	$2,695	P/6045
8	9B	Vista Viejo	Cabot	SW	28	8	$2,695	P/6045
9	9C	Vista Viejo	Cabot	SW	3.5	1	$360	P/6063
10	10	Vista Viejo	Bridlewood	NW	21	6	$2,095	P/6064
11	11	Vista Viejo	Anadale	NW	21	6	$2,095	P/6052
12	12	Falling Leaf 26881	Devonshire	WN	14	4	$1,410	P/6051
13	13	Woodbluff Rd 27136	Raintree	ES	21	6	$2,095	P/6050
14	14	Woodbluff Rd 27135	Raintree	EN	21	6	$2,095	P/6049
15	15	Woodbluff Rd	Cedarbluff Terrace	NW	10	2	$785	P/6047
16	16	Woodbluff Rd	Vista Viejo	N	28	8	$2,695	P/6046
17	17	Woodbluff Rd	Vista Viejo	N	3.5	1	$360	P/6048
18	18A	Moore Oaks Rd 26832	Devonshire	NE	10	2	$715	P/6058
19	18B	Moore Oaks Rd 26836	Devonshire	NE	3.5	1	$360	P/6059

20	19	Moore Oaks Rd 26821	Devonshire	NW	21	6	$2,095	P/6061
21	20	Moore Oaks Rd 26831	Devonshire	NW	14	4	$1,410	P/6060
22	21	Devonshire	Nottingham Ct	SE	7	2	$715	P/6066
23	22	Devonshire 26801	Nottingham Ct	SW	21	6	$2,095	P/6065
24	22A New	Bridlewood 26811	Vista Viejo	SW	3.5	1	$360	P/6054
25	22B New	Devonshire	Falling Leaf	SW	3.5	1	$360	P/6062
26	23	Devonshire	Nottingham Ct	SE	3.5	1	$360	P/6068
27	24	Devonshire	Nottingham Ct	SW	14	4	$1,410	P/6067
28	25	Nottingham Ct	Harrington Ct	NW	21	6	$2,095	P/6069
29	26	Nottingham Ct	Devonshire	NE	28	8	$2,695	P/6070
30	27	Nottingham Ct	Oso	SE	7	2	$715	P/6075
31	28	Nottingham Ct	Oso	SW	21	6	$2,095	P/6074
32	29	Chelsea Ln	Nottingham Ct	SW	21	6	$2,095	P/6071
33	30	Chelsea Ln	Nottingham Ct	SE	3.5	1	$360	P/6072
34	31	White Oak Rd	End of Cul-de-Sac		14	4	$1,410	P/6073
35	40	Nellie Gail	Moulton	ES	28	8	$2,695	P
36	41	Westridge Ln	Lost Colt	WN	28	8	$2,695	P
37	42	Westridge Ln	Lost Colt	WS	28	8	$2,695	P
38	46	Red Lodge Pl	End of Cul-de-Sac		7	2	$715	P
39	47	Highwood Circ	End of Cul-de-Sac		7	2	$715	P
40	48	Rocking Horse Ln	End of Cul-de-Sac		7	2	$715	P
41	32	Nellie Gail	Oso	SE	3.5	1	$360	P

Project Total: $64,915

Notes: City of Laguna Hills to provide CB cleaning if required.

Warranty attached separately.

Quote Good for 2013 OCTA Measure M2 Environmental Cleanup Program Tier 1.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: DONALD J. WHITE
ASSISTANT CITY MANAGER

ISSUE: THIRD QUARTER FINANCE AND TREASURER'S REPORT (FY 2012/13)

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AND FILE THE THIRD QUARTER FINANCIAL AND TREASURER'S REPORT FOR FISCAL YEAR 2012-13.

SUMMARY:

Staff is submitting to the City Council the Quarterly Financial Highlights for the Third Quarter of Fiscal Year 2012/13. The financial statements show the planned use of reserves during the Third quarter of the fiscal year, due to revenues and expenditures that are unevenly received and expended over the course of the fiscal year. The City's total fund balance as of March 31, 2013, is $6,497,171.

BACKGROUND:

Attached to this report is a pamphlet entitled “City of Laguna Hills Quarterly Financial Highlights, Third Quarter, Fiscal Year 2012/13.” The information presented in the pamphlet provides the City Council and City Management with the results of the City's financial operations for the nine months ended March 31, 2013, and its fund balance as of the same period.

The pamphlet also contains a condensed Treasurer’s Investment Report. The City’s total cash and investments as of March 31, 2013, is $7,777,960. Compared with the same period of the previous fiscal year, total cash and investments are down by roughly $135,000.

The Laguna Hills Civic Center section in the pamphlet includes an abridged balance sheet and income statement summary for the Laguna Hills Civic Center leasing operation. Essex Realty, the management company for the property, reported a net income of $81,426 for the nine months of leasing activity from July 1, 2012 to March 31, 2013. After adding back contra rent revenue associated with the City's occupied spaces, the effective net income is $531,223. The balance sheet shows equity of $16,882,614 as of March 31, 2013.

ATTACHMENTS:

- City of Laguna Hills Quarterly Financial Highlights
  3rd Quarter FY 2012/13

CITY OF LAGUNA HILLS

Quarterly Financial Highlights

3rd Quarter, Fiscal Year 2012-13

March 31, 2013

Honorable Mayor and City Council Members:

At the end of the third quarter, the City's year-to-date funding sources were approximately $13.91 million and funding uses for the same period were approximately $17.84 million, resulting in the anticipated use of reserves by quarter end March 31, 2013. This is attributed to the timing in funding of capital improvement projects, which typically lag behind spending, and the accrual of tax revenues received within the first 60-days of the prior fiscal year. Approximately, 48% of general fund revenues is expected to be recorded in the last quarter of the fiscal year.

A Summary of Funding Sources and Uses for the nine months ended March 31, 2013 is presented in the following table:

FY 2012/13, Quarter End 03/31/13 Highlights

	YTD Actual (million)	Budget (milion)	YTD % of Budget
Funding Sources	*$ 13.91*	*$ 23.5*	*59%*
Funding Uses	*17.84*	*24.9*	*72%*
Net Change	*($ 3.9)*	*($ 1.4)*	

Report Variances

There are various revenues and expenditures which are received or expended unevenly during the fiscal year. In accordance with Government Accounting Standards Board Statement No. 22, revenues from taxpayer-assessed taxes, such as sales tax and franchise tax, received in the first two months of this fiscal year were accrued in the prior fiscal year. There are also certain expenditures, such as annual insurance premiums, that are expensed in full during the first quarter. Therefore, when comparing the budget with actual data, one cannot expect that exactly 75% of the fiscal year's revenues and expenditures would have been received or expended by the third quarter of the fiscal year. Thus, the YTD as a percentage of budget shown in this report does not necessarily indicate material deviations or budget variances.

Fund Balance

Included in this pamphlet, on page 5, is a report on the City's Fund Balance as of March 31, 2013. City-managed short-term idle funds, as well as bond funds, are invested in approved securities. An abridged balance sheet, which itemizes the City's assets and liabilities, is included on page 4.

Continued on page 2

Laguna Hills Civic Center

The abridged Balance Sheet and Income statement for the Laguna Hills Civic Center leasing operation is shown below:

Abridged Balance Sheet
As of March 31, 2013

ASSETS		
Total Current Assets	$	166,694
Total Fixed Assets		16,759,171
TOTAL ASSETS	**$**	**16,925,865**
LIABILITY & EQUITY		
Total Current Liabilities	$	43,251
Total Equity		16,882,614
TOTAL LIABILITIES & EQUITY	**$**	**16,925,865**

Income Statement Summary
For the 9 Months Ended March 31, 2013

TOTAL INCOME	420,739
TOTAL EXPENSES	339,313
NET INCOME/(LOSS)	**81,426**

Funding Sources

The City's total funding sources comprise of general fund revenues, special fund revenues, and other financing sources. At the end of the third quarter, total funding sources were approximately $13.91 million, or 59% of budget.

General Fund Revenues

General Fund Revenues are utilized primarily to finance the City's general governmental activities. At quarter end, general fund revenues totaled $9,998,369, or 52% of budget. The recording of these revenue sources comply with GASB 22, which addresses the timing of recognition of non-exchange transactions, e.g. taxes and fines.

Receipts of Property Tax, which are concurrent with the County's tax collection schedule, came in at $4,904,573, or 57% of budget. Intergovernmental Revenues, which includes sales tax revenue, were $2,908,671, or 51% of budget. Franchise fees from utility companies and transient occupancy tax comprise Franchise Tax revenues, which came in at $1,047,718, or 43% of budget. These receipts lag at least a quarter and no accrual was made at quarter end. Revenues from Licenses & Permits, $412,016, and Charges for Services, $574,301, are dependent upon development activities and came in at 45% and 51% of budget respectively. Fines and Forfeitures, which includes parking and vehicle fines, ended the quarter at 30% of budget, at $151,089.

Special Revenues and Grants

Many of the Special Revenue funding sources are tied in with the City's Capital Improvement Plan. The receipts of funding sources for certain capital projects typically lag behind the spending on the projects, as the claims are applied for during construction or after project-completion. At the end of the third quarter, special revenues receipts totaled $942,058, or 25% of budget.

Other Funding Sources

In accordance with GAAP, not all increases in governmental fund financial resources can be classified as revenue. Certain increases instead are reported as other financing sources, such as sales of general capital assets, proceeds of general long-term debt, and financial inflows from other funds. On September 13, 2012, the sale of the Moulton-La Paz property to Vintage Real Estate closed escrow for $2,952,352.

Funding Uses

The City's total funding uses consist of the City's Operating Expenditures, outlay for Capital Improvement projects, debt charges and expenditures for grant related programs. At the end of the third quarter, total funding uses were approximately $17.8 million, which was 72% of the annual budget.

Operating Expenditures

At the end of the third quarter, operating expenditures totaled roughly $11.8 million, which represents 68% of the total operating budget. The spending levels for all the functional areas were at or below 75%, with the exception Information Technology, as payments for certain expenditures, such as annual software maintenance contracts, were expensed in full at the beginning of the fiscal year.

Capital Improvement Plan

All budgeted capital improvement projects automatically re-appropriate each fiscal year until the project is completed. The amended budget of approximately $5.2 million includes roughly $2.3 million in budget carry-overs from the re-appropriation of capital improvement projects, namely the La Paz Widening at I-5 project (of $1.3 million). At the end of the third quarter, total capital expenditures were $4,001,911, or 77% of budget.

Capital Improvement Program For the 9 Months Ended, March 31, 2013		
Streets, Signals & Lighting	$	3,470,964
Streetscape		13,631
Flood Control & Water Quality		123,538
Parks		184,052
Public Facilities		143,957
Trails and Open Space		65,769
Total	**$**	**4,001,911**

CITY OF LAGUNA HILLS
Comparative Statement of Operation - Governmental Funds
For the 9 Months Ended, March 31, 2013

	FY 2012/13			FY 2011/12		
	Y-T-D ACTUAL	AMENDED BUDGET	YTD % of BUDGET	Y-T-D ACTUAL	AMENDED BUDGET	YTD % of BUDGET
FUNDING SOURCES						
General Fund Revenues						
Property Taxes	$ 4,904,573	$ 8,680,357	57%	$ 4,768,778	$ 8,443,720	56%
Intergovernmental Revenues	2,908,671	5,738,434	51%	2,931,822	5,615,936	52%
Franchise Taxes	1,047,718	2,422,641	43%	1,015,520	2,244,170	45%
Licenses and Permits	412,016	910,000	45%	430,096	805,600	53%
Charges for Current Services	574,301	1,125,413	51%	571,629	1,117,613	51%
Fines & Forfeitures	151,089	500,000	30%	207,910	500,000	42%
Total General Fund Revenues	9,998,369	19,376,845	52%	9,925,756	18,727,039	53%
Special Revenue Funds						
Gas Tax Fund	461,375	932,707	49%	629,895	912,629	69%
Measure M2 Fair Share	320,850	497,908	64%	308,147	468,290	66%
Measure M - Competitive	-	245,709	0%	-	165,709	0%
AB 2766 Fund	17,728	40,000	44%	19,225	40,000	48%
CDBG	-	215,000	0%	-	228,750	0%
ARRA	-	-		144,399	-	
Developer Fees	-	-		238,754	-	
Redevelopment Tax Increment	-	71,400	0%	62,302	70,000	89%
Housing Set-aside	-	22,850	0%		22,400	0%
CARITS	-	-		545,476	-	
Beverage Recycling Fund	-	8,826	0%	-	8,826	0%
CR&R Recycling Fees	20,000	20,000	100%	20,000	20,000	100%
C&D Forfeited Deposits	31,611	50,000	63%	30,107	50,000	60%
Senior Mobility Program	25,781	34,226	75%	20,419	34,226	60%
Public Art Fund	-	-		27,613	-	
Grants and Contributions	-	1,630,966	0%	1,080,931	4,990,000	22%
Law Enforcement Grants	64,713	-		88,184	-	
Total Special Revenue Funding	942,058	3,769,593	25%	3,215,452	7,010,830	46%
Other Funding Sources						
Sale of capital assets	2,952,352	-		-	-	
Interest Income	20,067	170,000	12%	20,310	80,000	25%
Distribution from Leasing Operations Fund	-	150,000	0%	-	100,000	0%
Total Other Funding Sources	2,972,419	320,000	929%	20,310	180,000	11%
TOTAL FUNDING SOURCES	$ 13,912,845	$ 23,466,438	59%	$ 13,161,518	$ 25,917,869	51%
FUNDING USES						
Operating Expenditures						
City Council/Manager	$ 787,058	1,078,024	73%	$ 820,917	$ 1,056,981	78%
City Clerk	269,072	388,623	69%	253,616	378,693	67%
Administrative Services	930,411	1,365,503	68%	940,856	1,310,565	72%
Information Technology	238,602	254,832	94%	161,868	287,970	56%
Community Development	737,400	1,370,580	54%	791,462	1,360,257	58%
Public Services	2,766,047	4,172,557	66%	2,981,923	4,018,945	74%
Community Services	1,215,359	1,844,180	66%	1,108,495	1,750,495	63%
Public Safety	4,927,261	6,893,205	71%	4,816,168	6,759,246	71%
Total Operating Expenditures	11,871,210	17,367,504	68%	11,875,305	16,923,152	70%
Capital Improvement Program	4,001,911	5,187,609	77%	3,251,189	7,438,785	44%
Other Funding Uses						
Debt Charges	1,805,043	1,803,187	100%	1,800,243	1,798,387	100%
Claims	114,541	50,000	229%	13,120	50,000	26%
Distributions to Business-type Fund	-	101,237	0%	-	-	
Special Revenue Fund Expenditures						
Redevelopment Tax Increment Fund	-	20,000	0%	10,323	47,515	22%
Housing Set-Aside	-	22,850	0%	-	22,400	0%
CDBG Fund Expenditures	-	215,000	0%	-	228,750	0%
Senior Mobility Program	3,270	34,226	10%	3,070	63,721	5%
Beverage Recyling	592	19,500	3%	14,154	34,000	42%
CR&R Recyling Fund	18,000	20,000	90%	13,019	13,019	100%
Forfeited C&D Deposits	18,975	54,731	35%	2,270	58,981	4%
AB 939 Surcharge Grant	3,204	2,669	120%	2,985	7,468	40%
Grants & Contributions	-	-		16,415	-	
Law Enforcement Fund Expenditures	2,312	-		10,315	-	
Total Other Funding Uses	1,965,935	2,343,400	84%	1,885,914	2,324,241	81%
TOTAL FUNDING USES	$ 17,839,056	$ 24,898,513	72%	$ 17,012,407	$ 26,686,178	64%
NET CHANGE IN FUND BALANCE	$ (3,926,211)	$ (1,432,075)		$ (3,850,890)	$ (768,309)	

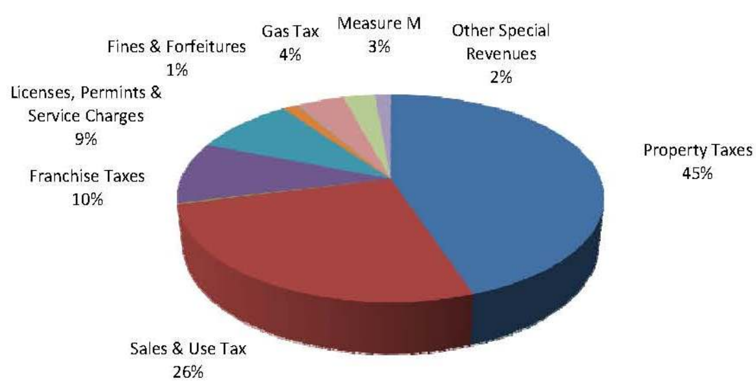
CITY OF LAGUNA HILLS

Abridged Balance Sheet - Governmental Funds

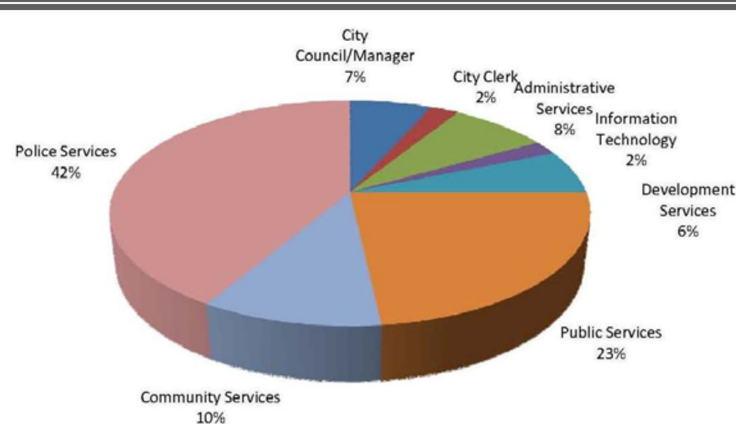
March 31, 2013

Assets		
Cash and investments	$	7,729,739
Receivables:		
Accounts		186,129
Interest		6,719
Due from other governments		1,965,359
Prepaid items		40,460
Total assets	**$**	**9,928,406**
Liabilities and Fund Balances		
Liabilities:		
Accounts payable	$	1,309,376
Refundable deposits to contractors		269,502
Deferred revenue		1,840,787
Trust accounts		11,571
Total liabilities	$	3,431,235
Fund balances:	$	6,497,171
Total liabilities and fund balances	**$**	**9,928,406**

REVENUES - General Fund & Special Revenue Funds FY 2012/13 As of 03/31/13



OPERATING EXPENDITURES FY 2012/13 As of 03/31/13



CITY OF LAGUNA HILLS
Governmental Funds
Statement of Working Funds
As of March 31, 2013

Fund Balance		
General Fund	$	6,745,572
Gas Tax		949,019
Measure M		5,709
Proposition 1B		175,544
CARITS		875,124
Senior Mobility Program		21,324
Beverage Recycling		38,153
CR&R Recycling		5
C&D Forfeited Deposits		25,578
AB 939 Surcharge Grant		7,607
Public Art Fund		(238,737)
Grants & Contributions		8,856
Debt Service		1,809,627
Total Beginning Fund Balance		**10,423,381**
Excess (Deficiency) of Funding Sources over Funding Uses		(3,926,211)
Fund Balance, as of March 31, 2013	**$**	**6,497,171**
Disposition of Working Funds		
Total Cash and Demand Deposits	$	878,618
Total Investments		6,851,121
Total Cash and Investments (for details see Treasurer's Report)		7,729,739
Receivables Net of Liabilities		(1,232,568)
Fund Balance, as of March 31, 2013	**$**	**6,497,171**

The Quarter End Financial Management Report for the 3rd Quarter of Fiscal Year 2012-13 is hereby submitted. The accounts of the City are organized on the basis of funds, each of which is considered a separate accounting entity. To the best of our knowledge and belief, the above information is reported in a manner that presents fairly the financial position and results of operation of the governmental funds of the City of Laguna Hills as of March 31, 2013.

Respectfully submitted,

original signed

Donald J. White
Assistant City Manager

May 8, 2013

Date

TREASURER'S INVESTMENT REPORT - ALL FUNDS (CONDENSED)
FOR THE 3RD QUARTER ENDED MARCH 31, 2013

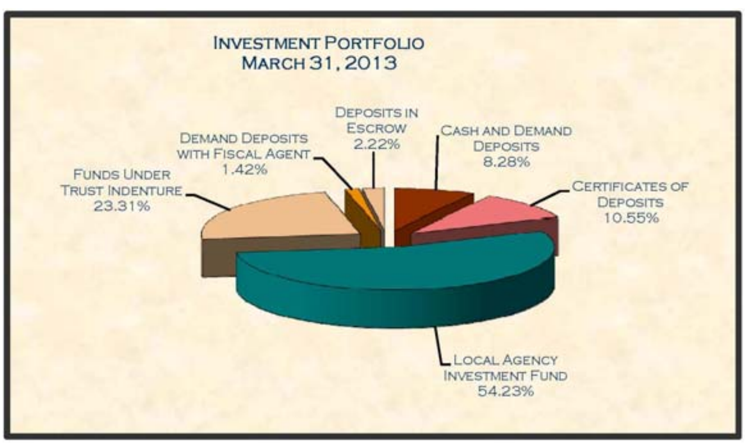
Cash and Investments by Type	3rd Quarter Beginning Book Value	Deposits	Withdrawals	3rd Quarter Ending Book Value	3rd Quarter Interest Income
Cash on Hand	$ 1,750	$ -	$ -	$ 1,750	$ -
Demand Deposits	544,076	5,629,792	5,531,844	642,025	-
Certificates of Deposits	750,000	-	-	750,000	471
Multiple Maturity Certificates of Deposits	70,502	-	-	70,502	443
State Treasurer's Investment Fund	5,339,379	3,527	1,125,000	4,217,906	3,532
Funds Under Trust Indenture	1,811,243	1,469	-	1,812,712	1,262
Demand Deposits with Fiscal Agent	123,041	305,492	318,248	110,284	-
Deposits in Escrow	172,780	-	-	172,780	-
TOTAL	**$ 8,812,771**	**$ 5,940,280**	**$ 6,975,092**	**$ 7,777,960**	**$ 5,708**

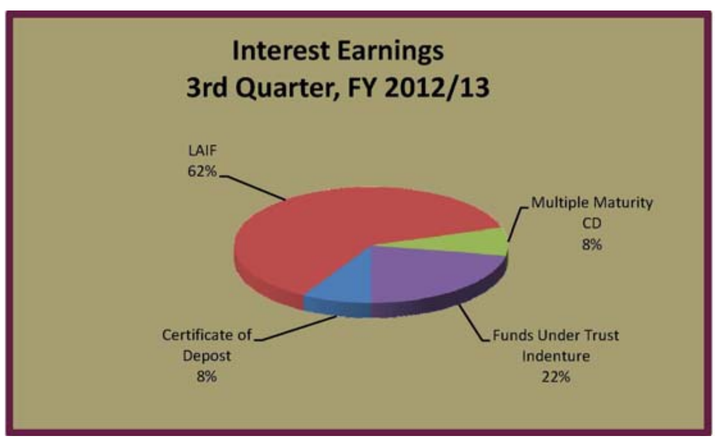
The City's investment policy approved by Council resolution is the prevailing guideline in managing investments. Short-term excess cash is currently invested primarily in the Local Agency Investment Fund (LAIF) administered by the State Treasurer. Held under trust indenture by The Bank of New York Mellon Trust Company, N.A, is a Reserve Fund established to secure the timely payment of principal and interest represented by the 2010 Refinancing Project bond issues.

The following is the summary of the cash and investments for the 3rd quarter ended March 31, 2013, compared with the same period of the previous fiscal year:

	March 31, 2013	March 31, 2012
Cash on hand	$ 1,750	$ 1,750
Pooled Deposits:		
Demand Deposits	752,309	209,443
Certificates of Deposits	820,502	820,957
Total Pooled Deposits	1,572,811	1,030,400
Pooled Investments:		
Local Agency Investment Fund	4,217,906	5,074,834
Restricted Cash and Investments:		
Local Agency Investment Fund	1,812,712	1,806,322
Demand Deposits	172,780	-
Total Cash and Investments	$ 7,777,960	$ 7,913,306

We believe the City's portfolio provides sufficient cash flow liquidity to meet the next six months of the City's projected operating expenditures.





3. MINUTES

3.1 REGULAR MEETING, APRIL 9, 2013

MOTION TO APPROVE THE MINUTES OF THE APRIL 9, 2013, REGULAR MEETING, BY M/COUNCIL MEMBER CARRUTH, S/MAYOR PRO TEMPORE BLOUNT.
APPROVED BY A VOTE OF 5-0.

3.2 ADJOURNED REGULAR MEETING, APRIL 16, 2013

MOTION TO APPROVE THE MINUTES OF THE APRIL 16, 2013, ADJOURNED REGULAR MEETING, BY M/COUNCIL MEMBER CARRUTH, S/MAYOR PRO TEMPORE BLOUNT.
APPROVED BY A VOTE OF 5-0.

4 CONSENT CALENDAR

MOTION TO APPROVE THE CONSENT CALENDAR, BY M/COUNCIL MEMBER CARRUTH, S/COUNCIL MEMBER GILBERT.
APPROVED BY A VOTE OF 5-0.

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 APRIL 23, 2013

THE CITY COUNCIL APPROVED THE WARRANT REGISTER IN THE AMOUNT OF $845,610.10.

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 7:41 PM.

5.1 ROLL CALL OF PLANNING AGENCY MEMBERS

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

5.2 PUBLIC COMMENTS

There were no Public Comments.

5.3 MINUTES

5.3.1 REGULAR MEETING, APRIL 9, 2013

MOTION TO APPROVE THE MINUTES OF THE APRIL 9, 2013, REGULAR MEETING, BY M/AGENCY MEMBER CARRUTH, S/AGENCY MEMBER GILBERT.
APPROVED BY A VOTE OF 5-0.

5.4 PLANNING AGENCY PUBLIC HEARINGS

There were no Public Hearings.

PLANNING AGENCY ADJOURNMENT

Mayor Kogerman reconvened the City Council meeting at 7:42 PM. All Council Members were present.

6. CITY COUNCIL PUBLIC HEARINGS

There were no City Council Public Hearings.

7. ADMINISTRATIVE REPORTS

7.1 City Manager

The City Manager made no reports.

7.2 Assistant City Manager

7.2.1 CITY VIEWS AND COMMUNITY SERVICES ACTIVITY GUIDE

Brian Lochrie, Faubel Public Affairs representative, spoke on City Views and Community Services Activity Guide.

Meg Gorham, Laguna Hills, spoke on City Views and Community Services Activity Guide.

THE CITY COUNCIL APPOINTED AN AD HOC COMMITTEE COMPRISED OF COUNCIL MEMBER GILBERT AND COUNCIL MEMBER BRESSETTE TO STUDY PUBLISHING OPTIONS REGARDING THE CITY VIEWS AND

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: DAVID REYNOLDS
DEPUTY CITY MANAGER/COMMUNITY SERVICES

ISSUE: 2013 MEMORIAL DAY RACE: EVENT UPDATE

RECOMMENDATION: THAT THE CITY COUNCIL RECEIVE AN ORAL PRESENTATION REGARDING THE 2013 CITY OF LAGUNA HILLS MEMORIAL DAY HALF MARATHON, 5K, AND 10K, HONORING THE USMC DARK HORSE BATTALION.

SUMMARY:

Staff will provide the City Council with an oral presentation regarding the status of the 2013 City of Laguna Hills Memorial Day Half Marathon, 5K, and 10K, Honoring the USMC Dark Horse Battalion.

City of Laguna Hills
City Council Meeting Agenda
Staff Report

City of Laguna Hills
City Council Meeting Agenda
Staff Report

DATE: MAY 14, 2013

TO: MAYOR AND COUNCIL MEMBERS

FROM: DAVID REYNOLDS
DEPUTY CITY MANAGER/COMMUNITY SERVICES

ISSUE: 2013 FOURTH OF JULY CELEBRATION AND FIREWORKS DISPLAY

RECOMMENDATION: THAT THE CITY COUNCIL: (1) RECEIVE A PRESENTATION ON THE 2013 FOURTH OF JULY CELEBRATION; AND (2) APPROVE THE FIREWORKS DISPLAY AGREEMENT WITH PYRO ENGINEERING, INC., AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT.

SUMMARY:

The City of Laguna Hills will host its annual Fourth of July celebration at the Laguna Hills Sports Complex on Thursday, July 4, 2013. The special event will be held from 4:00 p.m. to 9:30 p.m. and includes a number of activities in addition to the fireworks show. At the direction of OCFA personnel, the firing location on the Laguna Hills High School campus has been moved. Exhibit B to the Fireworks Display Agreement provides an aerial picture of the new firing location. Staff's recommendation is to authorize the City Manager to execute an agreement with Pyro Engineering, Inc., for the 2013 fireworks display. The proposed show for 2013 will have approximately one thousand one hundred (1,100) shells, and a cost of $24,500. The show will be approximately 18-20 minutes in length. This information was presented to the Parks and Recreation Commission at its March 14, 2013, meeting.

BACKGROUND:

The City of Laguna Hills will host its annual Fourth of July celebration at the Laguna Hills Sports Complex on Thursday, July 4, 2013. For the Fourth of July Celebration event this year, the following activities are tentatively scheduled:

Main Stage Entertainment:

- Straight 78 (70's through Contemporary Funk, Soul, and Rock)

Games:
- Soccer Kick
- Double Hoop Shot
- Football Toss

Carnival Rides:
- Two carnival rides

Activities:
- 40 foot obstacle Course
- Spacewalk-Airwalk

Children's Activities
- Face Painting
- Crafts

City Information Booth: (To Date)
- Community Services Class/Event Promotion
- Recycling Information
- City Commissions

Vendor Booths: (Confirmed to date)
- Dippin Dots - LHHS PTSA
- Churros, candy, pretzels, & nachos - LHHS Music Boosters
- Roasted Corn, lemonade & pizza - Boy Scout Troop 1602
- Shaved ice - LHHS Water Polo Boosters
- Hot dogs & brownies - Festival Singers
- Chili & Cornbread - AYSO 1422
- Water, soda & Gatorade - LHHS Football Boosters

The following is the tentative schedule of events:

4:00 p.m. Event Begins
Activities, games, music, food and vendor booths

8:50 P.M. Mayor's Welcome/Comments

9:00 P.M. National Anthem

9:05 P.M. Fireworks Display

In addition to the activities listed above, it is anticipated that "Team Dark Horse" will be present to support the adopted Marines of the 3/5 Battalion at this year's event. Marine's from the 3/5 Battalion may also be present.

Vendor booth rental forms were sent to all past vendors. Vendors who have participated previously in the Fourth of July Celebration have until May 17, 2013, to submit their request for a booth for 2013. After this date, food items that have not been secured by a past vendor may be given away to other interested Laguna Hills non-profit organizations.

Staff, working with the City Attorney's office, negotiated a new contract with Pyro Engineering, Inc., to build more safeguards for the City into the agreement in the event that mishaps occur during the 2013 fireworks show. These additional safeguards are listed below.

- The City requested that its display be carried out by a lead pyrotechnician that: (1) has three years of experience providing public firework displays, and/or (2) has successfully provided no less than ten public fireworks displays.
- The name of the lead pyrotechnician, a copy of his/her California Pyrotechnic Operator for Public Display license, and an adequate summary of his/her prior experience and credentials shall be provided to the City for verification and approval in advance of the display.
- The City proposed amending the liquidated damages provisions set forth in Section 7.1 of the 2012 Fireworks Display Agreement as follows:
    - <u>Failure to start on time</u>
        - Failure to start display within 5 to 15 minutes of designated display time would trigger 20% liquidated damages.
        - Failure to start display within 15 to 30 minutes of designated display time would trigger 50% liquidated damages.
        - If the display is not started within 30 minutes of designated display time, the City may opt to cancel the show and claim 100% liquidated damages.
    - <u>Gaps or breaks in display after the show starts</u>
        - Gap(s) or break(s) lasting 2 to 5 minutes in total would trigger 20% liquidated damages.
        - Gap(s) or break(s) lasting 5 to 15 minutes in total would trigger 50% liquidated damages.
        - If the gap(s) or break(s) last more than 15 minutes in total, the City may opt to cancel the show and claim 100% liquidated damages.
- The show's firing location has been moved at the direction of OCFA personnel. Exhibit B to the Fireworks Display Agreement provides an aerial picture of the new firing location.

Staff's recommendation is for the City Council to approve this Agreement and to authorize the City Manager to execute an agreement with Pyro Engineering, Inc., for the 2013 fireworks display. The proposed show for 2013 will have approximately one thousand one hundred (1,100) shells, and a cost of $24,500. The fireworks display will be approximately 18-20 minutes in length.

FISCAL IMPACT:

The proposed budget for the 2013 Fourth of July event is $53,750 which includes a fireworks budget of $26,400. Expenditures for the 2012 Fourth of July Celebration totaled $44,372 which includes the discounted cost of the fireworks show. Net costs totaled $39,113, which accounted for $4,059 in ticket sales revenue and $1,200 in vendor booth rentals.

ATTACHMENTS:

- Firework Display Agreement

FIREWORKS DISPLAY AGREEMENT
Pyro Engineering, Inc.

THIS FIREWORKS DISPLAY AGREEMENT (the "Agreement") is made, entered into, and effective this 14th day of May 2013, by and between the City of Laguna Hills, a California general law city and municipal corporation ("City"), and Pyro Engineering, Inc., a New York corporation, dba Bay Fireworks ("PEI").

RECITALS

A. PEI designs, produces, and conducts public fireworks displays; and

B. City desires to engage PEI to design, produce and perform a public fireworks display on July 4, 2013, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein, both parties hereto do mutually agree as follows.

AGREEMENT

1. **Engagement.** City hereby engages PEI to provide to City one public fireworks display ("Display"), and PEI accepts such engagement upon all of the promises, terms and conditions hereinafter set forth.

1.1 **PEI Duties.** PEI shall provide all pyrotechnic equipment, trained pyrotechnicians, shipping, pyrotechnic products, application for specific pyrotechnic permits (the cost of which, including standby fees, shall be paid by City) relating to the Display, and insurance covering the Display. Subject to Paragraph 18, PEI shall provide the Display in substantial conformance with the duration, quantities and format outlined in the Proposed Inventory Aerial Shell Segment, a copy of which is attached hereto as Exhibit "A" and is incorporated herein by this reference and made a part of this Agreement as though set forth fully herein.

1.2 **City Duties.** City shall provide the Site, as defined in Paragraph 2, for the discharge of the Display, access to the Site, security for the Site as set forth in Paragraph 11, and any authorization necessary for PEI to utilize the Site for the Display.

1.3 **PEI Performance.** As a material inducement to the City entering into this Agreement, PEI acknowledges and understands that the Display contracted for under this Agreement requires specialized skills and abilities and that, consistent with this understanding, PEI represents and warrants that it shall conduct the Display and perform all related services and work under this Agreement in a skillful and competent manner, and that it shall be held to a standard of quality and performance prevalent in the pyrotechnic industry for such Display service and work and with the standards recognized as being employed by contractors in the pyrotechnic field in the State of California. PEI further represents and warrants that it is skilled in the field of public fireworks displays and that it holds the necessary skills and abilities to satisfy the standard of quality and performance as set forth in this Agreement. PEI further represents and warrants that it and all of its employees and subcontractors providing services under this Agreement shall have sufficient skill and experience to perform the Display services and work assigned to them. All Display services and work shall be completed to the reasonable satisfaction of the City.

1.4 Term. This Agreement shall commence upon the effective date of this Agreement and continue in full force and effect until completion of all Display services and work.

2. **Time and Place.** The Display shall take place on July 4, 2013 ("Scheduled Date"), at approximately 9:00 p.m. ("Scheduled Time"), at the Laguna Hills High School located at 25401 Paseo de Valencia, Laguna Hills, CA, between the Tennis Court and Baseball Field, which is adjacent to the Laguna Hills Community Center located at 25555 Alicia Parkway, Laguna Hills, CA ("Site"). The Display will be under the direct supervision and control of a lead PEI pyrotechnician as set forth in Paragraph 3. It is agreed that PEI shall be the exclusive fireworks supplier and producer for the Display contracted for herein. City reserves the right to determine the actual start and stop time of the Display.

3. **Lead Pyrotechnician.**

3.1 Experience. The Display shall be conducted by and discharged under the direct supervision and control of a lead PEI pyrotechnician that: (i) has a minimum of three years of experience providing public fireworks displays; and/or (ii) has successfully provided no less than ten public fireworks displays.

3.2 Verification of Credentials. PEI shall furnish City with the name of the lead PEI pyrotechnician responsible for the Display, a copy of his/her Basic Commercial or Special Effects 1st Class License, and a written summary of his/her prior experience and credentials. PEI shall provide the documentation required by this Paragraph to the City by no later than June 7, 2013.

4. **Fees, Interest, and Expenses.**

4.1 Fee. City agrees to pay PEI a fee of $24,500.00 (Twenty Four Thousand Five Hundred Dollars) ("Display Fee") for the Display. City shall pay to PEI $12,250.00 (Twelve Thousand Two Hundred and Fifty Dollars) of the Display Fee as a deposit ("Deposit") upon execution of this Agreement by both parties. Except as otherwise provided below, the balance of the Display Fee shall be paid by City no later than July 18, 2013.

4.2 Interest. In the event that the Display Fee is not paid in a timely manner, City will be responsible for the payment of 1.5% interest per month or 18% annually on the unpaid balance.

4.3 Expenses. PEI shall pay all normal expenses directly related to the Display including, but not limited to, freight, insurance as set forth herein, pyrotechnic products, pyrotechnic equipment, experienced pyrotechnic personnel to set up and discharge the pyrotechnics, and those additional items outlined as PEI's responsibility under this Agreement.

City shall pay all costs related to the Display not supplied by PEI including, but not limited to, all governmental fees and taxes, including sales, use, excise, license, permit, entertainment, or other fees, taxes or surcharges imposed or otherwise applied to the Display.

5. **Force Majeure**. City agrees to partially assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and other causes beyond the control of PEI which may prevent the Display from being safely discharged on the Scheduled Date. If, for any such reason, PEI is not reasonably able to safely discharge the Display on the Scheduled Date, City may: (i) reschedule the Display on a mutually agreed upon date occurring no later than six months from the Scheduled Date, and pay to PEI the balance of the Display Fee within 15 business days of completion of the rescheduled Display; or (ii) cancel the Display, forfeit the Deposit, and be relieved of any obligation to pay to PEI the balance of the Display Fee.

6. **Rescheduling**. City shall have the option to unilaterally reschedule the Display at any time prior to the Scheduled Date. Except as provided otherwise in Paragraph 5, if City elects to reschedule the Display, it shall pay to PEI the balance of the Display Fee within 15 business days of completion of the rescheduled Display plus: (i) 5% of the Display Fee, or $1,225.00 (One Thousand Two Hundred Twenty Five Dollars), if the City notifies PEI of the request to reschedule before 12:00 a.m. on July 3, 2013; or (ii) 15% of the Display Fee, or $3,675.00 (Three Thousand Six Hundred Seventy Five Dollars), if the City notifies PEI of the request to reschedule on or after 12:00 a.m. on July 3, 2013. The Display shall be rescheduled on a mutually agreed upon date occurring no later than six months from the Scheduled Date.

7. **Right to Cancel, Substantial Delay or Postponement.**

7.1 **Right to Cancel.** City shall have the option to unilaterally cancel the Display at any time prior to the Scheduled Date. If City elects to cancel the Display prior to the Scheduled Date for any reason other than force majeure pursuant to Paragraph 5, PEI's inability to perform as a result of operator error, or malfunction or failure of pyrotechnic equipment or materials as provided in Paragraph 7.2(C), or PEI's failure to fulfill its obligations under this Agreement, PEI shall retain the Deposit, and the City shall pay to PEI as liquidated damages: (i) 50% of the balance of the Display Fee, or $6,125.00 (Six Thousand One Hundred Twenty Five Dollars), if the City notifies PEI of the cancellation at least 30 days prior to the Scheduled Date; (ii) 75% of the balance of the Display Fee, or $9,188.00 (Nine Thousand One Hundred Eighty Eight Dollars), if the City notifies PEI of the cancellation 15 to 29 days prior to the Scheduled Date; or (iii) 100% of the balance of the Display Fee, or $12,250.00 (Twelve Thousand Two Hundred Fifty Dollars), if the City notifies PEI of the cancellation less than 15 days prior to the Scheduled Date.

7.2 **Substantial Delay or Postponement.** Both parties agree that the City will suffer damages as a result of any substantial delay or postponement of the Display resulting from operator error, or malfunction or failure of the pyrotechnic equipment or materials, and therefore agree to the following liquidated damages provisions:

A. If PEI, as a result of operator error, or malfunction or failure of the pyrotechnic equipment or materials, is unable to start the Display within 5 to 15 minutes after the Scheduled Time, or if at any time after the Display has begun and is underway, there is/are a gap(s) or break(s) in the program lasting 2 to 5 minutes in total, PEI shall pay to the City as liquidated damages 20% of the Display Fee, or $4,900.00 (Four Thousand Nine Hundred Dollars).

B. If PEI, as a result of operator error, or malfunction or failure of the pyrotechnic equipment or materials, is unable to start the Display within 15 to 30 minutes after the Scheduled Time, or if at any time after the Display has begun and is underway, there is/are a gap(s) or break(s) in the program lasting 5 to 15 minutes in total, PEI shall pay to the City as liquidated damages 50% of the Display Fee, or $12,250.00 (Twelve Thousand Two Hundred Fifty Dollars).

C. If PEI, as a result of operator error, or malfunction or failure of the pyrotechnic equipment or materials, is unable to start the Display for more than 30 minutes after the Scheduled Time, or at any time after the Display has begun and is underway, there is/are a gap(s) or break(s) in the program lasting more than 15 minutes in total, the City, in its sole discretion, may cancel the Display without incurring any liability for payment to PEI and without any obligation to reschedule the Display. In either event, it is expressly agreed that PEI shall pay to the City as liquidated damages 100% of the Display Fee, or $24,500.00 (Twenty Four Thousand Five Hundred Dollars).

8. **Notice of Rescheduling or Cancellation.**

8.1 Notice Prior to Scheduled Date. In the event that the City elects to reschedule or cancel the Display prior to the Scheduled Date, the City shall communicate its decision to Barbara Howard of PEI at barbara@bayfireworks.com and/or by phone to (516) 597-5500.

8.2 Notice on Scheduled Date. In the event that the City elects to reschedule or cancel the Display on the Scheduled Date, the City shall communicate its decision to Dennis Brady of PEI at brady@bayfireworks.com and/or by phone to (516) 433-4132. In addition, the City shall inform the lead PEI pyrotechnician onsite of its decision as appropriate.

9. **City Contract Officer.** The City Manager, or his/her designee, shall be solely authorized to make decisions concerning this Agreement and the Display including, but not limited to, requests to reschedule or cancel the Display.

10. Safety. PEI shall comply with applicable federal, state and local laws and regulations and employ safety programs and measures consistent with recognized applicable industry standards and practices. At all times before and during the Display, it shall be within PEI's sole discretion and control to determine whether or not the Display may be safely discharged or continued. It shall not constitute a breach of this Agreement by PEI to determine that the Display cannot be discharged or continued as a result of any conditions or circumstances affecting safety beyond the reasonable control of PEI. Conditions or circumstances resulting from operator error, or malfunction or failure of the pyrotechnic equipment or materials shall not be deemed "beyond the reasonable control of PEI" for purposes of this Paragraph and shall remain subject to the liquidated damages provisions set forth in Paragraph 7.2.

11. **Security**. City shall provide and maintain sufficient security personnel, barricades, and police services before, during and after the Display until the lead PEI pyrotechnician declares the Site clear. The City shall also provide and maintain a shell casing fallout area clear of any buildings, cars and spectators with a minimum 500-foot radius, as specified by the current edition of *National Firework Protection Association 1123: Code for Fireworks Display* ("NFPA 1123"), as a Fire Safety Zone ("FSZ") from the time the fireworks are delivered to the Site until the lead PEI pyrotechnician declares the Site clear. The approximate location and scope of the FSZ is depicted in Exhibit "B" attached hereto. It is understood and agreed that PEI will cease the discharge of all fireworks due to any security breach of the FSZ. PEI shall not be responsible for personal injury, vehicle or property damage occurring within the FSZ as a result of the City's failure to maintain the 500-foot radius FSZ clear of any buildings, cars, or spectators. Furthermore, City shall be responsible for any property damage to the Laguna Hills High School Tennis Court, Baseball Field, Track and/or Football Field solely within the FSZ caused by ordinary fallout from the Display. City acknowledges and agrees that PEI's responsibilities are limited to the Display and that PEI is relying on City to maintain the aforementioned FSZ and to comply with all Federal, State, and local laws, orders, regulations and ordinances pertaining to the implementation of any and all security measures at the FSZ. Any inspections of the FSZ by or on behalf of City made during setup of the Display shall be in accordance with the current edition of NFPA 1123, and under the direct supervision of the lead PEI pyrotechnician. Any such inspection shall not interfere with the safety of the setup, discharge, or disassembly of the Display. The lead PEI pyrotechnician may, at his/her sole discretion, cancel any inspection that in his/her opinion may compromise the safety of the setup, discharge, or disassembly of the Display.

12. **Continuity**. PEI shall establish Display "continuity" (i.e., test and confirm the functionality of electrically fired pyrotechnic lines, channels and circuits) by no later than 7:00 p.m. on the Scheduled Date, or no less than two hours prior to the Scheduled Time as such time may be modified by the City.

13. **Contract Subject to Government Regulation**. This Agreement and PEI's obligations and PEI's performance hereunder are subject to all applicable Federal, State, and local laws, rules, ordinances, regulations and codes, now or hereinafter in effect, and to the conditions and limitations contained in any necessary permits, as set forth in Paragraph 14 ("Display Permits"). In the event any Federal, State, or local law, rule, regulation or ordinance shall be enacted which in any way prohibits, limits or restricts the sale, performance or operation of the exhibition of the Display or in the event the Display Permits in any way limit or restrict the sale, performance or operation of said exhibition, PEI shall limit or restrict its performance of the Display so as to comply with such law, rule, regulation or ordinance or limitation or restriction of Display Permits. The City acknowledges that any such limit or restriction placed on the performance or operation of the Display shall in no way result in or entitle City to a reduction or abatement in the full contract price.

14. **Permits**. PEI agrees to apply for permits for the firing of pyrotechnics from the Orange County Fire Authority, and if required, the FAA. The City shall be responsible for any fees associated with these permits, including standby fees. The City shall be responsible for obtaining any other necessary permits, paying associated fees, and making other appropriate arrangements

for police services, other fire departments, road closures, event/activity or land use permits or any permission or permit required by any local, regional, state or federal government.

15. **Cleanup**. PEI shall be responsible for the removal of all Display equipment and any live pyrotechnics from the Site. The City shall be responsible for cleaning the Site and FSZ.

16. **Insurance and Indemnification.**

16.1 Insurance. PEI 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 any and all claims for injuries against persons or damages to property resulting from PEI's performance under this Agreement. PEI 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 and the Saddleback Valley Unified School District, their 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 PEI's obligation to indemnify City and the Saddleback Valley Unified School District, their elected officials, officers, agents, employees, and volunteers.

16.1.1 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 ten million dollars ($10,000,000.00) per occurrence, eleven million dollars ($11,000,000.00) in the general aggregate, and two million dollars ($2,000,000.00) for products and completed operations; the commercial general liability policy shall name the City of Laguna Hills and the Saddleback Valley Unified School District as additional insureds 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, PEI's insurance coverage shall be primary insurance as respects City and the Saddleback Valley Unified School District, and their respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City or the Saddleback Valley Unified School District and their respective elected officials, officers, employees, agents, and volunteers shall be in excess of PEI'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.

16.1.2 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.

16.1.3 Verification of Coverage. PEI shall furnish City with both certificates of insurance and original 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 by no later than June 7, 2013. City reserves the right to require PEI'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.

16.1.4 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 and the Saddleback Valley Unified School District, their elected officials, officers, employees, agents, and volunteers; or, PEI shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

16.1.5 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 and the Saddleback Valley Unified School District, their directors, officials, officers, employees, agents, and volunteers.

16.2 Indemnification. To the fullest extent permitted by law, PEI shall defend (at PEI's sole cost and expense with legal counsel reasonably acceptable to the City), indemnify, protect, and hold harmless City and the Saddleback Valley Unified School District, their elected and appointed 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 (PEI's employees included), for damage to property, including property owned by City and the Saddleback Valley Unified School District, or from any violation of any federal, state, or local law or ordinance, which Claims arise out of, pertain to, or are related to PEI's performance under this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit PEI's indemnification obligation or other liability hereunder.

17. **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.

18. **Substitutions**. PEI shall have the right, at its discretion, to substitute any fireworks it deems necessary provided same does not detract from the aesthetic value or quality of the Display. This includes, but is not limited to, shell sizes, quantities, types and brand names. Any substitutions shall in no way result in or entitle City to a reduction or abatement of the full contract price.

19. **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 PEI covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

20. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof, and may not be changed, modified, renewed or extended except by a written agreement, signed by both parties.

21. **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

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

23. **Notice**. Except as set forth in Paragraph 8, any notice, request, demand, direction, or other communication required or permitted hereunder shall be in writing, and shall be personally delivered, sent by registered or certified mail, postage prepaid, return-receipt-requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City:

City of Laguna Hills
Attention: City Manager
24035 El Toro Road
Laguna Hills, CA 92653
Telephone: (949) 707-2600
Facsimile: (949) 707-2614

To PEI:

Pyro Engineering, Inc.
Attention: Barbara J. Howard, Manager
999 South Oyster Bay Road
Suite 111
Bethpage, NY 11714
Telephone: (516) 597-5500
Facsimile: (516) 597-5507

24. **Binding Effect.** This Agreement shall not be binding on either party until executed by both City and PEI.

25. **Corporate Authority.** Each of the undersigned represents and warrants that (i) the party for which he/she is executing this Agreement is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Agreement on behalf of the party for which he/she is signing, (iii) by so executing this Agreement, the party for which he/she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the party for which he/she is signing is bound.

[Signatures on following 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:

By: ________________________
Gregory E. Simonian,
City Attorney

ATTEST

By: ________________________
Peggy J. Johns,
City Clerk

"PEI"
Pyro Engineering, Inc.

Date: 4/24/13

By : ________________________
Dennis P. Brady, Jr.,
Chief Executive Officer

Date: 4/24/13

By : ________________________
Joseph Mastanduno,
Chief Financial Officer

Exhibit A

Proposed Inventory Aerial Shell Segment

for

City of Laguna Hills

2013 Fourth of July Celebration

LAGUNA HILLS

July 4, 2013

SHOW DURATION: 18-20 MINUTES

BAYFIREWORKS

OPENING SEGMENT	QTY
Three-Inch Shells	110
Four–Inch Shells	20
Five-Inch Shells	10

BODY OF PROGRAM	QTY
Three-Inch Shells	260
Four-Inch Shells	160
Four-Inch Japanese Shells	30
Five-Inch Shells	110
Five-Inch Japanese Shells	20

GRAND FINALE	QTY
Three-Inch Shells	375
Four –Inch Shells	40
Five-Inch Shells	30

Proposed Inventory
Aerial Shell Segment

Program Value: $24,500

1,100 Shells Total

BAY FIREWORKS AT
WALT DISNEY WORLD FLORIDA

Exhibit B

Approximate Fire Safety Zone

for

City of Laguna Hills

2013 Fourth of July Celebration


Fireworks Zone 4
0 ft
500 ft