

CITY OF LOS ALAMITOS

3191 Katella Avenue
Los Alamitos, CA 90720

AGENDA CITY COUNCIL REGULAR MEETING MONDAY, JULY 18, 2011 – 7:00 p.m.

NOTICE TO THE PUBLIC

This Agenda contains a brief general description of each item to be considered. Except as provided by law, action or discussion shall not be taken on any item not appearing on the agenda. Supporting documents, including staff reports, are available for review at City Hall in the City Clerk's Office or on the City's website at www.ci.los-alamitos.ca.us once the agenda has been publicly posted.

Any written materials relating 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, 3191 Katella Ave., Los Alamitos CA 90720, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

It is the intention of the City of Los Alamitos to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee, or a participant at this meeting, you will need special assistance beyond what is normally provided, please contact the City Clerk's Office at (562) 431-3538, extension 220, 48 hours prior to the meeting so that reasonable arrangements may be made. Assisted listening devices may be obtained from the City Clerk at the meeting for individuals with hearing impairments.

Persons wishing to address the City Council on any item on the City Council Agenda will be called upon at the time the agenda item is called or during the City Council's consideration of the item and may address the City Council for up to three minutes.

1. CALL TO ORDER

2. ROLL CALL

Council Member Graham-Mejia
Council Member Kusumoto
Council Member Poe
Mayor Pro Tem Edgar
Mayor Stephens

3. PLEDGE OF ALLEGIANCE

Council Member Poe

4. INVOCATION

Council Member Graham-Mejia

5. ORAL COMMUNICATIONS

At this time, any individual in the audience may come forward to speak on any item within the subject matter jurisdiction of the City Council. Remarks are to be limited to not more than five minutes per speaker.

6. REGISTER OF MAJOR EXPENDITURES

July 18, 2011.

Roll Call Vote

Council Member Graham-Mejia
Council Member Kusumoto
Council Member Poe
Mayor Pro Tem Edgar
Mayor Stephens

7. CONSENT CALENDAR

All Consent Calendar items may be acted upon by one motion unless a Council Member requests separate action on a specific item.

*****CONSENT CALENDAR*****

A. Approval of Minutes (City Clerk)

- 1. Approve Minutes of the Special Meeting – May 16, 2011.
- 2. Approve Minutes of the Special Meeting – June 13, 2011.
- 3. Approve Minutes of the Regular Meeting – June 6, 2011.

B. Warrants (Finance)

July 18, 2011

*****END OF CONSENT CALENDAR*****

8. DISCUSSION ITEMS

A. Consideration of Proposals to Conduct Outreach Related to the Los Alamitos Boulevard Revitalization Project (Comm. Dev.)

The following is a summary of the consultants considered to complete the City's Outreach Program related to the Los Alamitos Boulevard Revitalization Project in response to the City's Request for Proposal (RFP).

Recommendation: Authorize the City Manager to approve a Professional Services Agreement with RBF Consultants for the Outreach Component of the Los Alamitos Blvd. Revitalization project at an amount not to exceed \$35,800.00.

B. Approval of Professional Services Agreement with Watershed Conservation Authority, for Project Manager and Construction Manager Services of Coyote Creek Park (Public Works)

The City is seeking to construct a low impact recreation parkway area in the SCE right-of-way along the Coyote Creek, behind Oak Middle School. Toward that end, the City has received a grant from the Rivers and Mountains Conservancy (RMC) in the amount of \$1,440,000. To complete the project, it is necessary to obtain approvals from numerous agencies, including the Southern California Edison Company, the Orange County Flood Control District, Los Angeles Flood Control District, Golden State Water Company and other entities. To date, those approvals have been very difficult to coordinate. With a looming deadline for construction on June 1, 2012, the RMC recommended strongly that the City utilize a project manager from the Watershed Conservation Authority (WCA) and

agreed that compensation for that project manager would be a reimbursable part of the project. Accordingly, staff is requesting that the City hire the Watershed Conservation Authority (WCA) to help the City get the project finished within the time frame of the grant.

Recommendation: Authorize the City Manager to execute a Professional Services Agreement with Watershed Conservation Authority, in the amount of \$99,656 to be Project Manager and Construction Manager. The funds required would be fully reimbursed by the Rivers and Mountains Conservancy.

C. Approval of Lease Agreement between Southern California Edison (SCE) and the City of Los Alamitos for the Coyote Creek Park (Public Works)

The City is seeking to construct a low impact, recreation parkway area in the SCE right-of-way along the Coyote Creek behind Oak Middle School, with a \$1,440,000 grant received from the Rivers and Mountains Conservancy (RMC). To complete the project, it is necessary to obtain a lease agreement from the Southern California Edison Company. The City Attorney has reviewed the draft lease and finds it acceptable for the purposes of a low impact, recreational parkway.

Recommendation: Authorize the City Manager, City Attorney and City Clerk to sign the lease.

D. Steps Necessary to Modify Intersection at Lexington Drive and Katella Avenue to Allow Southbound Lexington Drive Traffic to Travel through the intersection into the Apartment Row Neighborhood (Public Works)

On January 18, 2011 Councilmember Mejia requested staff to research methods of modifying the traffic signal at the intersection of Lexington Drive and Katella Avenue to allow southbound traffic to cross Katella Avenue into the Apartment Row neighborhood. In researching the issue, staff learned that the traffic signal was constructed to not allow through traffic on southbound Lexington Drive in compliance with the terms of a three-party agreement between the cities of Los Alamitos and Cypress, and Cottonwood Church. Because the modification, if effected would require a change in the street markings on Lexington Drive, immediately north of Katella Avenue, staff was obligated also to discuss the issue with Arrowhead Products, with whom the City has a separate agreement regarding traffic modifications.

Staff researched the request by Councilmember Mejia, determined that modification of the signal to allow southbound traffic on Lexington Drive, south of Katella Avenue would provide additional convenience to persons living in the Apartment Row and Carrier Row neighborhoods, and met with the affected parties seeking input and concurrence. Accordingly, staff has prepared draft letters to the City of Cypress, Cottonwood Church, and Arrowhead Products requesting the modification discussed above in exchange for modifications of the three-party agreement that reflects additional traffic modifications requested by the City of Cypress and Cottonwood Church.

Recommendations: If the City Council desires that the lane configuration be changed to allow southbound Lexington Drive traffic to be able to drive through the Katella Avenue intersection, staff recommends that the City Manager be authorized to sign the attached letters to the City of Cypress, Cottonwood Church, and Arrowhead Products requesting those parties to take the actions necessary to amend the three-way agreement governing the configuration of the traffic signal at Katella Avenue and Lexington Drive.

9. MAYOR AND COUNCIL INITIATED BUSINESS

Council Announcements

At this time, Council Members may also report on items not specifically described on the Agenda that are of interest to the community, provided no action or discussion is taken except to provide staff direction to report back or to place the item on a future Agenda.

Council Member Poe
Mayor Pro Tem Edgar
Mayor Stephens
Council Member Graham-Mejia
Council Member Kusumoto

10. ITEMS FROM THE CITY MANAGER

11. ADJOURNMENT

The next meeting of the City Council is scheduled for Monday, August 1, 2011, in the City Council Chambers.

I hereby certify under penalty of perjury under the laws of the State of California, that the foregoing Agenda was posted at the following locations: Los Alamitos City Hall, 3191 Katella Ave.; Los Alamitos Community Center, 10911 Oak Street; and, Los Alamitos Museum, 11062 Los Alamitos Blvd.; not less than 72 hours prior to the meeting.



Adria M. Jimenez, CMC
City Clerk



Date

CITY OF LOS ALAMITOS
Register of Major Expenditures
July 18, 2011

Pages:

01	\$ 108,840.56	Major Warrants	07/18/2011
	\$ 145,369.74	Payroll	07/08/2011
	\$ 144,001.77	Payroll Benefits	07/08/2011

Total **\$ 398,212.07**

Statement:

I hereby certify that the claims or demands covered by the foregoing listed warrants have been audited as to accuracy and availability of funds for payment thereof. Certified by Anita Agramonte, Finance Director.



 this 13th day of July, 2011

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
CALIFORNIA JOINT POWERS INSURANCE AGEN	PROPERTY INS FY 11/12	GENERAL FUND	INSURANCE	47,949.00
			TOTAL:	47,949.00
COLANTUONO & LEVIN, PC	TRASH CONTRACT 05/11	GENERAL FUND	NON-DEPARTMENTAL	14,441.03
	GENERAL COUNSEL 05/11	GENERAL FUND	CITY ATTORNEY	4,014.28
	GENERAL COUNSEL 05/11	GENERAL FUND	CITY ATTORNEY	1,548.00
	GENERAL COUNSEL 05/11	GENERAL FUND	CITY ATTORNEY	234.00
	GENERAL COUNSEL 05/11	GENERAL FUND	CITY ATTORNEY	54.00
	GENERAL COUNSEL 05/11	GENERAL FUND	CITY ATTORNEY	552.00
	GENERAL COUNSEL 05/11	GENERAL FUND	CITY ATTORNEY	378.00
	GENERAL COUNSEL 05/11	GENERAL FUND	CITY ATTORNEY	65.00
	GENERAL COUNSEL 05/11	GENERAL FUND	CITY ATTORNEY	274.50
			TOTAL:	21,560.81
SCIENTIA CONSULTING GROUP	PARKNLOT SURVEILLANCE	ASSET SEIZURE	CAPITAL PROJECTS	13,672.00
			TOTAL:	13,672.00
WILLDAN ENGINEERING	CONSTRUCTION MNGMNT	C.D.B.G	CAPITAL PROJECTS	2,731.25
	CONSTRUCTION MNGMNT	GAS TAX	CAPITAL PROJECTS	7,920.04
	CONSTRUCTION MNGMNT	RESIDENTIAL STREET	CAPITAL PROJECTS	15,007.46
			TOTAL:	25,658.75

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===== FUND TOTALS =====
10 GENERAL FUND                69,509.81
19 C.D.B.G                     2,731.25
20 GAS TAX                     7,920.04
24 RESIDENTIAL STREET/ALLEYS   15,007.46
27 ASSET SEIZURE               13,672.00
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GRAND TOTAL:                   108,840.56
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**MINUTES OF THE CITY COUNCIL
OF THE CITY OF LOS ALAMITOS**

SPECIAL MEETING – May 16, 2011

ITEM NO. 7A1

**THESE MINUTES ISSUED FOR
INFORMATION ONLY AND ARE
SUBJECT TO AMENDMENT AND
APPROVAL AT THE NEXT
MEETING**

1. CALL TO ORDER

The City Council met in Special Session at 5:02 p.m., Monday, May 16, 2011 in the Council Chambers, 3191 Katella Avenue, Mayor Stephens presiding.

2. ROLL CALL

Present: Council Members: Graham-Mejia, Kusumoto, Poe
Mayor Pro Tem Edgar, Mayor Stephens

Absent: Council Members: None

Present: Staff: Jeffrey L. Stewart, City Manager
Anita Agramonte, Finance Manager
Angie Avery, Community Services Director
Dave Hunt, City Engineer
Adria M. Jimenez, City Clerk
Todd Mattern, Police Chief
Steven Mendoza, Community Development Dir.
Tony Brandyberry, Public Services Supt.

3. ORAL COMMUNICATIONS

At 5:04 p.m., Mayor Stephens opened Oral Communications. Having no one come forward to speak, Mayor Stephens closed Oral Communications.

4. SPECIAL ORDERS OF THE DAY

Review of the Proposed Fiscal Year 2011-12 Operating Budget

This report provides the City Council with the preliminary Fiscal Year 2011-12 Proposed Operating Budget.

Jeff Stewart, City Manager, provided opening comments and stated Ms. Agramonte, Finance Manager, will review and discuss, in detail, items related to the City's budget.

Ms. Agramonte advised she will review the proposed General Fund Revenues and Expenditures. Ms. Agramonte advised follow-up items, which included Laurel Park Debt Service, GASB 45, Internal Service Funds, Capital Improvement Fund possible consolidation, Revised Seven Year CIP, and any items from tonight's meeting will be addressed at the June 6th meeting.

Ms. Agramonte advised the City is projecting a small increase in the City's main revenue sources and provided information on the following revenue fund categories:

Property Tax represents 27.5% of General Fund revenues. Property tax revenues have continued to increase and an additional 2% increase is projected for Fiscal Year 2011-12. This revenue category includes secured, unsecured, lighting and landscape, supplemental, prior years, property in-lieu of VLF, and property transfer tax.

Sales Tax represents 20.4% of General Fund revenues. Receipts in this category are projected to increase about \$89,000 over last fiscal year. \$75,000 of this increase is attributed to the negotiated sales tax guarantee built into the City's refuse disposal contract. An additional 2% increase is attributed to projected economic growth in the City, however, this is reduced by a negative \$20,000 projected "triple flip" adjustment anticipated in Fiscal Year 2011-12.

Transient Occupancy Tax increased in FY 2010-11, and are projected at \$82,000 for FY 2011-12.

Utility Tax represents 19.1% of the City's General Fund. This revenue source is projected to show a minimal increase of \$13,000. The City collects 6% utility user tax on electricity, natural gas, telephone and water utilities. This revenue stream has remained fairly level with the prior year, showing only a slight, less than 1%, overall increase for FY 2011-12.

Franchise Fees is projected to increase by 1.6% in FY 2011-12. Fees are assessed on electricity, gas, water, waste disposal, and cable television in the City.

Business Licenses are projected to show a 1.3% CPI increase.

Licenses and Permits have declined 14% FY 2010-11. A slight \$8,000 increase is projected in this revenue category for FY 2011-12.

Fines and Forfeitures are revenues collected from traffic and vehicle code violations. FY 2011-12 is projecting \$570,500 in revenues.

Recreation Service revenues are projected at \$1,176,000 remaining level with the prior fiscal year. Estimates include revenues from services related to the operation of the pool which was incorporated into the General Fund.

Investment Earnings have continued to decline as LAIF interest rates are at an all time low 0.51% as of March 2011. It is projected that interest rates will increase slightly in FY 2011-12; \$30,000 in revenues is projected.

Revenues from Other Agencies or Intergovernmental revenues are revenues from grants, motor vehicle in lieu revenues and other reimbursements. Revenues are estimated at \$57,600.

Miscellaneous Revenues accounts for one-time revenue items such as the sale of property, insurance reimbursements, funds collected for damages to city property and other miscellaneous receipts. The City received \$250,000 from the sale of the street sweeper, and \$128,400 in workers compensation insurance reimbursements. This category is projected to total \$60,000 in FY 2011-12.

The **Transfer In** category accounts for transfers from other funds to offset operational expenditures. For FY 2011-12 it is projected that the general fund will receive transfers in from the Gas Tax Fund (\$177,000) for the allowable gas tax contribution to the City's street maintenance program, the Public Safety Augmentation Fund (\$82,031) to partially offset the cost of Police Services, the Supplemental Law Enforcement Services Fund (\$33,737) and the Office of Traffic Safety Fund (\$88,505) to partially offset the cost of the Police Department motor officer program and other expenditures pertaining to traffic safety programs.

General Fund Expenditures

Ms. Agramonte reviewed General Fund Expenditures. She noted that departmental expenditures are projected to increase slightly with a total requested budget of \$11,170,442 from the original budget of \$10.407 million. She noted that this does include the \$90,000 for the Los Alamitos Blvd. Revitalization Project.

Ms. Agramonte reviewed the below departmental expenditures highlights and changes:

Administration consists of City Council, City Manager, Administrative Services, and City Attorney. Total requested budget for City Administration for FY 2011-12 is \$1,285,243. This represents a \$101,597 decrease over the FY 2010-11 budget. This includes savings from the proposed reorganization of the Administrative Services Division, as well as the proposed replacement of the full-time Department Secretary position with a part-time Department Secretary.

Police has several divisions: Administration, Patrol, Investigation, Records, Communications Technology, Community Outreach, Youth Programs, Traffic, and Emergency Preparedness. For FY 2011-12 the Police Department is requesting \$5,138,088. This represents a 3.98% increase or \$196,695. The increases are due to: 1) the omission of a vacant Police Officer position in the previous budget; 2) negotiated MOU adjustments; and, 3) West Comm Share \$15,000 contract reduction.

Community Development divisions include: Administration, Planning, Neighborhood Preservation, Building Inspection, and NPDES. The total requested budget for FY 2011-12 is \$643,505, which is a 14.65% or \$82,247 increase when compared to last fiscal year. The increase is due to the proposed reinstatement of the Department Secretary position and a projected \$25,000 increase in the NPDES contract.

Public Works is broken down into four divisions: Administration, Street Maintenance, Building Maintenance, and City Engineer. Requested for FY 2011-12 is \$1,566,077, which is an increase of \$14,816. Savings will be realized from the elimination of street sweeping. There are slight increases in operating line items; and, the line item for street repairs resulting from accident damages to City property was re-established.

Recreation and Community Services divisions are: Administration, Community Services, Day Camp, Playgrounds, Sports, Special Classes, and Special Events. For FY 2011-12 the Recreation Department is requesting \$1,597,862, which is a \$61,264 increase. This represents a proposition to reinstate the second Recreation Supervisor position. In order to offset the costs of this position, the department has recommended commensurate reductions in part-time staffing and other expenditure line items, as well as several proposed revenue enhancements.

Mayor Pro Tem Edgar referred to the Parks, Recreation and Cultural Arts Committee Meeting Minutes and asked for information regarding a recent committee report which outlined 13 items the committee would like to reinstate as part of the budget process.

Angie Avery, Community Services Director, advised that the committee has applied careful thought and analysis to budget cuts in the past years. The Committee agreed on many items but was not able to bring back a confirmed list. The department was able to increase revenues and will be using their recommendations as a guideline. Currently, the Recreation and Community Services budget is off-set by 74% of department revenues.

Insurance/Other is projected at \$727,000 in FY 2011-12.

Transfers Out are proposed at \$212,667 to pay for the Laurel Park Certificates of Participation.

Ms. Agramonte advised overall the General Fund is projecting expenditures totaling \$11,138,955, a 2.05%, or \$223,755 increase from last year. She further stated that staff estimates that the General Fund will complete the current year with a \$898,362 surplus. Of this, \$571,000 is derived from one-time sources that are not projected to recur in future years. For Fiscal Year 2011-12, a \$79,551 surplus is projected. This projection includes \$165,000 in one time resources derived from proposed transfers from special revenue funds and insurance reimbursements.

Mayor Pro Tem Edgar asked Ms. Agramonte to provide details in regards to the proposed \$898,362 surplus.

Ms. Agramonte advised \$600,000 savings was realized at Mid-Year; \$175,000 was a transfer from the Pool Fund; and, the remaining savings were realized in departmental expenditure reductions.

Ms. Agramonte reviewed a comparison chart of General Fund Revenues to Expenditures from FY 2005-06 through FY 20011-12. FY 2005-06 was the first year that the Certificate of Participation Bonds were issued for the acquisition of Laurel Park and approximately \$2 million was transferred to the Capital Projects fund for the purchase.

In FY 2007-08 the budget adopted a \$600,000 General Fund deficit. This is the year the City joined the CJPIA and \$637,000 was budgeted, representing a \$200,000 increase in insurance costs over prior year's costs. The Police budget increased by over \$700,000 due to MOU negotiations. \$267,000 was transferred to the Technology Fund for the purchase of the new Finance Software; and, \$426,000 was transferred to the Garage Fund for vehicle and equipment purchases.

Ms. Agramonte noted in both FY 2008-09 and 2009-10, revenues exceeded expenditures in spite of drastic revenue declines.

Ms. Agramonte referred to a General Fund Balance bar graph and noted the fund balance is projected to increase to \$7.1 million in FY 2010-11 and reach \$7.2 million in FY 2011-12.

Ms. Agramonte reviewed additional items for Council consideration which included the School Resource Officer position, banners on City streets, Christmas decorations, Website upgrade, and Web Streaming of Council Meetings.

Mr. Tony Brandyberry provided information regarding the banners on City streets and stated approximately \$50,000 is needed for infrastructure to support the banners; banners costs are approximately \$800 - \$1,000 per banner; and, it is approximately \$200 for installation costs per banner per side.

Council Member Kusumoto inquired as to the location and the number of banners (Los Alamitos Blvd. or Katella Ave.) and, also asked if the banners would be used for internal (City) purposes as well, such as recreation events. Council Member Kusumoto asked if there would be a return on the investment of banners if the City publicized events.

Ms. Avery advised she does not believe there is a necessity for additional publicity for the City's Parks and Recreation events. And, at this time it would be hard to quantify.

Additional discussion ensued regarding banners on City streets.

Council Member Poe asked for information on the Christmas decorations and why the estimate was so high.

Ms. Avery provided information on the proposed Christmas decorations for the City. The estimate is approximately \$25,000 and Ms. Avery provided a cost break-out for refurbishment and replacement and new banners and decorations.

Council Member Graham-Mejia requested additional information on why it is more for new banners. She stated she liked the idea, but does not believe it is something the City can afford.

Ms. Avery advised the estimate is more for new banners because it is a lease program.

Mayor Pro Tem Edgar stated he does not have an issue if the City Council chooses not to consider this item. Mayor Pro Tem Edgar inquired as to permission requirements for hanging banners on Katella Avenue.

Mr. Hunt stated portions on Los Alamitos Blvd are owned by the City and the City can hang banners at those locations; however, on the streets where the right-of-way carries back and forth, the City would need to obtain permission. On Katella Ave., the City owns all but one lane on the north side and there are sections where we own the whole street; however, again we would have to be on the western side. The City would have to be selective of where the banners are placed.

Mayor Pro Tem Edgar stated he is supportive of funding the School Resource Officer; the website upgrade and possibly web streaming using LATV franchise fees.

Mayor Stephens confirmed what Transient Occupancy Taxes (TOT) are; and, inquired if red light camera traffic citation funds are included in Fines and Forfeitures.

Chief Mattern responded in the affirmative and advised the City is in year six of the program. The Police Department has seen a steady decline in violations.

Mayor Stephens inquired why is there a decrease in the West Comm contract.

Mr. Stewart advised there is a recommendation to decrease the contract by \$15,000.

Mayor Stephens stated he believes the School Resource Officer is important and asked if it is possible to obtain corporate sponsorship for the funding of banners.

Mr. Stewart advised banner sponsorships create possible free speech issues for the City.

Council Member Graham-Mejia inquired as to the amount of the grant for the School Resource Officer, and why is the recommendation for funding the position for nine months.

Chief Mattern advised the grant amount is for an entry-level police officer position, \$108,000, for the first three years; the City will have to fund in year four and beyond.

Mr. Stewart advised the City is recruiting now for the position which will be hired in September/October when school begins.

Council Member Graham-Mejia asked how many police officer positions are currently unfunded.

Chief Mattern advised there are currently two positions unfunded.

Council Member Graham-Mejia stated the City should consider the banners in the future when funding is available; she is supportive of upgrading the City's website and web streaming of Council Meetings.

Council Member Kusumoto asked if there are any liability issues with the banners. Council Member Kusumoto stated he is supportive of the School Resource Officer and updating the City's website. In regards to the Christmas decorations, he stated he is not sure of the value.

Council Member Poe stated she is supportive of the School Resource Officer, but believes, the City should not have to bear the entire costs; it should be split between the local cities and the school district. Council Member Poe stated she was not in favor of spending funds on the banners. She stated she did not know the Christmas decorations would be so expensive and stated it may be a possibility to have businesses, organizations, or individuals sponsor the decorations. She stated she was in favor of the website upgrade.

Mayor Pro Tem Edgar recommended funding 1/3 of the School Resource Officer.

Mr. Stewart recommended holding off on funding the position until the grant awards are distributed.

Mayor Pro Tem Edgar asked for information on the City's contract with California Joint Powers Insurance Authority and requested the City research other insurance options.

Council Member Graham-Mejia inquired about the following: fencing at Orville Lewis Park; phone notification system; license & permits; using surplus funds to provide additional services to assist residents; Utility Users Tax; addition of City staff; a City Investment Plan; and, reorganization of the Finance Department.

Mr. Stewart stated the fencing at Orville Lewis Park has been funded and provided costs. He addressed the addition of City staff, and provided information on the reorganization of the Finance Department.

Chief Mattern advised information regarding the phone notification system will be provided at the next budget meeting.

Council Member Kusumoto requested projections for utility companies on UUTs.

Mr. Stewart advised the City is trying to obtain detailed information on trends from the utility companies.

Council Member Kusumoto asked for a break-down of what is included in the Administration Department budget, specifically the City Clerk's budget.

Ms. Agramonte advised the City Clerk is included in the City Manager's budget.

Council Member Poe commented on the NPDES contract increase of \$25,000 and stated it continually increases and believes the businesses have not had good education on NPDES.

Council Member Poe inquired as to the Summer Park Programs in the City.

Ms. Avery advised there are two parks that host summer programs: Orville Lewis and Little Cottonwood Parks.

Council Member Graham-Mejia stated that if the City does have surplus funds she would like to see that money go back to the park programs.

Mr. Stewart advised these follow-up items will be reviewed at the next budget meeting: Laurel Park Debt Service, GASB 45, Internal Service Funds, Capital Improvement Funds, and Revised Seven-Year Capital Improvement Plan.

5. ADJOURNMENT

Mayor Stephens adjourned the meeting at 6:38 p.m.

Kenneth Stephens, Mayor

ATTEST:

Adria M. Jimenez, CMC
City Clerk

ITEM NO. 7A2

THESE MINUTES ISSUED FOR
INFORMATION ONLY AND ARE
SUBJECT TO AMENDMENT AND
APPROVAL AT THE NEXT
MEETING

MINUTES OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS

SPECIAL MEETING – June 13, 2011

1. CALL TO ORDER

The City Council met in Special Session at 8:32 a.m., Monday, June 13, 2011 in the Council Chambers, 3191 Katella Avenue, Mayor Stephens presiding.

2. ROLL CALL

Present: Council Members: Kusumoto, Poe
Mayor Pro Tem Edgar, Mayor Stephens

Excused: Council Member: Graham-Mejia

Present: Staff: Jeffrey L. Stewart, City Manager
Dave Hunt, City Engineer
Adria M. Jimenez, City Clerk
Steven Mendoza, Community Development
Director

3. ORAL COMMUNICATIONS

At 8:34 a.m., Mayor Stephens opened Oral Communications. Having no one forward to speak, Mayor Stephens closed Oral Communications.

4. SPECIAL ORDERS OF THE DAY

Approval of Final Parcel Map 2010-119 (3742 Katella Avenue)

The Final Parcel Map 2010-119 for the subdivision of airspace of a single parcel for condominium purposes, located at 3742 Katella Avenue, is ready for submission to the County Recorder's Office for final review.

Dave Hunt, City Engineer provided a summary and answered questions from the City Council.

Motion/Second: Poe/Edgar

Unanimously Carried (Graham-Mejia "Excused")

1. Adopted Resolution No. 2011-09, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, APPROVING FINAL PARCEL MAP NO. 2010-119 FOR THE PROPERTY LOCATED AT 3742 KATELLA AVENUE"; and,
2. Determined that recording of Final Parcel Map 2010-119 will not be in violation of any of the provisions of Section 66474, 66474.1, and 66474.2 of the Subdivision Map Act; and,

3. Determined that the proposed subdivision, together with the provisions for their design and improvement, is consistent with the General Plan required by Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 of the Government Code, or any specific plan adopted pursuant to Article 8 (commencing with Section 65450) of Chapter 3 of Division 1 of the Government Code; and,
4. Directed the City Clerk to endorse on the face of Final Parcel Map 2010-119, the certificate which embodies the approval of said maps and submit maps to the County Recorder of Orange County for recording.

5. ADJOURNMENT

Mayor Stephens adjourned the City Council Meeting at 8:46 a.m.

Kenneth Stephens, Mayor

ATTEST:

Adria M. Jimenez, CMC
City Clerk

**MINUTES OF THE CITY COUNCIL
OF THE CITY OF LOS ALAMITOS**

REGULAR MEETING – June 6, 2011

ITEM NO. 7A3

**THESE MINUTES ISSUED FOR
INFORMATION ONLY AND ARE
SUBJECT TO AMENDMENT AND
APPROVAL AT THE NEXT
MEETING**

1. CALL TO ORDER

The City Council met in Regular Session at 7:36 p.m., Monday, June 6, 2011 in the Council Chambers, 3191 Katella Avenue, Mayor Stephens presiding.

2. ROLL CALL

Present: Council Members: Graham-Mejia, Kusumoto, Poe
Mayor Pro Tem Edgar, Mayor Stephens

Absent: Council Members: None

Present: Staff: Jeffrey L. Stewart, City Manager
Sandra Levin, City Attorney
Anita Agramonte, Finance Director
Angie Avery, Community Services Director
Dave Hunt, City Engineer
Adria M. Jimenez, City Clerk
Todd Mattern, Police Chief
Steven Mendoza, Community Development Dir.

3. PLEDGE OF ALLEGIANCE

Mayor Pro Tem Edgar led the Pledge of Allegiance.

4. INVOCATION

Mayor Stephens gave the Invocation.

5. PRESENTATIONS

A. Orange County United Way, Habitat for Humanity, and Casa Youth Shelter

Commendations were presented to Orange County United Way, Habitat for Humanity and Casa Youth Shelter by the Mayor. Pictures with Council followed.

B. Los Alamitos Police Department

Mayor Stephens presented members of the Police Department with a Commendation. Pictures with Council followed.

6. ORAL COMMUNICATIONS

Judy Klabouch, Chamber of Commerce, provided information on the upcoming Chamber of Commerce events: Citizen of the Year Appreciation Dinner and the Chamber of Commerce Golf Tournament.

Cathie Salai, resident, expressed her disappointment regarding the City Employee MOU approved by City Council. Ms. Salai pointed out necessary sidewalk repairs in the City and stated funds should be used to improve the City

for the residents, instead of employee benefits. Ms. Salai also asked what is the City doing to be "business-friendly."

Alice Jempso, resident, commented on Item #9B, Explanation of Los Alamitos' Peddler/Solicitor Regulations. Ms. Jempso stated she was pleased to see this item on the agenda.

Javier Mejia, resident, advised that the traffic signal on Humbolt has exposed wiring and he believes it is a safety issue. Mr. Mejia also suggested a solution for graffiti, and asked for an alternative to the speed signs in the alleys. Mr. Mejia also requested an update on the possibility of Lexington going straight-thru across Katella Avenue.

Jake Black, expressed his approval of the Rossmoor Shopping Center.

Dean Grose, resident, commented on Item #8D, stating he believed Katella was to be included as part of the Smart Street Program. Mr. Grose stated his biggest concern of OCTA being the project director is that the City may lose some impact and feedback. Mr. Grose encouraged the City Council to ensure that the City does have the opportunity to provide feedback on the project.

7. REGISTER OF MAJOR EXPENDITURES

June 6, 2011.

Motion/Second: Graham-Mejia/Edgar

Unanimously carried: The City Council approved the Register of Major Expenditures for June 6, 2011, in the amount of \$748,516.08.

Roll Call Vote

Council Member Graham-Mejia	Aye
Council Member Kusumoto	Aye
Council Member Poe	Aye
Mayor Pro Tem Edgar	Aye
Mayor Stephens	Aye

8. CONSENT CALENDAR

All Consent Calendar items may be acted upon by one motion unless a Council Member requests separate action on a specific item.

Mayor Stephens requested Consent Calendar Item #8E be pulled for discussion; Council Member Graham-Mejia requested Consent Calendar Item #8D be pulled for discussion.

Motion/Second: Graham-Mejia/Poe
Approved the following Consent Calendar Items:

*****CONSENT CALENDAR*****

A. Approval of Minutes

Approve Minutes of the Regular Meeting – May 16, 2011.

B. Warrants
June 6, 2011.

C. Pool Service and Maintenance Contract
This agenda item is a contract for service and maintenance of the pool.

Authorized the City Manager to execute a contract with Decksides Pool Service for service and maintenance at the pool. This contract is for the first optional extension year of a one-year contract with two optional one-year extensions. The contract originated in FY 2010-2011. The contract is not to exceed \$20,000 annually.

*****END OF CONSENT CALENDAR*****

8D. Memorandum of Understanding C-1-2466 for the Katella Avenue Traffic Light Synchronization Program Project

The Orange County Transportation Authority (OCTA) project, entitled Katella Avenue Traffic Light Synchronization Program Project, will synchronize 58 traffic signals from the western border of Orange County in the City of Los Alamitos, to the intersection of Santiago Canyon Road and Cannon Street in the City of Orange. The project will upgrade traffic signal equipment, as well as update signal timing parameters to reflect current traffic patterns. Katella Avenue was selected due to its high volume of traffic and regional significance. The project will be managed and constructed by OCTA.

The Memorandum of Understanding (MOU) will establish a relationship between the OCTA and agencies that have traffic signals on Katella Avenue. The MOU allows OCTA to administer a project within all the jurisdictions with a common goal of signal synchronization. The OCTA project will be managed and constructed with oversight from each agency pertaining to the agency's individual signals.

Mr. Hunt provided a staff report and answered questions from the City Council.

Motion/Second: Poe/Edgar

Carried 4/1 (Graham-Mejia "Abstain")

Approved the Memorandum of Understanding C-1-2466 by and between Orange County Transportation Authority and cities of Anaheim, Cypress, Garden Grove, Los Alamitos, Orange, Stanton, and Villa Park, and the County of Orange and the State of California Department of Transportation for Katella Avenue Traffic Light Synchronization Program Project.

8E. Reject all Bids for the Construction of Laurel Park Rehabilitation (CIP No. 10/11-04) and Direct the City Engineer to Re-advertise

On May 18, 2011, construction bids were publicly opened for the construction of Laurel Park Rehabilitation (CIP No. 10/11-04). After a thorough review of all bids submitted, staff determined that the bid submitted by DD Systems, Inc. to be the lowest responsible bid in the total bid amount of \$249,585.63. This bid amount exceeds the appropriated construction budget for this project, and staff recommends that the City Council reject all bids and re-advertise.

Mayor Stephens commented on this item and noted his concerns were resolved during the previous budget meeting.

Motion/Second: Stephens/Graham-Mejia
Unanimously Carried:

1. Rejected all bids received for the construction of Laurel Park Rehabilitation (CIP No. 10/11-04); and,
2. Authorized the City Engineer to re-advertise for bids to construct the project at the lowest cost to the City.

9. DISCUSSION ITEMS

A. Acceptance of Donation of Bench and Tree

This report seeks City Council acceptance of the donation of a park bench and tree to be located at Little Cottonwood Park

Angie Avery, Community Services Director, provided the staff report and answered questions from City Council.

Motion/Second: Poe/Graham-Mejia
Unanimously Carried: Authorized the acceptance of the donation of a concrete bench and tree to be located at Little Cottonwood Park.

B. Explanation of Los Alamitos' Peddler/Solicitor Regulations

Recent activity has led the City to review its procedures related to Peddler/Solicitor Permit regulations. Staff has outlined how the City of Los Alamitos regulates parties who go door-to-door and the level of regulations the Peddlers, Solicitors and Canvassers are subjected to. This review may be an opportunity to discuss this important issue and direct staff to make future changes in the code.

Steven Mendoza, Community Development Director, provided the staff report and answered questions from the City Council.

The City Council directed staff to research the different options of informing residents of peddlers/solicitors in the City.

C. Approval of Professional Service Agreement (PSA) with The Planning Center/DCE for General Plan Update and Approval of Corresponding Budget Amendments

The following is a summary of the consultants considered to complete the City's General Plan Update including rating, interview, and negotiations with the proposers in response to the City's Request for Proposal (RFP).

Steven Mendoza, Community Development Director, provided a brief staff report to the City Council.

Ad-Hoc Subcommittee Members Council Member Kusumoto and Mayor Pro Tem Edgar provided additional information to members of the City Council.

Motion/Second: Stephens/Poe
Carried: 4/1 (Graham-Mejia "No")

1. Authorized the City Manager to approve a Professional Services Agreement with The Planning Center/DCE for the General Plan Update in the amount of \$429,478.00; and,
2. Authorized staff to amend the proposed budget for Fiscal Year 2011-2012 for year one of the Agreement in the amount of \$150,000.00; and,
3. Authorized staff to amend the proposed budget for Fiscal Year 2011-2012 in the amount of \$25,000.00 for the in-house peer review of the General Plan including Engineering, Traffic, and Legal.

D. Consideration and Possible Action Regarding the Draft Report of the Orange County Redistricting Commission

The Orange County Redistricting Commission recently released a map depicting draft boundaries of Assembly and Congressional Districts in Orange County. This item has been placed on the City Council agenda for the purpose of determining whether or not the Council seeks to comment on the process and/or submit correspondence regarding the configuration of the draft districts.

Jeff Stewart, City Manager, stated the OC Redistricting Commission is starting to move forward on drawing new boundaries for the Senate and Assembly Districts in Southern California. It looks like there has been a significant change on the first preliminary draft maps which are attached to the staff report. It looks like the assembly district boundaries are changing to include Long Beach and Costa Mesa, and exclude Cypress and La Palma. These are significant changes in boundaries and this item was brought forward for Council direction.

After Council discussion, consensus was reached to direct the City Manager to draft a letter: 1) in opposition to the recommended redistricting boundary changes; 2) in support of the Association of California Cities –

Orange County's position; and, 3) forward a copy of the City's letter to the surrounding Cities.

10. MAYOR AND COUNCIL INITIATED BUSINESS

Council Announcements

Mayor Stephens reported on his attendance at the Southland Credit Union's 75th Anniversary event; the Chamber of Commerce Citizen of the Year Dinner; the OCFA's Board of Directors Meeting and Budget and Finance Committee Meetings.

Council Member Graham-Mejia asked if it was possible to conduct Police Officer Association negotiations from the dias in open session. Ms. Graham-Mejia requested the City address the safety items brought forward by Ms. Jempsa and the Lexington traffic signal concern brought forward by Mr. Mejia. Ms. Graham-Mejia requested the City spend money on repairing the sidewalks to reduce trip hazards. She congratulated the Los Alamitos High School graduating class and the elementary schools.

Mr. Stewart advised Council Member Graham-Mejia that negotiations are unable to be conducted in public.

Council Member Kusumoto reported on his attendance at Southland Credit Union's 75th Anniversary Celebration and the Chamber of Commerce's Citizen of the Year Dinner. Mr. Kusumoto asked if the City purchased a table for the event and asked for protocol on the City purchasing tables for events.

Mr. Stewart advised the City did not purchase a table; however, a table was purchase by two individual Council Members and Wildan.

Council Member Poe reported on her attendance at the West Comm Meeting, the OC County Library Meeting, the Southland Credit Union's 75th Anniversary; the Girl Scout Fly-Up Ceremony and announced the recipients of the Girl Scout Gold Awards. She advised she attended the Chamber of Commerce's Citizen of the Year Dinner and the Los Alamitos Police Officers Association Dinner at Preveza. She reported on the past Picnic at the Plaza event held on Thursday and invited residents to attend the next event. Council Member Poe congratulated Ms. Okina who was named Orange County's Principal of the Year. Council Member Poe asked if the City was working with the Sewer District in regards to NPDES inspections; stated she believed the Lexington signal issue was given to the Traffic Commission; she asked for an update on the possibility of allowing U-turns on Katella Ave.; and, asked staff to review the possibility of either one-way alleys or streets to assist with traffic concerns.

Mr. Stewart provided additional information on meeting with the Sewer District, noting the District provided information regarding a possible NPDES consultant who is less expensive.

Mayor Pro Tem Edgar reported on his attendance at the Girl Scout Bridging Ceremony, the Memorial Day Ceremony held at Forrest Lawn; and Southland Credit Union's 75th Anniversary. Mayor Pro Tem Edgar commented on the Los Alamitos Police Officer's Association Dinner and the Chamber of Commerce's Citizen of the Year Dinner. Mayor Pro Tem Edgar provided an update on the RMC project and thanked Mr. Hunt for his assistance with moving the project forward. Mayor Pro Tem Edgar stated he believed the budget workshops have been productive and stated the objective is to confirm the budget is structurally and fiscally sound and rebuild the reserve back to \$8 million dollars. Mayor Pro Tem Edgar advised he was nominated and elected as the Vice-Chair for the Orange County Sanitation District and advised he is traveling to Washington D.C. next week to lobby for wastewater. Information on his travel will be provided to Council Members. He commented on Council Member Poe's report on the Library Board. Mayor Pro Tem Edgar congratulated his son, Ethan Edgar, on graduating from Oak Middle School.

11. ITEMS FROM THE CITY MANAGER

City Manager Stewart had no report.

12. CLOSED SESSION

City Attorney Levin advised the scheduled Closed Session is cancelled.

A. Conference with Legal Counsel

The City Council finds, based on advice from legal counsel, that discussion in open session will prejudice the position of the local agency in the litigation.

Existing Litigation (G.C. 54956.9(a))

AT&T Mobility Wireless Data Services Tax Litigation, Northern District of Illinois Case No. 1:10-CV-2278 and

Anticipated Litigation (G.C. 54956.9b(3)(C))

Receipt of Claim pursuant to Tort Claims Act from New Cingular Wireless PCS LLC threatening litigation (copy available for public inspection in City Clerk's Office). A point has been reached where, in the opinion of the City Council on the advice of its legal counsel, based on the below-described existing facts and circumstances, there is a significant exposure to litigation against the City Council.

13. ADJOURNMENT

The City Council Meeting was adjourned at 9:38 p.m. in memory of Officer Andrew Garton and Jeff Thompson.

Kenneth Stephens, Mayor

ATTEST:

Adria M. Jimenez, CMC
City Clerk

CITY OF LOS ALAMITOS
A/P Warrants
July 18, 2011

Pages:

01-07	\$ 72,262.43	A/P Warrants	07/18/2011
08	\$ 2,500.00	Advance Warrant	07/06/2011

Total **\$ 74,762.43**

Statement:

I hereby certify that the claims or demands covered by the foregoing listed warrants have been audited as to accuracy and availability of funds for payment thereof. Certified by Anita Agramonte, Finance Director.



this 13th day of July, 2011

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
ADAMSON POLICE PRODUCTS	HAND HELD STOP SIGNS	GENERAL FUND	TRAFFIC	89.52
			TOTAL:	89.52
ALAMITOS AUTO PARTS	OIL & OIL FILTERS	GARAGE FUND	GARAGE	129.40
	BRAKES & ROTORS	GARAGE FUND	GARAGE	280.87
	RETURN - OIL	GARAGE FUND	GARAGE	46.53
	BRAKES	GARAGE FUND	GARAGE	103.14
			TOTAL:	466.88
ALL AMERICAN SIGN COMPANY	LETTERING & DECALS	GARAGE FUND	GARAGE	202.19
			TOTAL:	202.19
ALLIANT INSURANCE SERVICES, INC.	LIABILITY INS/CC RENTALS	GENERAL FUND	SPECIAL CLASSES	446.93
			TOTAL:	446.93
ANDERSON ELECTRICAL & LIGHTING SERVICE	ELECTRICAL REPAIR	BUILDING IMPROVEME	CAPITAL PROJECTS	80.00
			TOTAL:	80.00
AT & T	BILL CYCLE 6/19-7/17	GENERAL FUND	COMMUNICATIONS TECHNOL	356.69
			TOTAL:	356.69
AT & T MOBILITY	BILL CYCLE 5/24-6/23	GENERAL FUND	PATROL	389.98
			TOTAL:	389.98
BEE BUSTERS, INC.	BEE REMOVAL	GENERAL FUND	PARK MAINTENANCE	125.00
	BEE REMOVAL	GENERAL FUND	PARK MAINTENANCE	125.00
			TOTAL:	250.00
DANIEL BRANDT	COMPUTER LOAN	GENERAL FUND	NON-DEPARTMENTAL	1,942.61
			TOTAL:	1,942.61
BUSINESS PRODUCTS DISTRIBUTORS	OFFICE SUPPLIES	GENERAL FUND	ADMINISTRATIVE SERVICE	199.97
	OFFICE SUPPLIES	GENERAL FUND	ADMINISTRATIVE SERVICE	33.91
	OFFICE SUPPLIES	GENERAL FUND	ADMINISTRATIVE SERVICE	25.14
	OFFICE SUPPLIES	GENERAL FUND	CITY ENGINEER	16.19
			TOTAL:	275.21
CAL STATE GLASS & MIRROR	INSTALL MIRRORS	GENERAL FUND	SPECIAL CLASSES	750.00
			TOTAL:	750.00
CAMEL FINANCIAL, INC.	DAY CAMP TRANSPORTATION	GENERAL FUND	SPECIAL CLASSES	330.00
			TOTAL:	330.00
CDW GOVERNMENT, INC.	APPLE IMAC PC	TECHNOLOGY REPLACE	ADMINISTRATIVE SERVICE	2,396.58
			TOTAL:	2,396.58
COUNTY OF ORANGE TREASURER-TAX COLLECT	OCATS 06/11	GENERAL FUND	COMMUNICATIONS TECHNOL	305.00
			TOTAL:	305.00
MIGUEL DE LA TORRE	TUITION REIMBURSEMENT	GENERAL FUND	STREET MAINTENANCE	1,575.00
			TOTAL:	1,575.00
GANAHL LUMBER COMPANY	PAINT SUPPLIES	GENERAL FUND	EMERGENCY PREPAREDNESS	23.35
	PAINT	GENERAL FUND	EMERGENCY PREPAREDNESS	69.58
	SAFETY EQUIPMENT	GENERAL FUND	STREET MAINTENANCE	9.33
	GATE REPAIR	GENERAL FUND	STREET MAINTENANCE	41.80

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
	IRRIGATION PARTS	GENERAL FUND	PARK MAINTENANCE	1.19
	LIGHT BULBS	GENERAL FUND	BUILDING MAINTENANCE	11.51
	LIGHT BULBS	GENERAL FUND	BUILDING MAINTENANCE	22.80
	WOOD & PAINT	GENERAL FUND	BUILDING MAINTENANCE	95.34
	ELECTRICAL SUPPLIES	BUILDING IMPROVEME	CAPITAL PROJECTS	3.89
	DOLLEY WHEELS	GARAGE FUND	GARAGE	17.38
			TOTAL:	296.17
GLENN E. THOMAS CO.	RADIATOR	GARAGE FUND	GARAGE	282.50
	COOLING FAN	GARAGE FUND	GARAGE	18.11
			TOTAL:	300.61
GLOBALSTAR USA	SATELLITE PHONE 06/11	GENERAL FUND	EMERGENCY PREPAREDNESS	26.34
	SATELLITE PHONE 07/11	GENERAL FUND	EMERGENCY PREPAREDNESS	26.34
			TOTAL:	52.68
GOLDEN STATE WATER COMPANY	BILL CYCLE 4/20-6/21	GENERAL FUND	STREET MAINTENANCE	307.58
	BILL CYCLE 4/20-6/21	GENERAL FUND	PARK MAINTENANCE	289.30
			TOTAL:	596.88
HARRY'S PLUMBING AND DRAINS, INC.	REPAIR SINK	GENERAL FUND	BUILDING MAINTENANCE	78.00
			TOTAL:	78.00
HARTZOG & CRABILL, INC.	LOS AL BLVD. ANALYSIS	GENERAL FUND	CITY ENGINEER	8,450.00
			TOTAL:	8,450.00
HI-WAY SAFETY INC.	MAINTENANCE YARD SIGNS	GENERAL FUND	STREET MAINTENANCE	159.04
	POOL SIGNS	GENERAL FUND	BUILDING MAINTENANCE	159.04
	4TH OF JULY SIGNS	GENERAL FUND	SPECIAL EVENTS	1,448.55
			TOTAL:	1,766.63
HYDRO-SCAPE PRODUCTS, INC.	FERTILIZER - MCAULIFFE	GENERAL FUND	PARK MAINTENANCE	752.99
	FERTILIZER - MCAULIFFE	GENERAL FUND	PARK MAINTENANCE	504.95
			TOTAL:	1,257.94
J & S STRIPING	RESTRIPE BLOOMFIELD	GAS TAX	CAPITAL PROJECTS	1,271.00
	RESTRIPE BLOOMFIELD	TRAFFIC IMPROVEMEN	CAPITAL PROJECTS	504.00
			TOTAL:	1,775.00
JDS TANK TESTING & REPAIR	DESIGNATED OPERATOR 06/11	GARAGE FUND	GARAGE	145.00
			TOTAL:	145.00
JUDICIAL DATA SYSTEMS CORPORATION	CITATIONS 05/11	GENERAL FUND	TRAFFIC	259.10
			TOTAL:	259.10
K&S AIR CONDITIONING, INC.	A/C REPAIR	GENERAL FUND	BUILDING MAINTENANCE	268.70
			TOTAL:	268.70
KREUZER CONSULTING GROUP	PAVEMENT MANAGEMENT	MEASURE M	CAPITAL PROJECTS	4,150.00
			TOTAL:	4,150.00
KUSTOM IMPRINTS	PARKS PROGRAM BANNER	GENERAL FUND	PLAYGROUNDS	229.50
	T-BALL T-SHIRTS	GENERAL FUND	SPECIAL CLASSES	439.13
			TOTAL:	668.63
COREY LAKIN	TRAINING LUNCH	GENERAL FUND	AQUATICS	109.84

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
	TRAINING LUNCH	GENERAL FUND	AQUATICS	29.39
			TOTAL:	139.23
TING LIU	INSTRUCTOR - ART	GENERAL FUND	SPECIAL CLASSES	161.53
			TOTAL:	161.53
LOS ALTOS TROPHY	T-BALL AWARDS	GENERAL FUND	SPECIAL CLASSES	391.50
			TOTAL:	391.50
OAD SCIENCE OF W. ORANGE COUNTY	SCIENCE CAMP	GENERAL FUND	SPECIAL CLASSES	514.80
			TOTAL:	514.80
MISC. VENDOR	REFUND - FIELD PREP FEES	GENERAL FUND	NON-DEPARTMENTAL	150.00
	REFUND - SECURITY DEPOSIT	GENERAL FUND	NON-DEPARTMENTAL	100.00
	REFUND - CRAFT CLASS	GENERAL FUND	NON-DEPARTMENTAL	52.00
			TOTAL:	302.00
NEXTEL COMMUNICATIONS	TRAFFIC CALMING SIGN	GENERAL FUND	TRAFFIC	17.48
			TOTAL:	17.48
NEXUS IS, INC.	CONTRACT MAINTENANCE	TECHNOLOGY REPLACE	ADMINISTRATIVE SERVICE	140.00
			TOTAL:	140.00
ORANGE COUNTY CITY MANAGER'S ASSOCIATI	2011-2012 DUES	GENERAL FUND	CITY MANAGER	325.00
			TOTAL:	325.00
PACIFIC TELEMAGEMENT SERVICES	PAY PHONE	GENERAL FUND	COMMUNICATIONS TECHNOL	82.64
			TOTAL:	82.64
PETTY CASH	SR. MEALS SUPPLIES	GENERAL FUND	NON-DEPARTMENTAL	6.59
	COFFEE SUPPLIES	GENERAL FUND	CITY COUNCIL	7.99
	COUNCIL SUPPLIES	GENERAL FUND	CITY MANAGER	21.90
	LUNCH MEETING	GENERAL FUND	CITY MANAGER	38.02
	MILEAGE REIMBURSEMENT	GENERAL FUND	ADMINISTRATIVE SERVICE	13.32
	MILEAGE REIMBURSEMENT	GENERAL FUND	ADMINISTRATIVE SERVICE	19.30
	MILEAGE REIMBURSEMENT	GENERAL FUND	ADMINISTRATIVE SERVICE	17.29
	BANKER'S BOXES	GENERAL FUND	ADMINISTRATIVE SERVICE	59.44
	PARKING	GENERAL FUND	POLICE ADMINISTRATION	3.75
	PARKING	GENERAL FUND	POLICE ADMINISTRATION	7.50
	WATER & ICE	GENERAL FUND	POLICE ADMINISTRATION	16.19
	FTO UPDATE	GENERAL FUND	POLICE ADMINISTRATION	50.00
	FTO UPDATE	GENERAL FUND	POLICE ADMINISTRATION	14.00
	PARKING	GENERAL FUND	RECORDS	6.00
	PARKING	GENERAL FUND	RECORDS	6.00
	USB HUB & CARD READER	GENERAL FUND	COMMUNICATIONS TECHNOL	43.48
	REFILL FIRE EXTINGUISHER	GENERAL FUND	EMERGENCY PREPAREDNESS	55.00
	SPRING CAMP SUPPLIES	GENERAL FUND	BUILDING MAINTENANCE	18.31
	50TH ANNIVERSARY PHOTOS	GENERAL FUND	RECREATION ADMINISTRAT	7.07
	50TH ANNIVERSARY PHOTOS	GENERAL FUND	RECREATION ADMINISTRAT	3.56
	50TH ANNIVERSARY FRAME	GENERAL FUND	RECREATION ADMINISTRAT	13.79
	LIFEGUARDING TEXTBOOK	GENERAL FUND	AQUATICS	35.00
	DAY CAMP PARKING	GENERAL FUND	DAY CAMP	14.00
	SPORTS LAUNDRY	GENERAL FUND	SPORTS	6.00
	VOLUNTEER LUNCH	GENERAL FUND	SPECIAL CLASSES	27.02
			TOTAL:	510.52

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
MARY PITTS	INSTRUCTOR - MARTIAL ARTS	GENERAL FUND	SPECIAL CLASSES	108.50
	INSTRUCTOR - MARTIAL ARTS	GENERAL FUND	SPECIAL CLASSES	200.20
			TOTAL:	308.70
PLAY-WELL TEKNOLOGIES	INSTRUCTOR - CAMP	GENERAL FUND	SPECIAL CLASSES	598.00
	INSTRUCTOR - CAMP	GENERAL FUND	SPECIAL CLASSES	239.20
	INSTRUCTOR - CAMP	GENERAL FUND	SPECIAL CLASSES	358.80
	INSTRUCTOR - CAMP	GENERAL FUND	SPECIAL CLASSES	1,196.00
		TOTAL:	2,392.00	
PLAYROOM ONE LLC	BOUNCE CAMP	GENERAL FUND	SPECIAL CLASSES	74.20
			TOTAL:	74.20
QUARTERMASTER	UNIFORM	GENERAL FUND	PATROL	89.86
	UNIFORM	GENERAL FUND	PATROL	64.19
	EQUIPMENT	GENERAL FUND	TRAFFIC	637.26
		TOTAL:	791.31	
REVENUE EXPERTS INC.	CODE ENFORCE CITES 05/11	GENERAL FUND	NEIGHBORHOOD PRESERVAT	14.00
			TOTAL:	14.00
RTC MEMORIAL MARKERS, INC.	50TH ANNIVERSARY BRICKS	GENERAL FUND	SPECIAL EVENTS	308.09
			TOTAL:	308.09
SMART & FINAL	4TH OF JULY SUPPLIES	GENERAL FUND	POLICE ADMINISTRATION	241.10
			TOTAL:	241.10
SOUTH COAST SUPPLY & GARDEN DAZE	SOIL - MCAULIFFE	GENERAL FUND	PARK MAINTENANCE	28.42
			TOTAL:	28.42
SOUTHERN CALIFORNIA EDISON	TRAFFIC SIGNAL	GENERAL FUND	STREET MAINTENANCE	59.05
	SPRINKLERS	GENERAL FUND	PARK MAINTENANCE	15.82
	SPRINKLERS	GENERAL FUND	PARK MAINTENANCE	163.89
			TOTAL:	238.76
SOUTHERN CALIFORNIA GAS	3614 FENLEY	GENERAL FUND	STREET MAINTENANCE	14.90
	3191 KATELLA	GENERAL FUND	BUILDING MAINTENANCE	210.90
	10911 OAK ST.	GENERAL FUND	BUILDING MAINTENANCE	57.10
			TOTAL:	282.90
SPARKLETT'S DRINKING WATER	SERVICE & RENTAL	GENERAL FUND	BUILDING MAINTENANCE	280.45
			TOTAL:	280.45
SPOT LIGHTING SUPPLIES, INC.	LIGHT BULBS	GENERAL FUND	BUILDING MAINTENANCE	62.53
	LIGHT BULBS	GENERAL FUND	BUILDING MAINTENANCE	63.08
	LIGHT BULBS	GENERAL FUND	BUILDING MAINTENANCE	13.05
	LAMP HOLDERS	BUILDING IMPROVEME	CAPITAL PROJECTS	55.46
	LIGHT BULBS	BUILDING IMPROVEME	CAPITAL PROJECTS	26.10
	BALLASTS	BUILDING IMPROVEME	CAPITAL PROJECTS	179.44
	LIGHT FIXTURES	BUILDING IMPROVEME	CAPITAL PROJECTS	462.19
		TOTAL:	861.85	
SPRINT	ACTIVITY THRU 6/21/11	GENERAL FUND	CITY MANAGER	37.13
	ACTIVITY THRU 6/21/11	GENERAL FUND	ADMINISTRATIVE SERVICE	37.13
	ACTIVITY THRU 6/21/11	GENERAL FUND	COMMUNICATIONS TECHNOL	37.13
	ACTIVITY THRU 6/21/11	GENERAL FUND	COMMUNITY DEVEL ADMIN	37.12

ENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
	ACTIVITY THRU 6/21/11	GENERAL FUND	PUBLIC WORKS ADMIN	37.12
	ACTIVITY THRU 6/21/11	GENERAL FUND	RECREATION ADMINISTRAT	37.12
			TOTAL:	222.75
TIME WARNER CABLE	P/D CABLE SERVICE 07/11	GENERAL FUND	COMMUNICATIONS TECHNOL	132.84
	INTERNET - COMPUTER CENTER	GENERAL FUND	RECREATION ADMINISTRAT	69.95
			TOTAL:	202.79
J.S. BANK	SR. MEALS SUPPLIES	GENERAL FUND	NON-DEPARTMENTAL	23.47
	SR. MEALS SUPPLIES	GENERAL FUND	NON-DEPARTMENTAL	6.50
	COUNCIL COFFEE	GENERAL FUND	CITY COUNCIL	12.95
	COUNCIL COFFEE	GENERAL FUND	CITY COUNCIL	12.95
	COUNCIL DINNER	GENERAL FUND	CITY COUNCIL	93.09
	COFFEE SUPPLIES	GENERAL FUND	CITY COUNCIL	70.56
	RETURN - CCAC SUPPLIES	GENERAL FUND	CITY MANAGER	18.59-
	OFFICE SUPPLIES	GENERAL FUND	CITY MANAGER	43.57
	DRUG REFERENCE BOOK	GENERAL FUND	POLICE ADMINISTRATION	46.95
	LANYARDS	GENERAL FUND	POLICE ADMINISTRATION	11.25
	OFFICE SUPPLIES	GENERAL FUND	POLICE ADMINISTRATION	19.25
	OFFICE SUPPLIES	GENERAL FUND	POLICE ADMINISTRATION	312.25
	DISINFECTANT WIPES	GENERAL FUND	POLICE ADMINISTRATION	188.31
	DETECTIVE TRAINING	GENERAL FUND	POLICE ADMINISTRATION	944.00
	ENTERSECT ONLINE	GENERAL FUND	INVESTIGATION	79.00
	EVIDENCE REPRIGERATOR	GENERAL FUND	RECORDS	142.50
	CARDSTOCK	GENERAL FUND	RECORDS	24.73
	RECORDS STAMP	GENERAL FUND	RECORDS	13.42
	WEBSITE	GENERAL FUND	COMMUNITY OUTREACH	14.95
	WEBSITE RENEWAL	GENERAL FUND	COMMUNITY OUTREACH	13.13
	WEBSITE	GENERAL FUND	COMMUNITY OUTREACH	12.95
	CORK BOARD	GENERAL FUND	EMERGENCY PREPAREDNESS	41.29
	DRY ERASE BOARD	GENERAL FUND	EMERGENCY PREPAREDNESS	80.65
	CARPET	GENERAL FUND	EMERGENCY PREPAREDNESS	159.03
	PRINTER CARTRIDGE	GENERAL FUND	COMMUNITY DEVEL ADMIN	162.03
	OFFICE SUPPLIES	GENERAL FUND	COMMUNITY DEVEL ADMIN	32.31
	CARD READER	GENERAL FUND	PUBLIC WORKS ADMIN	25.23
	STEEL CAPS	GENERAL FUND	STREET MAINTENANCE	41.81
	WIRE	GENERAL FUND	STREET MAINTENANCE	21.91
	STREET SUPPLIES	GENERAL FUND	STREET MAINTENANCE	185.17
	FENCE TIES	GENERAL FUND	PARK MAINTENANCE	43.90
	TILE SEALER	GENERAL FUND	BUILDING MAINTENANCE	128.93
	RETURN - TILE SEALER	GENERAL FUND	BUILDING MAINTENANCE	128.93-
	LIGHT BULBS	GENERAL FUND	BUILDING MAINTENANCE	13.70
	RACE ON BASE - SURVEY	GENERAL FUND	RECREATION ADMINISTRAT	299.00
	RETURN - SWIMWEAR	GENERAL FUND	AQUATICS	216.29-
	SWIMWEAR	GENERAL FUND	AQUATICS	162.21
	SWIMWEAR	GENERAL FUND	AQUATICS	54.07
	DAY CAMP SUPPLIES	GENERAL FUND	DAY CAMP	346.32
	DAY CAMP SUPPLIES	GENERAL FUND	DAY CAMP	36.36
	SPORTS SUPPLIES	GENERAL FUND	SPORTS	52.45
	SPORTS SUPPLIES	GENERAL FUND	SPORTS	338.45
	SHELVING	GENERAL FUND	SPECIAL CLASSES	881.46
	FIRST AID SUPPLIES	GENERAL FUND	SPECIAL CLASSES	328.86
	RACE ON BASE - SUPPLIES	GENERAL FUND	SPECIAL CLASSES	34.44
	DEPT. SUPPLIES	GENERAL FUND	SPECIAL CLASSES	43.48
	MUSIC & MOVIES IN PARK AD	GENERAL FUND	SPECIAL CLASSES	213.96
	MUSIC & MOVIES IN PARK AD	GENERAL FUND	SPECIAL CLASSES	230.42

ENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
	PICNIC AT PLAZA POSTCARDS	GENERAL FUND	SPECIAL CLASSES	130.04
	DAY CAMP SUPPLIES	GENERAL FUND	SPECIAL CLASSES	107.46
	DAY CAMP SUPPLIES	GENERAL FUND	SPECIAL CLASSES	234.97
	CLASS SUPPLIES	GENERAL FUND	SPECIAL CLASSES	56.99
	CLASS SUPPLIES	GENERAL FUND	SPECIAL CLASSES	423.16
	4TH OF JULY AD	GENERAL FUND	SPECIAL EVENTS	331.24
	4TH OF JULY SUPPLIES	GENERAL FUND	SPECIAL EVENTS	999.57
	FLOOR MATS	BUILDING IMPROVEME	CAPITAL PROJECTS	87.69
	CEILING TILES	BUILDING IMPROVEME	CAPITAL PROJECTS	754.50
	REMOTE CONTROL	BUILDING IMPROVEME	CAPITAL PROJECTS	27.43
	WIRE & REMOTE CONTROL	ASSET SEIZURE	CAPITAL PROJECTS	240.32
	MOWER PARTS	GARAGE FUND	GARAGE	332.12
	FLOOR MAT	GARAGE FUND	GARAGE	167.95
	POWER CORD	TECHNOLOGY REPLACE	ADMINISTRATIVE SERVICE	58.71
			TOTAL:	9,631.56
U.S. POSTAL SERVICE (HASLER)	ADD POSTAGE TO METER	GENERAL FUND	ADMINISTRATIVE SERVICE	3,000.00
			TOTAL:	3,000.00
UNDERGROUND SERVICE ALERT OF SO. CALIF	SERVICE ALERT FAXES	GENERAL FUND	STREET MAINTENANCE	27.00
			TOTAL:	27.00
UNITED STATES POSTMASTER	BULK MAIL POSTAGE	GENERAL FUND	RECREATION ADMINISTRAT	100.00
	BROCHURE POSTAGE	GENERAL FUND	RECREATION ADMINISTRAT	1,349.00
			TOTAL:	1,449.00
JSA MOBILITY WIRELESS, INC.	PAGER FEES 06/11	GENERAL FUND	PUBLIC WORKS ADMIN	20.09
			TOTAL:	20.09
VERIZON CALIFORNIA, INC.	POLICE DEPT/RELAY LINE	GENERAL FUND	COMMUNICATIONS TECHNOL	84.37
	EOC/FAX LINES	GENERAL FUND	COMMUNICATIONS TECHNOL	896.41
			TOTAL:	980.78
VERIZON WIRELESS	POLICE	GENERAL FUND	POLICE ADMINISTRATION	25.08
	COMM DEV	GENERAL FUND	NEIGHBORHOOD PRESERVAT	19.65
	PUBLIC WORKS	GENERAL FUND	STREET MAINTENANCE	219.38
			TOTAL:	264.11
VICTORY LOCK AND KEY	GLASS DOOR REPAIR	BUILDING IMPROVEME	CAPITAL PROJECTS	147.50
			TOTAL:	147.50
SAMUEL J. WELLS, APC	LEGAL SERVICES	GENERAL FUND	CITY ATTORNEY	6,405.00
			TOTAL:	6,405.00
WEST COAST ARBORISTS, INC.	TREE TRIMMING	GAS TAX	CAPITAL PROJECTS	1,388.00
	TREE TRIMMING	TRAFFIC IMPROVEMEN	CAPITAL PROJECTS	5,121.00
	TREE MAINTENANCE	GAS TAX	CAPITAL PROJECTS	2,060.00
			TOTAL:	8,569.00
WESTERN OIL SPREADING SERVICES	SLURRY SEAL - MCAULIFFE	GENERAL FUND	PARK MAINTENANCE	224.46
	SLURRY SEAL - MCAULIFFE	GENERAL FUND	PARK MAINTENANCE	121.58
			TOTAL:	346.04
WITHERS & SANDGREN LTD.	LANDSCAPE ARCHTCTRL SVCS	RIVERS/MTNS. CONSE	CAPITAL PROJECTS	1,765.00
			TOTAL:	1,765.00

ENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
BEROREZ IRVINE	STEAM CLEAN TILE	BUILDING IMPROVEME	CAPITAL PROJECTS	640.00
			TOTAL:	640.00
SUMAR INDUSTRIES	STRIPING MATERIAL	TRAFFIC IMPROVEMEN	CAPITAL PROJECTS	263.40
			TOTAL:	263.40

===== FUND TOTALS =====

10	GENERAL FUND	48,808.09
20	GAS TAX	4,719.00
25	BUILDING IMPROVEMENT	2,464.20
26	MEASURE M	4,150.00
27	ASSET SEIZURE	240.32
41	RIVERS/MTNS. CONSERVANCY	1,765.00
44	TRAFFIC IMPROVEMENT	5,888.40
50	GARAGE FUND	1,632.13
53	TECHNOLOGY REPLACEMENT	2,595.29

	GRAND TOTAL:	72,262.43

VENDOR SORT KEY	DESCRIPTION	FUND	DEPARTMENT	AMOUNT
GOLDEN STATE WATER COMPANY	WATER SERVICE APPLICATION	RIVERS/MTNS. CONSERVANCY	CAPITAL PROJECTS	2,500.00
			TOTAL:	2,500.00

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===== FUND TOTALS =====
41  RIVERS/MTNS. CONSERVANCY      2,500.00
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      GRAND TOTAL:                2,500.00
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TOTAL PAGES: 1

City of Los Alamitos

Agenda Report Discussion Items

July 18, 2011
Item No: 8A

To: Mayor Kenneth Stephens & Members of the City Council
Via: Jeffrey L. Stewart, City Manager
From: Steven Mendoza, Director of Community Development
Subject: Consideration of Proposals to Conduct Outreach Related to the Los Alamitos Boulevard Revitalization Project

Summary: The following is a summary of the consultants considered to complete the City's Outreach Program related to the Los Alamitos Boulevard Revitalization Project in response to the City's Request for Proposal (RFP).

Recommendation: Authorize the City Manager to approve a Professional Services Agreement with RBF Consultants for the Outreach Component of the Los Alamitos Blvd. Revitalization project at an amount not to exceed \$35,800.00.

Background

In April 2011, staff obtained proposals from firms to provide an outreach component to the Los Alamitos Boulevard Revitalization Project. City Council requested an extensive outreach be conducted prior to proceeding on the Los Alamitos Boulevard Revitalization Project.

A RFP was developed asking each firm to provide a proposal on the following topics:

1. Project Initiation
2. Outreach Notification and Advertising
3. Outreach Meetings
4. Summary and Recap of Outreach Effort

The RFP stated that the following would be used in selections of the proposer:

1. Cost
2. History and Firm Experience
3. Completeness of Proposals
4. References

The RFP asked proposers to include the cost of providing project initiation; outreach notification and advertising; and, conducting outreach meetings. The outreach meetings would include two residential meetings, supplemented with parent outreach; four meetings with the school district and PTA to secure parental involvement; and, one business meeting. The consultant would be responsible for providing a summary and

recap of outreach efforts to the Planning Commission and the City Council. The full text of the RFP is attached.

Evaluation/Ranking

The Community Development Director and the City Engineer reviewed each proposal, developed a scoring matrix, and ranked the individual proposals. The ranking of the proposals is indicated in Table 1 below.

LOS ALAMITOS BLVD OUTREACH		RBF Consul.	Sierra Group	West Bound Comm.	3D Visions	Pacific Muni Consult	Planning Center	Center for Collab. Policy
		AVG	AVG	AVG	AVG	AVG	AVG	AVG
1	Project Initiations	8	8	7	8	8	4	6
2	Outreach Notification & Advertising	9	8	8	6	7	5	7
3	Outreach Meetings	9	6	6	6	8	4	8
4	Summary & Recap	9	8	8	8	7	4	3
5	Costs	7	6	7	7	0	6	9
6	History & Firm Experience	9	6	6	6	7	7	0
7	Completeness of Proposals	9	7	7	7	9	5	6
8	References	8	7	7	7	8	7	3
		67	55	54	53	53	41	40

The ranking resulted in narrowing the choices to the top three firms. RBF Consulting received the leading score of 67; the next highest was the Sierra Group at 55. The top three rated firms were RBF, Sierra, and West Bound Communications. Table 2 below represents the costs proposed by all firms.

LOS ALAMITOS BLVD OUTREACH - COSTS	RBF Consulting	Sierra Group	West Bound Commun.	3D Visions	Pacific Muni Consult.	Planning Center	Center for Collab. Policy
Phase 1							
TASK 1. Project Initiation	2,430	7,088	2,780	4,205	2,560	625	2,892
TASK 2. Outreach Notification and Advertising	5,460	17,044	6,152	7,930	6,150	10,700	2,618
TASK 3. Outreach Meetings	16,520	10,855	18,448	21,165	32,420	19,000	8,654
TASK 4. Summary & Recap of Outreach Efforts	6,930	3,986	2,414	2,210	5,100	3,575	4,970
Mailing Costs	3,520						
Canvas Signs	365						
Travel	300						474
Document Printing	275						
Travel, Printing and Mailing					3,000		
Operating Expenses (photo copies, materials, postage, calls, internet services)							3,200
Management Fee							\$551
TOTAL	\$35,800	\$38,973	\$29,794	\$35,510	\$49,230	\$33,900	\$23,359

Final Consultant Selection

Based upon the rankings, staff analyzed the prices of the top three ranked firms. The costs of the top three ranked firms (lowest to highest) is: West Bound Communications at \$29,794.00; RBF Consulting at \$35,800.00; and, The Sierra Group at \$38,973.00

Sierra Group and West Bound's proposal only included one meeting with the PTA instead of the requested four meetings as required by the Request for Proposal (RFP.) RBF Consulting included all of the required elements at a cost of \$35,800.00, and is therefore being recommended as the selected firm for this project. The combination of a high rating and a reasonable price makes RBF the lowest responsive proposer for this Outreach project.

RBF recently completed the Los Alamitos Medical Center Environmental Impact Report. The City's recent experience with RBF was above satisfactory. RBF demonstrated consistency throughout the multiple public hearings required for that project and worked well with the Planning Commission and City Council. Additionally staff conducted reference checks with the City of La Mirada and the City of Buelton with satisfactory results.

Fiscal Impact

During the January 3, 2011, City Council meeting a presentation was given on the status of the Downtown Revitalization Funding and Public Outreach. The City Council authorized \$90,000.00, to start Phase 2 and 3.

• Phase 2 – Conceptual Design	\$40,000
• Phase 3 – Traffic Study and Public & Business Outreach	\$50,000
• Phase 4 – Environmental Documentation	\$ 0
• Phase 5 – Construction Documents	\$ 0
TOTAL	\$90,000

During the March 7, 2011, City Council meeting a presentation was given of the status of the Downtown Revitalization Concept Plans and the traffic study was started.

In Fiscal Year 2010-11, \$25,867 was spent on the Phase 2 Conceptual Design, and \$8,450 was spent on the Phase 3 Traffic Study. It's important to note \$16,900 was awarded by City Council for the Traffic Study. Staff is recommending carrying over \$55,683 to Fiscal Year 2011-12 to complete the Conceptual Design, Traffic Study, and Public Outreach.

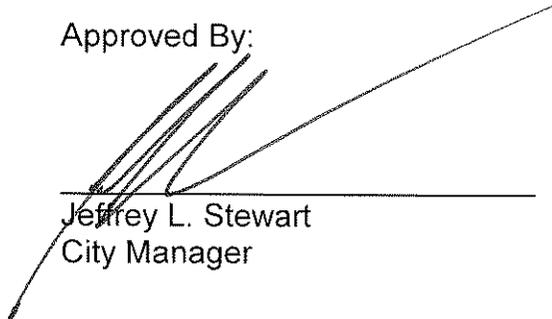
	Budgeted Amount	Amount Used	Remaining Balance
Phase 2 – Conceptual Design	40,000	(25,867)	14,133
Phase 3 – Traffic Study and Public & Business Outreach	50,000	(8,450)	41,550
TOTAL	\$90,000	(34,317)	\$55,683

Submitted By:



Steven A. Mendoza
Director of Community Development

Approved By:



Jeffrey L. Stewart
City Manager

*Attachments: 1. Professional Services Agreement with RBF Consulting
2. Request For Proposal (RFP)*

PROFESSIONAL SERVICES AGREEMENT
(City of Los Alamitos / RBF Consulting)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Los Alamitos, a California municipal corporation (“City”) and RBF Consulting, a California Corporation (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: Outreach for Los Alamitos Blvd. Revitalization project.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Such professional services as are set forth in Consultant’s April 28, 2011, proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s April 28, 2011, fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 “Commencement Date”: August 15, 2011.
- 3.4 “Expiration Date”: December 31, 2011.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below.

5. CONSULTANT’S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any

such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Thirty-Five Thousand, Eight Hundred Dollars (\$ 35,800.00) unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Susan Harden shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage as is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and fees of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any

insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
 - 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
 - 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
 - 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
 - 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds.

Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

Steven Mendoza, Community
Development Director
City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720
Telephone: (562) 431-3538
Facsimile: (562) 493-1255

If to Consultant:

Susan Harden, Project Manager
RBF Consulting
14725 Alton Parkway
Irvine, CA 92618-2027
Telephone: (949) 472-3505
Facsimile: (949) 472-8373

With courtesy copy to:

Sandra J. Levin, Esq.
Los Alamitos City Attorney
Colantuono & Levin, P.C.
300 S. Grand Ave., Suite 2700
Los Angeles, CA 90071
Telephone: (213) 542-5700
Facsimile: (213) 542-5710

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1. Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4. The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term,

covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Los Alamitos

“Consultant”
RBF Consulting

By _____
Jeffrey L. Stewart, City Manager

By: _____
Michael J. Burke, Executive Vice President

Date: _____

Date: _____

By: _____
Douglas J. Frost, Executive Vice President

Date: _____

Attest:

By _____
Adria M. Jimenez, CMC, City Clerk

Date: _____

Approved as to form:

By _____
Sandra J. Levin, City Attorney

Date: _____

EXHIBIT A
SCOPE OF WORK



APPROACH AND COST PROPOSAL

DOWNTOWN REVITALIZATION OUTREACH

PROJECT APPROACH

TASK 1. PROJECT INITIATION

1.1 KICKOFF MEETING

RBF/UDS will meet with City staff to understand the City's specific objectives, refine the project schedule, choose tentative meeting dates and venues, and identify what stakeholder groups should be involved and who their key contacts are. This discussion will lay the groundwork for quickly reaching a variety of community members and inviting them to get involved.

Task 1 Deliverables:

- *RBF/UDS attendance at kick-off meeting*
- *Refined project schedule*
- *List of key stakeholder contacts*

TASK 2. NOTIFICATION AND PROMOTION

2.1 OUTREACH MATERIALS

RBF/UDS will develop outreach materials that are interesting and informative, and that encourage a variety of community members to get involved in the outreach process.

Flyer and Brochure – RBF/UDS will develop a mailer with two parts: a brochure with graphics that provides an overview of downtown revitalization including objectives for Los Alamitos Boulevard, and a flyer with information about upcoming meetings and other ways to provide input. The mailing will include an invitation for community members to contribute streetscape images for the preference survey that will be conducted at upcoming meetings.

Canvas Sign – RBF/UDS will design a large sign advertising the outreach meetings that is easy for drivers to read, and produce up to four (4) canvas banners with this design for the City to install.

2.2 OUTREACH COORDINATION

Stakeholder Coordination – RBF/UDS will engage the key contacts of stakeholder groups in disseminating the outreach materials by inviting them to a group meeting to share the materials and generate a sense of excitement about the process ahead. If some contacts are not able to attend the meeting, RBF/UDS will seek them out individually. RBF/UDS will distribute materials through multiple channels including LAUSD, PTAs, Los Alamitos Medical Center, Library, homeowners associations, Rossmoor CSD, and houses of worship.

Mailing – RBF/UDS will print and mail the flyer and fact sheet in a single mailing to all households in Los Alamitos and Rossmoor, estimated to be 8,000 addresses.

Website Materials and Email List – RBF/UDS will provide PDF versions of the flyer and brochure for staff to post on the City website, and email them to the key stakeholder contacts.

Staff Coordination – RBF/UDS will review and make suggestions for other outreach materials produced by the City, such as news releases and newspaper advertisements.

Task 2 Deliverables:

- *Draft and final versions of flyer and fact sheet in PDF format*
- *Draft and final design for canvas sign in PDF format; proof for sign; four (4) canvas signs, approx. 36" x 60"*

TASK 3. OUTREACH MEETINGS

3.1 RESIDENTIAL MEETINGS

Meetings held in residential areas will give residents an opportunity to learn about the downtown revitalization project, raise concerns, provide ideas, and express preferences for streetscape elements and the curvilinear versus straight alignment. Two meetings with the same agenda will be held in different locations, one on a weeknight and another on a Saturday, to make attendance more convenient. We recommend meetings that last no longer than 2.5 hours to encourage more people to participate.

3.2 ADDITIONAL RESIDENTIAL MEETING (OPTIONAL)

An additional residential meeting may be desirable to obtain more feedback from community members, with opportunities for discussion and better understanding of issues raised in the initial meetings. Or it may be more informational, structured as an open house. The format and timing of this meeting will be determined by City staff objectives.

Suggested Meeting Agenda

- **Check-In and Welcome (15 minutes)**
- **Introductory Presentation (30 minutes)**
RBF/UDS and City staff will review the purpose and background of the downtown revitalization effort, the Commercial Corridors Plan and the boulevard strategy, desired boulevard project timeline, and purpose of the outreach meetings.
- **Post-It Note Q&A (30 minutes)**
To allow more people to ask questions and express thoughts before they provide feedback on streetscape elements and alignments, we suggest structuring the Q&A period so that all participants quickly jot down on Post-It Notes the topics that are most on their minds. For instance, a "+/-" exercise would prompt participants to briefly say what they like most about the boulevard project, and what they are most concerned about. Facilitators will quickly organize the Post-It Notes into topics that will then be the basis for a room-wide discussion.
- **Small Group Discussion (25 minutes)**
Each table will have two kinds of handouts. One will have images of streetscape elements and related costs provided by the City Engineer, supplemented by images provided by the community and RBF/UDS. The other handout will show the two boulevard alignments with features called out. Participants will be prompted to discuss the handouts with others at their table in preparation for room-wide polling.
- **Polling and Discussion (40 minutes)**
Participants will express their preferences using handheld polling devices, reviewing the streetscape options and alignments in a PowerPoint. A facilitator will lead a room-wide discussion of the polling responses.
- **Closing and Next Steps (10 minutes)**
A facilitator will summarize what participants have expressed and describe next steps in the process.

3.3 BUSINESS COMMUNITY MEETING

RBF/UDS will facilitate a meeting with the business community, including businesses and property owners along Los Alamitos Boulevard. This meeting will have a similar structure to the residential meetings, but the introductory presentation should focus more on benefits and issues related to businesses.

3.4 ADDITIONAL BUSINESS COMMUNITY MEETING (OPTIONAL)

An additional business meeting may be desirable to go into more detail on construction schedule and logistics, if construction is imminent. Or, as in the additional residential meeting, it may provide further opportunity to address issues brought up in the first meeting.

3.5 PTA AND SCHOOL DISTRICT MEETINGS

RBF/UDS will facilitate three meetings with school PTAs and one meeting with LAUSD representatives to focus on concerns related to schools affected by the project. These meetings are envisioned to be shorter than the workshops, with an introductory presentation followed by open-ended discussion between school stakeholders and City staff. The meeting with LAUSD should include a representative of Los Alamitos High School and the Director of Facilities, Maintenance, Operations, and Transportation. At least one meeting will explore issues related to Los Alamitos High School including vehicle, bicycle, and pedestrian safety; pick-up/drop-off access; construction dates or limitations; and future school plans.

3.6 ONLINE SURVEY (OPTIONAL)

To make it easier for community members to participate, RBF/UDS proposes to develop and run an online survey through a third-party provider such as SurveyMonkey that allows additional community members to indicate their preferences regarding the streetscape and alignment options, as well as express additional thoughts on the project. This survey would complement the residential/ business meetings.

Task 3 Deliverables:

- Facilitation by up to three (3) RBF/UDS team members, logistics coordination, materials, and presentations for two (2) residential meetings and one (1) business community meeting, 2.5 hours each
- Facilitation by up to two (2) RBF/UDS team members, logistics coordination, materials, and presentations for three (3) 1.5-hour PTA meetings and one (1) 2-hour LAUSD meeting
- (Optional) Facilitation by up to two (2) RBF/UDS team members, logistics coordination, materials, and presentation for additional 2-hour residential/business meeting
- (Optional) Draft survey questions, online survey, and results (in summary memo)
- Meeting summaries (in summary memo)

TASK 4. SUMMARY AND RECAP

4.1 SUMMARY MEMO

RBF/UDS will provide a detailed summary of outreach efforts and the public input received through those efforts in the form of a memo that can be provided to the Planning Commission and City Council, and placed on the City's website. The memo will include photos from meetings and graphics such as desired streetscape characteristics. RBF/UDS will also provide raw public input in a separate document.

4.2 PUBLIC HEARINGS

RBF/UDS will make presentations on the outreach effort and public input to the Planning Commission and City Council.

Task 4 Deliverables:

- Draft (Word document) and final (Word, PDF, 15 hard copies) detailed memo with graphics
- Presentation at two (2) public hearings by one (1) RBF/UDS team member

EXHIBIT B
APPROVED FEE SCHEDULE

COST PROPOSAL

The cost proposal on the following page represents the RBF/UDS team's not-to-exceed budget estimate for this project, given our understanding of the available resources and the scope outlined in the RFP. Our team would be pleased to work with the City of Los Alamitos to develop a scope and budget that best suits your needs.

Los Alamitos Downtown Revitalization Outreach Cost Estimate

	Task Totals	Optional Task Totals
TASK		
1. Project Initiation		
1.1 Kickoff Meeting	\$2,430	
2. Notification and Promotion		
2.1 Outreach Materials (labor only; see below for expenses)	\$2,410	
2.2 Outreach Coordination	\$3,050	
3. Outreach Meetings		
3.1 Residential Meetings	\$7,060	
3.3 Business Community Meeting	\$3,200	
3.5 PTA and School District Meetings	\$6,260	
4. Summary and Recap		
4.1 Summary Memo	\$4,145	
4.2 Public Hearings	\$2,785	
Reimbursable Expenses		
Mailing Costs (first-class rate x 8,000 households)	\$3,520	
Canvas Signs	\$365	
Travel	\$300	
Document Printing	\$275	
Optional Tasks		
3.2 Additional Residential Meeting (Optional)		\$3,600
3.4 Additional Business Community Meeting (Optional)		\$3,600
3.6 Online Survey (Optional)		\$5,380
Subtotal for Optional Tasks		\$12,580
TOTAL	\$35,800	\$12,580

Notes:

a) Budget based on RBF/UDS past experience. Budget shall apply to the project estimated to be completed no later than December 2011.

b) All work to be performed on a "not to exceed" contract price, which will become the firm fixed price upon completion of negotiations with staff authorized to negotiate an agreement. The total budget includes all miscellaneous costs for reproduction, telephone, postal, delivery, reference materials and incidental expenses. RBF will receive payment either on a percentage basis using milestones or by monthly billing, as determined by the Client. The RBF/UDS project manager reserves the right to make adjustments to staff allocations within the overall budget.

Prepared April 27, 2011





CITY OF LOS ALAMITOS

Community Development Department
3191 Katella Ave., Los Alamitos, CA 90720-5600
Phone: (562) 431-3538 Fax: (562) 493-0678

REQUEST FOR PROPOSAL Downtown Revitalization Outreach

RFP Prepared by and Proposals to be Provided to:

CITY OF LOS ALAMITOS COMMUNITY DEVELOPMENT DEPARTMENT

Steven Mendoza, Community Development Director
3191 Katella Avenue - Los Alamitos, California 90720

(562) 431-3538, extension 300
e-mail address: smendoza@ci.los-alamitos.ca.us

Proposals Due By:
12:00 Noon
Thursday April 28, 2011

RFP Available online at:
<http://www.ci.los-alamitos.ca.us/RFP/index.html>

CITY OF LOS ALAMITOS REQUEST FOR PROPOSAL Downtown Revitalization Outreach

1. INTRODUCTION

The City of Los Alamitos ("City") Community Development Department is requesting proposals for the provision of an outreach program for a proposed Downtown Revitalization project. The Downtown Revitalization project is the redesign of Los Alamitos Boulevard between Cerritos and Katells which could (if approved) reduce the curb-to-curb distance by over 20 feet (from 95 feet to 73 feet), with a reduction of almost 40 feet at intersections. The "Straight" design option would nearly double the width of the existing sidewalk and parkway area (tripled at intersections), and the "Curvilinear" design option would go even further and create public spaces and sidewalk areas as wide as 47 feet at key locations along the corridor. The City is currently completing a traffic study on two versions of the proposed project and will soon be prepared to engage the public. The origin of the project came about through the results of a SCAG Compass Blueprint Project which is on the City's website at <http://www.ci.los-alamitos.ca.us/community/LosAlCorridor.pdf>.

2. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit and select a consultant to administer the three month outreach program. Under the direction of the Community Development Director, the consultant would serve as Outreach Coordinator and would provide the range of expertise necessary to carry out the normal functions of outreach.

All services provided by the Consultant shall be performed by individuals that meet the qualifications and experience. The successful consultant shall also have the resources to provide cost effective and timely services.

3. THE CITY

The City of Los Alamitos incorporated in 1960, and is located on the Northwest edge of Orange County. It is situated North of Seal Beach, East of Long Beach, South of Hawaiian Gardens, and West of Cypress. The City encompasses 4.3 square miles with a small population of approximately 12,000. The City is mature, urbanized, and, for the most part, built-out. Half of the community's 4.3 square miles is the federally operated Joint Forces Training Base (JFTB).

4. SCOPE OF SERVICES

The City has described the proposed scope in Exhibit A to this RFP.

5. ADDITIONAL CONSULTANT RESPONSIBILITIES

The consultant shall be responsible for completing the specified services in accordance with the City's Professional Services Agreement.

6. TERM

The term of the agreement shall begin on May 1, 2011 (upon approval by City Council), and shall end

upon completion of the project. Either party may terminate this agreement upon sixty (60) days written notice, with or without cause. At least thirty (30) days prior to the termination of this agreement, the Consultant shall bring forward to the City a proposal to extend the agreement. Should the City choose to discontinue the agreement, it will provide a minimum of fifteen (15) days notice.

7. PROPOSAL REQUIREMENTS

The proposal shall clearly address all of the information requested herein. To achieve a uniform review process and obtain the maximum degree of comparability, it is required that proposals be organized and contain all information as specified below:

- A.** A Letter of Introduction, to include an understanding of the scope of services.
- B.** The firm's approach to delivering the scope of services.
- C.** Brief company profile and number of years the firm has been in business.
- D.** Location of principal office that will be responsible for the implementation of this contract.
- E.** Description of the professional qualifications of the personnel who will be assigned to work in the City of Los Alamitos. While the Consultant may propose any staffing scenario to effectively perform the services, the proposal shall identify the key personnel who will be assigned to perform the services and how, where, and when those services will be provided.
- F.** Three references to include: name, address, and phone number of the organization, length of time outreach services were provided, and a description of the services provided.
- G.** Cost Proposal for Services. The method of payment upon negotiation of an agreement shall be monthly payments based upon satisfactory progress and the submission of requests for payments.
- H.** Any other information which should be considered, such as any special services or customer service philosophy which define your firm's practices.
- I.** The firm will be required to have professional liability insurance including liability at a minimum of one million per occurrence, worker's compensation, and vehicle coverage including comprehensive and collision insurance naming the City of Los Alamitos as additional insured. The proposal shall state whether such insurances will be in force at time of contract execution.

8. SUBMITTAL

Seven (7) bound copies and one (1) color digital Microsoft Word copy of the proposal must be submitted no later than 12:00 noon, Thursday April 28, 2011. Postmarks and faxes are not acceptable. Proposals must be titled "RFP for Downtown Revitalization Outreach." Proposals must be submitted to:

Steven Mendoza, Community Development Director
City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720

Questions related to this Request for Proposal may be referred to Steven Mendoza at (562) 431-3538, ext. 300. Proposals not received on or prior to the date and time specified will not be considered.

9. SELECTION CRITERIA

Selection of the firm will be based on:

- Cost
- History and experience of the firm
- Scope of the services to be offered
- Completeness of the Proposal
- Service delivery approach
- Qualifications of assigned personnel
- References

The City of Los Alamitos reserves the right to accept or reject any and all proposals, or any portion of any proposal, or to waive any irregularities or informalities in the proposal or in the proposal process, or to make the award on the basis of that item or combination of items which, in its opinion, serves the best interest of the City. This Request for Proposal does not commit the City of Los Alamitos to pay costs incurred in the preparation of a response to this request. Services shall not commence until the Professional Services Agreement is executed by the City. Responses to this Request for Proposal become the property of the City.

EXHIBIT A – SCOPE OF SERVICES
Downtown Revitalization Outreach

TASK 1. PROJECT INITIATION

The selected consultant will meet with City staff to discuss the proposed scope, confirm outreach objectives, and review work performed in Phases 1 and 2 of the Downtown Revitalization effort.

The selected consultant will start to identify specific dates and venues for the outreach meetings and generate a list of key attendees that should attend and/or will be able to encourage others to attend. It will be important not only to include those involved in the Compass Blueprint project, but also those who may raise objections in future discussions unless they are directly engaged. This scope assumes that the outreach efforts will take place over a short period of time and no more than three months. This scope also assumes that the traffic study will be completed prior to the start of Task 2.

Budget: \$ _____

Primary Deliverables: Kick-off Meeting, Refined Schedule, List of Key Attendees

TASK 2. OUTREACH NOTIFICATION AND ADVERTISING

Members of the City Council have hailed the importance of the Downtown Revitalization project. Residents and businesses have confirmed the significance of the project in both their support for and concern about the potential improvements. There is a strong desire from the general public for an opportunity to voice their opinion and gain a better understanding of the potential revitalization project. Accordingly, it will be very important to deploy a broad notification effort and to advertise the outreach meetings using several methods, without incurring unnecessary or excessive costs.

Among the many options for notifying residents and businesses in Los Alamitos and Rossmoor, staff is recommending a combination of meeting notices, fact sheets, canvas signs, and material for the City's website.

Meeting Notice and Fact Sheet. The selected consultant will design a color flyer to notify the resident, property owner, and business owners of the outreach meetings. The notice will include a brief description of the Downtown Revitalization effort and the purpose of the outreach meetings; date, time, and location information; a link to the City's website for more information; and, other key information such as contact information and other options for input. This meeting notice is intended to serve for notification of all meetings and will include date, time, and location information for both residential and business community meetings. It may also indicate a separate meeting is being held with the school district.

The selected consultant will prepare a color fact sheet either as a part of the meeting notice or as a separate flyer that reiterates the general purpose of the Downtown Revitalization outreach, lists answers to common questions, and describes what is not happening (e.g. taking of private property). Graphics will be incorporated into the fact sheet, drawing upon the material generated in the first two phases and the recent Compass Blueprint project.

This proposal should include production of a draft copy of the meeting notice and fact sheet for the City's review and a final proof copy suitable for printing. The selected firm shall be responsible for the printing, postage and of the meeting notice and fact sheet. The selected firm shall distribute the notice and/or fact sheet through the U.S. Mail, school district, medical center, library, homeowner's associations, Rossmoor Community Services District, churches, and other local organizations and businesses.

Canvas Signs. The community regularly uses canvas signs to notify residents of local events. Key sign locations are the Rossmoor Wall at Seal Beach Boulevard and Saint Cloud Drive, the Rossmoor Wall at Katella Avenue and Wallingsford Road, the fence at Los Alamitos Boulevard and Orangewood Avenue, and the fence around the vacant corner property at Los Alamitos Boulevard and Cerritos Avenue. Canvas signs are an excellent method of advertising local meetings and events and can be more effective than an ad in the local newspapers.

The Selected consultant will **design and provide** a canvas sign that will contain information similar to the meeting notice. The sign copy and graphics would be sized so as to be safely legible for passing motorists and on a canvas with an overall dimension of approximately 36"x60". This scope includes production of the canvas sign and a final proof. The City will be responsible for mounting of the sign at selected locations.

Website Material. PDF versions of the meeting notice, fact sheet, and canvas sign will be generated at a size suitable for easy download from the City's website.

Other Options. Various members of the public, Planning Commission, and City Council have mentioned other options such as a video for Los Alamitos Cable Television and/or an article/advertisement in the local newspapers. Although this scope does not include time to prepare or coordinate such outreach options, the selected consultant should be available to review or discuss other outreach materials prepared by the City.

Budget: \$ _____

Primary Deliverables: Meeting Notice, Fact Sheet, Canvas Sign (draft, proof, and PDF copies)

TASK 3. OUTREACH MEETINGS

To ensure those in the community feel they have been given ample opportunity to provide input and obtain information, a series of two meetings with residents, one meeting with the business community, and one meeting with the Los Alamitos Unified School District (LAUSD) will be held. Following discussions during the Kick-off Meeting, the selected consultant will work with the City to confirm the meeting dates, times, and locations. It will be important to confirm this information as early as possible to allow for sufficient meeting notification.

Residential Meetings. Two residential meetings will be held at different locations (north and south of Katella Avenue), and at different times of the day/week to give the public an opportunity to attend a meeting that is nearby and/or conducted at a convenient time. The meetings should last 2–4 hours. The selected consultant will provide input and recommendations on meeting locations/venues and will coordinate with the City to secure appropriate venues. The selected consultant will assist the City with day-of meeting logistics and meeting documentation. The residential meetings will be designed with a 5-minute welcome from the City; a 30-minute presentation by the selected firm and City staff to educate the public on the project, its background, estimated construction costs and scheduling, and common questions/concerns; and then an open session for the public to ask questions. The selected firm will work with City staff to lead and facilitate the meeting.

These meetings should not only be informative. They should also be fun and interesting. To engage the public and help identify priorities, a preference survey will be conducted for the public to see and identify their preference for a variety of streetscape elements and palettes, guided in part by the cost range associated with various streetscape elements. The City's Engineer will be able to provide graphic examples of streetscape elements commensurate with a range of cost and quality options explored in the construction estimates. A survey should be conducted during or after the formal

presentation and Q&A (sufficient distance between the two areas would be needed to minimize disruption). The selected consultant will also seek input on their preference for the straight or curvilinear option.

Business Community Meeting. A meeting with the business community would share some of the information and format from the residential meetings, but also focus on issues associated with how the improvements could affect and benefit the businesses and property owners along the boulevard. The meeting could be held at City Hall or a suitable location along or near Los Alamitos Boulevard.

PTA and Los Alamitos Unified School District (LAUSD) Meeting. The meeting with various PTA's and LAUSD would be between the City, the selected consultant, and representatives from the District such as the High School Principal and/or the Director of Facilities, Maintenance, Operations, and Transportation. In addition to an overall discussion of the project, this meeting would focus on issues regarding the high school and vehicle, bicycle, and pedestrian safety; pick-up/drop-off access; construction dates or limitations; and future school plans.

Meeting Graphics and PowerPoint. This scope assumes that the City (through Wildan Engineering) will provide large-scale graphics including an aerial, utility and infrastructure plans, existing and proposed project conditions, photos of local businesses, and streetscape elements/plant palettes. The selected consultant will be responsible for the creation of the meeting PowerPoint (electronic only) and materials for the preference survey (excluding those graphics listed in the previous sentence). As part of the outreach process, the selected consultant will encourage the public to submit pictures of places or features they like in Los Alamitos or in other downtown areas for inclusion in the meeting presentation and preference survey.

Budget: \$ _____

Primary Deliverables: Outreach Meetings (2 Residential, 1 Business Community, and 4 LAUSD (District and 3 PTA's), PowerPoint

Budget Option 1 \$ _____ for one additional residential meeting

Budget Option 2 \$ _____ for one additional Commercial Property Owner meeting

TASK 4. SUMMARY AND RECAP OF OUTREACH EFFORTS

The selected consultant will summarize the outreach efforts and input provided at each meeting and other input received by the City in a graphical memo summary. A draft and final copy of the summary will be prepared, along with a PDF copy suitable for placement on the City's website. The selected consultant will also be available to present the results at one Planning Commission meeting and one City Council meeting.

Budget: \$ _____

Primary Deliverables: Draft and Final Outreach Summary

TOTAL BUDGET: \$ _____

ESTIMATED SCHEDULE

TASK	MONTH 1	MONTH 2	MONTH 3
Task 1. Project Initiation			

Kick-off Meeting			
Task 2. Outreach Notification and Advertising			
Meeting Notice/Fact Sheet			
Canvas Sign			
Website Materials			
Task 3. Outreach Meetings			
Residential Meeting #1			
Residential Meeting #2			
Business Community Meeting			
LAUSD Meeting			
Task 4. Summary and Recap			
Summary Memo			
Planning Commission Meeting			
City Council Meeting			

Note: The schedule assumes the traffic study is completed prior to any work conducted for Task 2.

City of Los Alamitos

Agenda Report Discussion Item

July 18, 2011
Item No: 8B

To: Mayor Kenneth Stephens & Members of the City Council

Via: Jeffrey L. Stewart, City Manager

From: David Hunt, City Engineer
Steven Mendoza, Director of Community Development

Subject: Approval of Professional Services Agreement with Watershed Conservation Authority, for Project Manager and Construction Manager Services of Coyote Creek Park

Summary: The City is seeking to construct a low impact recreation parkway area in the SCE right-of-way along the Coyote Creek, behind Oak Middle School. Toward that end, the City has received a grant from the Rivers and Mountains Conservancy (RMC) in the amount of \$1,440,000. To complete the project, it is necessary to obtain approvals from numerous agencies, including the Southern California Edison Company, the Orange County Flood Control District, Los Angeles Flood Control District, Golden State Water Company and other entities. To date, those approvals have been very difficult to coordinate. With a looming deadline for construction on June 1, 2012, the RMC recommended strongly that the City utilize a project manager from the Watershed Conservation Authority (WCA) and agreed that compensation for that project manager would be a reimbursable part of the project. Accordingly, staff is requesting that the City hire the Watershed Conservation Authority (WCA) to help the City get the project finished within the time frame of the grant.

Recommendation: Authorize the City Manager to execute a Professional Services Agreement with Watershed Conservation Authority, in the amount of \$99,656 to be Project Manager and Construction Manager. The funds required would be fully reimbursed by the Rivers and Mountains Conservancy.

Background

In 2005, the City of Los Alamitos was awarded funding in the amount of \$1,440,000 from the Rivers and Mountains Conservancy (RMC) to create a recreation parkway adjacent to Coyote Creek, Oak Middle School and the Royal Oak Mobile Home Park. The grant funds for the project come from the RMC through Proposition 50, the Clean Drinking Water, Coastal and Beach Protection State Bond Act of 2002.

The project site borders Coyote Creek flood channel and the regional bike trail along Coyote Creek, both of which are maintained by the Los Angeles County Department of Public Works (LACPW), between Cerritos Avenue and Katella Avenue. The parcel is approximately 2,500 feet in length and approximately 4.0 acres. The site is comprised of a Southern California Edison (SCE) right-of-way area, an SCE easement for an existing oil pipeline, and an additional easement area for Orange County Flood Control District (OCFCD). The OCFCD easement is used to maintain the Los Alamitos Channel, an earthen channel which flows through the site from the northeast to southwest. The project focus is to create a passive recreation area with landscaping composed of native plants of significant ecological value to the region to attract habitat, and restore the site from a barren utility corridor into a passive greenway park along the Coyote Creek Channel. The walkways will be constructed with non-pervious materials to allow storm water to percolate back into the ground. The development of a park is an opportunity to provide a prototype for the modification of single-purpose land use restrictions to multi-purpose land uses.

Discussion

This project had several starts and stops since 2003. The current deadline is that the construction of this project must be completed by June 30, 2012 or the City could lose the funding for this project. Despite the efforts of three City and Interim City Engineers, and one contract engineer assigned to the project, the project languished and became several months behind schedule. The Executive Director of the RMC has observed the City's struggle for nearly a year, and recommended that the City retain the assistance of the WCA to help the City get the project finished within the time frame of the grant.

The Watershed Conservation Authority was created in 2003 and is a joint powers authority of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) and the Los Angeles County Flood Control District. The focus of the WCA is on projects which will provide open space, habitat restoration, and watershed improvement in the watersheds of both the San Gabriel River and the Lower Los Angeles River.

WCA has been working on the project for the last several months getting the project back on schedule with great success. The efforts of WCA have been the main factor in getting the agencies involved in the project on board with meeting the deadline. WCA has also focused the design consultant to meet the objective of the project and meet the criteria of Edison, which will speed up review time. Deborah Enos, the Project Manager for WCA, has processed similar projects through Edison and RMC and that experience has already proven extremely helpful on this project; she remains one of the few persons on the horizon to have the necessary experience in working with the agencies involved with this project. However, Ms. Enos' efforts will result in costs that will exceed the City Manager's expenditure authority, and thus require Council action to move forward. Accordingly, staff is recommending that the City Council authorize the City Manager to execute an agreement with the WCA for Ms. Enos' continued services.

COYOTE CREEK IMPROVEMENTS – PROJECT SCHEDULE

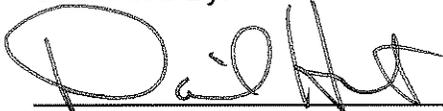
City Approval of Draft Easement Agreement	July 18, 2011
100% Design Submittal	July 23, 2011
SCE Prelimin Review of 100% submittal	August 15, 2011
SCE submits Lease Agreement to CPUC	August 18, 2011
SCE Final Review of 100% submittal	September 2, 2011
SEC submits Draft 851 Application to CPUC and City	September 19, 2011
CPUC Approves Lease Agreement and 851 Application	November 30, 2011
Bid Process	December 2011
Constructions Begins	February 2012
Construction Ends	June 2012

Fiscal Impact

The proposed fee of \$99,656 is reasonable for the scope of work. Staff recommends a Professional Services Agreement be awarded to Watershed Conservation Authority to provide Project Manager and Construction Manager Services of Coyote Creek Park. The Agreement and Scope of Services are included as **Attachment 1**.

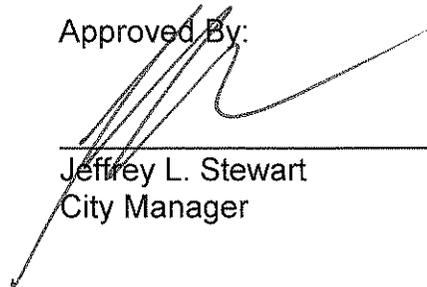
Funds for these services are budgeted in this 2010–11 Capital Improvement Program and will be reimbursed through the RMC grant.

Submitted By:



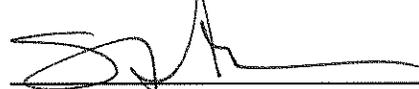
David Hunt, PE
City Engineer

Approved By:



Jeffrey L. Stewart
City Manager

Reviewed By:



Steven Mendoza
Director of Community Development

Attachment: 1) Professional Services Agreement – Watershed Conservation Authority

PROFESSIONAL SERVICES AGREEMENT
(City of Los Alamitos / Watershed Conservation Authority)

1. IDENTIFICATION

This Professional Services Agreement (“Agreement”) is entered into by and between the City of Los Alamitos, a California municipal corporation (“City”) and Watershed Conservation Authority (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: to perform Project Management and Construction Management for the Coyote Creek Park project per Exhibit A.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Such professional services as are set forth in Consultant’s June 29, 2011 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s April 7, 2011 fee schedule to City attached also in Exhibit A and incorporated herein by this reference.
- 3.3 “Commencement Date”: July 19, 2011.
- 3.4 “Expiration Date”: June 30, 2012.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 (“Termination”) below.

5. CONSULTANT'S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Ninety-nine Thousand Six Hundred Fifty-Six Dollars (\$99,656) unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Debbie Enos shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not

withhold applicable taxes or other authorized deductions from payments made to Consultant.

- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

- 10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not

enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

- 10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage as is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and fees of litigation.
- 10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

- 10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

- 11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.
- 11.1.3 Worker's Compensation insurance as required by the laws of the State of California.
- 11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 11.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that

the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).

- 11.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 11.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.
- 11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

- 12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

City of Los Alamitos
3191 Katella Avenue
Los Alamitos, CA 90720
Telephone: (562) 431-3538
Facsimile: (562) 493-1255

If to Consultant:

Watershed Conservation
Authority
100 N. Old San Gabriel
Canyon Road
Azusa, CA 91702
Office (626) 8151019
Fax (626) 815-1269

With courtesy copy to:

Sandra J. Levin, Esq.
Los Alamitos City Attorney
Colantuono & Levin, P.C.
300 S. Grand Ave., Suite 2700
Los Angeles, CA 90071
Telephone: (213) 542-5700
Facsimile: (213) 542-5710

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

- 17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.
- 17.2. If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

- 18.1. Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.2. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 18.3. The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 18.4. The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term,

covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

- 18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Los Angeles County, California and Consultant hereby consents to jurisdiction in Los Angeles County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations

herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Los Alamitos

“Consultant”
Watershed Conservation Authority

By _____
Jeffrey L. Stewart, City Manager

By: _____
Jane Beesley, Acting Executive Officer

Date: _____

Date: _____

By: _____
Name: _____ Title: _____

Date: _____

Attest:

By _____
Adria M. Jimenez, CMC, City Clerk

Date: _____

Approved as to form:

By _____
Sandra J. Levin, City Attorney

Date: _____

EXHIBIT A
SCOPE OF WORK
AND FEE SCHEDULE

CITY OF LOS ALAMITOS



Mayor:
Ken Stephens

Mayor Pro Tem:
Troy D. Edgar

Council Members:
Warren Kusumoto
Gerri L. Graham-Mejia
Marilynn M. Poe

City Manager:
Jeffrey L. Stewart

July 12, 2011

Valorie Shatynski
Interim Executive Officer
Rivers and Mountains Conservancy
100 N Old San Gabriel Canyon Road
Azusa, CA 91702

The City of Los Alamitos is requesting a Grant Amendment to include a revised Budget and Timeline. The last submitted budget worksheet was dated September 21, 2009. At that time, no allowance was included for project management. The purpose of the revised budget is to include fees for a project manager specifically dedicated to this project, at the request of RMC staff. The project has been delayed for various unexpected reasons; however, the City is now prepared to move forward towards the completion of this park.

A professional Project Manager will be contracted by the City to handle general oversight and coordination of this project, allowing the City to focus on finalizing this much delayed passive park site.

The project management fees include crucial tasks, including but not limited to, coordination with stakeholders and permitting agencies such as the Los Angeles County and Orange County Flood Control Districts, Los Alamitos Unified School District and SCE (including CPUC), as well as processing the required agreements and encroachment permitting. Additionally, the project manager will be responsible for overseeing the completion of the construction documents, during construction and job close-out.

The project manager, Debbie Enos of Watershed Conservation Authority, will be designated as the primary point of contact for coordination with the RMC project manager.

All signature/authorizing authority will remain with the City Manager. The revised budget and timeline are attached for review in respect to this request.

If any questions please call me at (562) 431-3538 ext 110

Sincerely,

David L. Hunt, P.E.
City Engineer

G:\DAVE HUNT - WILLDAN\LETTERS\RMC - 5-4-11.doc

3191 Katella Avenue
Los Alamitos, CA
90720-5600

Telephone:
(562) 431-3538

FAX (562) 493-1678

www.ci.Los-Alamitos.ca.us

Watershed Conservation Authority

Governing Board

June 29, 2011

**Teresa Villegas,
Chair**

Designee for Gloria Molina
Los Angeles County Board of
Supervisors, 1st District

**Brian Mejia,
Vice Chair**

Designee for Michael D.
Antonovich
Los Angeles County Board of
Supervisors, 5th District

Karly Katona

Designee for Mark Ridley-
Thomas
Los Angeles County Board of
Supervisors, 2nd District

Connie Sziebl

Designee for Don Knabe
Los Angeles County Board of
Supervisors, 4th District

Dan Arrighi

Rivers and Mountains
Conservancy

Frank Colonna

Rivers and Mountains
Conservancy

Edward Wilson

Rivers and Mountains
Conservancy

Gail Farber

Director
Los Angeles County
Department of Public Works

Jane Beesley

Acting Executive Officer

Mr. Jeff Stewart
City Manager
3191 Katella Ave
Los Alamitos, CA 90720

**Re: City of Los Alamitos Coyote Creek Improvement
Project - WCA PM and CM Services Proposal**

Dear: Mr. Stewart

At the request of the City of Los Alamitos and the recommendation of the Rivers and Mountains Conservancy (RMC), the Watershed Conservation Authority (WCA) is providing the attached Professional Services proposal (Exhibit A) for your consideration to forward the Coyote Creek Improvement project to completion over the next 12 months. This proposal outlines the WCA's anticipated Project and Construction Management services necessary to complete the project as efficiently as possible and within the remaining grant period. For reference, please see the attached Updated Project Budget (Exhibit B) and Updated Project Schedule (Exhibit C).

In Order to Proceed

- Any contract that the WCA seeks to enter into with the City of Los Alamitos, to provide Professional Services, will require the WCA Board of Director's consideration and approval. **Next scheduled WCA Board meeting is July 28, 2011. Acceptance of proposal and sample contract would need to be in place by July 12 to be placed on the agenda.**

- The WCA does not have an independent cash flow stream and therefore would require, from the City of Los Alamitos, an upfront retention value of 10% of the total anticipated fee, or \$9,900.00, to proceed.

- In addition to executing a professional services contract with the WCA, the City of Los Alamitos will need to provide a letter to the Rivers and Mountains Conservancy requesting a project extension through June 1, 2012. If the

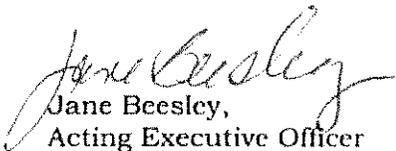
Page 2 - Coyote Creek WCA Services Proposal
June 29, 2011

City of Los Alamitos finds the attached budget and schedule exhibits acceptable, these should also be submitted to the RMC for review and approval of a grant amendment. The **grant amendment request letter must be sent to the RMC by July 12, 2011** to be included on the July 25, 2011 RMC Board Agenda for consideration.

The WCA sincerely appreciates the opportunity to provide Project and Construction Management assistance to the City of Los Alamitos for the Coyote Creek Improvement Project. We thank you in advance for your timely consideration and attention to our proposal and the issuance of the RMC grant amendment request letter. While there remain unknowns and items wholly outside the control of the WCA, such as Southern California Edison's Lease process and Public Utility Commission approval process, the WCA will perform our best efforts to achieve the RMC's grant requirements and time deadline.

Upon your acceptance of our proposal, we can provide the appropriate services agreement for execution by the City, or utilize the City's form if it is compatible with the WCA's requirements and is approved by the WCA's Board of Directors. If you have any questions or concerns regarding this proposal for services or wish to modify any task to better meet the specific needs of the City at the Coyote Creek Improvement project, please contact our Project Manager, Debbie Enos at 626-815-1019 ext 112 or at denos@wca.ca.gov.

Sincerely,


Jane Beesley,
Acting Executive Officer

cc:

Enclosure(s)

JB: (de)

Exhibit A – Professional Services Proposal

City of Los Alamitos Coyote Creek Improvement Project - WCA PM & CM Services

The Watershed Conservation Authority (WCA), created in 2003, is a joint powers authority of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) and the Los Angeles County Flood Control District. The focus of the WCA is on projects which will provide open space, habitat restoration, and watershed improvement in the watersheds of both the San Gabriel River and the Lower Los Angeles River.

Scope of Work includes the following:

Design and Pre-Construction Activities

- 1) Review project documents, related exhibits, and applicable project and site easement/permitting requirements to become familiar with the project, understand the design criteria and acceptance parameters and arrive at mutual understanding of the requirements for the project with the City of Los Alamitos.
- 2) Establish contact with appropriate representatives to the project including City of Los Alamitos, Landscape Architect and relevant sub-consultants, Southern California Edison (SCE), Golden State Water Company, County of Los Angeles Flood Control District, Orange County Flood Control, Pipeline Company and others as required.
- 3) Review the required baseline schedule and supporting documentation, advise as to areas of improvement and produce, as necessary, schedule correction strategies to meet project timeline targets.
- 4) Establish a project file system and communication hierarchy with the City, the Landscape Architect, SCE and contractor(s) and other project team members as appropriate to facilitate communication within the project team, document decisions made, inspection and site observation results and the progress of the project.
- 5) Hold regular project team meetings, prepare action item meeting notes and track progress.
- 6) Review and comment on Construction Documents and support transmittal for plan checks and permit submittals.

- 7) Assist the City, as required or requested, to facilitate SCE Lease process and submittal of documents in support of California Public Utilities Commission application and compliance with SCE construction guidelines.
- 8) Assist the City and Landscape Architect during the Bid and Award Process.

Construction Activities

- 1) Conduct project team meetings and prepare, distribute and track action items.
- 2) Provide on-going and regular monitoring of contractors operations as appropriate at the project site, including when major new/critical construction operations are taking place as anticipated by contractor's schedule. *Note: on-site monitoring will not be continuous full-time observation, but will provide observation for the duration required based upon the contractors progress, construction activities and inspection required of others.*
 - a) It is anticipated that the CM will conduct daily monitoring visits to the project site and provide a daily report of issues raised or notes of observations made, as well as observations and inspections made by others.
 - b) Daily reports will be collated and submitted to the City with a monthly progress report.
- 3) Assist the City, as required or requested, with the receipt, distribution, review and return of required project document submittals with the appropriate actions required of the contractor documented in the submittal return package when the CM is at the project site.
 - a) Schedule of Values.
 - b) Trade, materials and equipment submittals.
 - c) Equipment schedules and lists.
 - d) Requests for information.
- 4) Provide Cost management and control to the project budget in support of the City staff.
 - a) Provide advice and consultation to the City in the processing of change order requests as appropriate.
- 5) Review and provide comment to the contractor of the periodic schedule updates and advise the City Staff of the project status as necessary or as requested.
 - a) Monthly schedule update submittals.
 - b) Intermittent schedule updates as may be required by the project progress and issues discovered during the project process.

- 6) Assist the City and Landscape Architect with the coordination, scheduling and verification of site visits, observations, reviews, testing and inspections required of the contractor to meet the requirements of the project documents.
- 7) Prepare and submit monthly Project Progress Report (one page, summary level, bullet format).
 - a) Summarize progress.
 - b) Address issues, resolution of issues and any impacts.
 - c) Summarize anticipated activities for future periods.
 - d) Address unusual or unexpected events, achievements and project benefits or risks.
- 8) Assist the City, or receive and process if requested, contractor's monthly payment requisitions.
 - a) Review and verify that the contractor "As Built" documents are up to date.
 - b) Review and verify the contractor's progress estimates.
 - c) If requested to process payment requisition by the City, WCA will provide the approved monthly pay request to the City for final processing and payment.
- 9) Substantial Completion verification and processing.
 - a) Coordinate and verify final testing of contractor install systems in accordance with contract documents. Receive and file final test reports.
 - b) Substantiate, review and publish the contractor's preparation of a "completion" list if required.
 - c) Substantiate, review and publish the contractor's preparation of the punch-list.
 - d) Request and coordinate Notice of Substantial Completion from Landscape Architect.
 - e) Conduct punch-list reviews.
 - f) Verify with SCE's Project Representative that SCE concurs with the completion of the project.
 - g) Notify the City of the completion of all project activities and punchlist.
- 10) WCA has not included site visits to verify contractor's Maintenance Period activities and operations, as this work will occur outside the funding window and term and scope of this proposal.

Project and Construction Management Services Costs

Based upon an assumed start date of May 17, 2011 and complete by date of June 30, 2012 for Project Management and Construction Management Services

in assisting the City of Los Alamitos and their staff with completing Design Documents, Permit and SCE submittals, CPUC submittal, and the Bid and Award process through completion of Construction activities, we have developed the time and material cost estimate proposed below.

<u>Project Function/Task</u>	<u>Estimated Fee</u>
Project Management/Construction Management	\$ 90,369
Support Services	\$ 6,897
Other Costs (i.e. Mileage)	<u>\$ 2,390</u>
Total Estimated PM/CM Fee	\$99,656

Note: Services equates to average of .4 Full-Time Equivalent (FTE) PM and CM support over the project term June 2011 to May 2012; please be aware that this cost estimate does not include full-time on-site management or oversight.

Retention

Upon execution of an agreement, the WCA will require a deposit equal to 10% of the total estimated fee.

Los Alamitos Coyote Creek Improvement Project

Professional Fee

	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	FTE	Total Hrs	Rate	Total Dollars
PM	0.2	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.4	0.4	0.4	0.4	0.4	0.8	34%	760	43.84	33318
CM	0.2	0.3	0.3	0.3	0.3	0.3	0.25	0.25	0.4	0.4	0.6	0.8	0.8	0.6	41%	928	61.48	57053
Dir	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.1	0.1	0.1	6%	136	50.71	6897
						0										0		97268

Mileage Reimbursement

	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total Trips	Total Miles	Rate	Total Dollars
PM	2	1	2	2	2	2	2	2	4	4	4	5	5	3	40	65	0.55	1430
CM	1	3	2	2	2	2	2	2	4	4	3				27	65	0.55	965
															67			2395

Exhibit B
Coyote Creek Parkway Improvement Project RMC 3318 - City of Los Alamitos

Project Cost Summary Tracking Report - 100% Planting Zone

Board Approved Pending	Category	Original Grant Budget	Current RMC Approved Budget	Proposed City Funding	Proposed RMC Budget Amendment
Total Project		\$ 1,440,000	\$ 1,440,000	\$ 42,000	\$ 1,440,000.00
Task 1	Site Planting/Irrigation	\$ 430,850.00	\$ 430,850.00		\$ 457,798.00
Task 2	Site Prep Demo/Grading	\$ 54,225.00	\$ 54,225.00		\$ 123,290.00
Task 3	Site Access Improvements	\$ 83,115.00	\$ 83,115.00		\$ 54,777.00
Task 4	MainLine Extension	\$ 15,000.00	\$ 15,000.00		\$ 55,000.00
Task 5 (see 1)					
Task 6	Electrical	\$ 15,000.00	\$ 15,000.00		\$ 7,500.00
Task 8	Graphics	\$ 5,000.00	\$ 5,000.00		\$ 9,500.00
Task 9	Pathway	\$ 438,000.00	\$ 438,000.00		\$ 118,725.00
	Other/Misc				\$ 10,200.00
	Contractor Mark-ups/Other	\$ 124,943.00	\$ 83,295.00		\$ 210,563.00
	6-month Plant Establishment		\$ -	\$ 18,000.00	\$ -
	Permits/supplementals	\$ 52,060.00	\$ 52,060.00		\$ 20,000.00
	Unallocated Contingency	\$ 126,807.00	\$ 126,807.00		\$ 107,707.00
Construction Total		\$ 1,345,000.00	\$ 1,303,352.00	\$ 18,000.00	\$ 1,175,060.00
Design/PM/Other					
	Withers and Sandgren	\$ 95,000.00	\$ 136,648.00		\$ 138,000.00
	WCA PM				\$ 100,000.00
	WILLDAN PM		\$ -	\$ 23,060.00	\$ 26,940.00
Soft Cost Total		\$ 95,000.00	\$ 136,648.00	\$ 23,060.00	\$ 264,940.00
Totals		\$ 1,440,000.00	\$ 1,440,000.00	\$ 41,060.00	\$ 1,440,000.00

Exhibit C
Los Alamos Coyote Creek Improvements - Project Schedule
 Updated June 2011

	2011							2012					
	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Design													
Permitting/Plan Checks													
SCE - Lease and CPUC Approvals													
SCE - Operations/Consent Approval													
Specialty Fabrication													
Bid Process													
Construction													
Project Complete/Close-out													

Critical Path

City of Los Alamitos

Agenda Report Discussion Item

July 18, 2011
Item No: 8C

To: Mayor Kenneth Stephens & Members of the City Council

Via: Jeffrey L. Stewart, City Manager

From: David Hunt, City Engineer
Steven Mendoza, Director of Community Development

Subject: Approval of Lease Agreement between Southern California Edison (SCE) and the City Of Los Alamitos for the Coyote Creek Park

Summary: The City is seeking to construct a low impact, recreation parkway area in the SCE right-of-way along the Coyote Creek behind Oak Middle School, with a \$1,440,000 grant received from the Rivers and Mountains Conservancy (RMC). To complete the project, it is necessary to obtain a lease agreement from the Southern California Edison Company. The City Attorney has reviewed the draft lease and finds it acceptable for the purposes of a low impact, recreational parkway.

Recommendation: Authorize the City Manager, City Attorney and City Clerk to sign the lease.

Background

In 2005, the City of Los Alamitos was awarded funding in the amount of \$1,440,000 from the Rivers and Mountains Conservancy (RMC) to create a recreation parkway adjacent to Coyote Creek, Oak Middle School and the Royal Oak Mobile Home Park. The grant funds for the project come from the RMC through Proposition 50, the Clean Drinking Water, Coastal and Beach Protection State Bond Act of 2002.

The project site borders Coyote Creek flood channel and the regional bike trail along Coyote Creek, both of which are maintained by the Los Angeles County Department of Public Works (LACPW), between Cerritos Avenue and Katella Avenue. The parcel is approximately 2,500 feet in length and approximately 4.0 acres. The site is comprised of a Southern California Edison (SCE) right-of-way area, an SCE easement for an existing oil pipeline, and an additional easement area for Orange County Flood Control District (OCFCD). The OCFCD easement is used to maintain the Los Alamitos Channel, an earthen channel which flows through the site from the northeast to southwest. The project focus is to create a passive recreation area with landscaping composed of native plants of significant ecological value to the region to attract habitat, and restore the site

from a barren utility corridor into a passive greenway park along the Coyote Creek Channel. The walkways will be constructed with non-pervious materials to allow storm water to percolate back into the ground. The development of a park is an opportunity to provide a prototype for the modification of single-purpose land use restrictions to multi-purpose land uses.

Discussion

The City Attorney has reviewed the draft lease and finds it acceptable for the purposes of a low impact, recreational parkway. Once the City accepts the Lease Agreement, Edison will finalize the Agreement and route it internally for signature. Once the Lease Agreement is signed by Edison's Vice President, it will be mailed to the City for signature. The Lease Agreement is returned for submittal to the CPUC; Edison's legal and regulatory departments will then prepare the Draft 851 application. A copy of the Draft 851 will be sent to the City of Los Alamitos for review. After the 851 is signed by all parties it will be submitted to the CPUC.

As soon as Edison receives the CPUC order authorizing SCE to Lease the site for a park and both SCE and the City of Los Alamitos accept conditions imposed by the CPUC, the Lease is in effect. Rents are paid by the City and insurance (refer to Article X of the Lease) provided by the City of Los Alamitos. SCE will confirm by letter that the lease is in effect. If SCE or the City does not accept any conditions imposed by the CPUC, the agreement terminates; if conditions imposed are accepted by both parties and final construction plans are approved by SCE, the City can start construction of the Park which is estimated to start December 2011.

Recommendations

Approve the "Lease Agreement" between Southern California Edison and the City of Los Alamitos for the Coyote Creek Park and establish a budget amount of \$1,750.00 for year 2011-2012 for the lease.

Fiscal Impact

The yearly rent for the lease will start out at \$1,750.00 in year one, and increase every 5 years, to cap out at \$2,562.18 in year 25 per the table in Schedule "1". The lease will commence on the date of the CPUC's order approving the lease. This is estimated to be December 2011.

Submitted By:

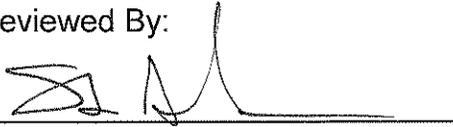


David Hunt, PE
City Engineer

Approved By:


Jeffrey L. Stewart
City Manager

Reviewed By:

A handwritten signature in black ink, appearing to be 'SM', written over a horizontal line.

Steven Mendoza
Director of Community Development

Attachment: 1) Lease Agreement dated 07-07-2011

LEASE AGREEMENT

by and between

Southern California Edison Company,

and

The City of Los Alamitos

LEASE AGREEMENT
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- EXHIBIT "A" – Site Description**
- EXHIBIT "B" – Secondary Land Use Requirements**
- EXHIBIT "B-1" – Constraints Guidelines**
- EXHIBIT "B-2" – RMC State Funded Projects Proposed on SCE Lands**
- EXHIBIT "B-3" – Application to Use SCE Site & RMC Approval Verification**
- EXHIBIT "C"- EMF Information**

LEASE AGREEMENT

This Lease Agreement (as the same may be amended, this "Agreement") is entered into this 11th day of July 2011 by and between Southern California Edison, a California corporation, ("Lessor"), and City of Los Alamitos ("Lessee") (individually referred to herein as "Party" and collectively referred to as "Parties") and is made with reference to the following facts:

RECITALS

- A. Lessor is a public utility company regulated by the California Public Utilities Commission ("CPUC") and is in the business of generating, transmitting and distributing electrical power to its customers throughout the Southern California area.
- B. Lessee is a duly formed City and political subdivision of the State of California.
- C. Lessee is authorized under Proposition 84 the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 to enter into agreements that further the purposes of Prop 40, 50 and 84.
- D. Lessor is the owner of that certain +/- 3.50. acre parcel of real property located in the County of Orange, State of California, (the "Site") that Lessor has determined is potentially suitable for the use by Lessee for public park and recreation purposes. The identified Site is more particularly identified in Exhibit "A" attached hereto and incorporated herein. Lessor has determined that the park and recreation use, as proposed by Lessee, is compatible with Lessor's primary use of the Site for electric utility purposes as reserved by Lessor under this Agreement.
- E. Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, a lease for the Site upon the terms and conditions set forth in this Agreement expressly to assist Lessee in furthering the purposes of Proposition 40, 50, 84 and other such applicable funding sources.

ARTICLE I

LEASE

- 1.1 Lease Term. The Lease for the Site shall be for a term of twenty five (25) years (the "Lease Term") commencing on the date of the CPUC's order approving this Lease as set forth in Article 1.2 below (the "Lease Commencement Date"), and terminates on the twenty fifth (25th) anniversary of the Lease Commencement Date (the "Termination Date"), unless sooner terminated in accordance with the terms of this Agreement.
- 1.2 Approval. Lessee understands that Lessor must obtain authorization from the CPUC pursuant to Section 851 of the California Public Utilities Code as a condition to lease the Site. Lessor agrees to file an application with the CPUC and will use its commercially reasonable efforts to secure approval to lease the Site to Lessee. In the event the CPUC issues an order authorizing Lessor to lease the Site with no conditions, then the "Lease Commencement Date" shall be date on which such order is issued. In the event the CPUC issues an order authorizing Lessor to lease the Site subject to certain conditions, Lessor shall deliver to Lessee a copy of any such order by the CPUC, and

Lessee and Lessor shall have thirty (30) days to elect either to (a) abide by any conditions imposed by the order; or (b) decline to abide by such conditions. In the event Lessee and Lessor elect to abide by such conditions imposed by the order, then Lessee and Lessor shall execute an amendment to this Agreement incorporating such conditions and the "Lease Commencement Date" shall be date on which such amendment is issued; the execution of any such amendment by Lessee and Lessor shall evidence the Parties' approval of such conditions imposed by the order. If Lessee and Lessor do not mutually agree to abide by such conditions, then the Parties shall have no obligation whatsoever under this Agreement. Lessor makes no representation or warranty whatsoever to Lessee regarding the outcome or the length of the Section 851 application process. In the event the CPUC prohibits Lessor from leasing the Site in accordance with this Agreement, then Lessor shall have no obligation whatsoever under this Agreement.

ARTICLE II

RENT

- 2.1 Rent. Lessee agrees to pay in lawful money of the United States as rent ("Base Rent") for the use of the Site during the term of this Agreement, without deduction, abatement, prior demand or offset, at the times and in the manner as hereinafter provided. Base Rent for the Site in the annual amounts specified on Schedule "1" attached hereto below shall be payable in advance in equal yearly installments on the Lease Commencement Date and on the anniversary of the Lease Commencement Date each year of the Lease Term thereafter at Lessor's address set forth in Section 2.3 below or at such other place as Lessor may designate in writing. Unless the context requires otherwise, references to "Rent" in this Agreement shall mean Base Rent together with all other amounts or payments required to be made by Lessee to or for the benefit of Lessor under this Agreement.
- 2.2 Late Payment Charges. Lessee acknowledges that late payment by Lessee to Lessor of the Rent will cause Lessor to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing, accounting and interest charges. Therefore, if any installment of the Rent is not received on the due date, and if such default is not cured in the time frames set forth with Section 13.2 (a) of the Lease, Lessee will be charged a ten percent (10%) late fee on all amounts outstanding. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Lessor will incur by reason of late payment by Lessee.
- 2.3 Checks for Rent Rent payments shall be made payable to "Southern California Edison Company" and mailed to Post Office Box 800, Rosemead, California 91770, Attention: Corporate Accounting Dept. - Accounts Receivable, or such other address as Lessor may designate in writing.

ARTICLE III

TAXES; ASSESSMENTS

- 3.1 On Real and Personal Site. Lessor shall be responsible for all real property taxes, if any, assessed against the Site and for all personal property taxes, if any, assessed against Lessor's improvements located on the Site. Lessee shall pay without abatement, offset or deduction all other real and personal property taxes, general and special assessments, and other charges of every description levied or assessed against

the Site, improvements located on the Site constructed by Lessee, personal property of Lessee located on or in the land or improvements, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the Lease Term. Nothing herein shall require Lessee to pay any taxes assessed against any equipment or improvements belonging to Lessor. Lessee shall make all payments direct to the charging authority at least five (5) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Lessee may, at Lessee's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency.

- 3.2 Prorations. All payments of taxes or assessments or both, except permitted installment payments, shall be prorated for the initial Lease Term year and for the year in which the Lease terminates. For permitted installment payments of which at least the first installment fell due before the commencement of the Lease Term, Lessee shall pay all installments falling due after commencement of the Lease Term. For permitted installment payments of which the first installment falls due during final years of the Lease Term, Lessee shall pay only the installment(s) falling due before expiration of the Lease Term.
- 3.3 For Other Property of Lessor. If the Site is assessed with other property of Lessor for purposes of property taxes, assessments, or other ad valorem or improvement levies (collectively referred to in this paragraph as taxes), all taxes imposed on the entire parcel of which the Site is a part shall, until the Site is separately assessed, be prorated and Lessee shall pay that fraction of the entire tax equal to the fraction that the value of the Site (excluding Lessor's improvements and equipment) bears to the value of the total property included in the assessment.
- 3.4 Lessee's Right to Contest. Lessee may contest the legal validity or amount of any taxes, assessments, or charges imposed by a taxing agency for which Lessee is responsible under this Agreement, and may institute such proceedings as Lessee considers necessary. If Lessee contests any tax, assessment, or charge Lessee may withhold or defer payment under protest but shall protect Lessor and the Site from any lien by adequate surety bond or other appropriate security.

Lessor appoints Lessee as Lessor's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments, or charges, conditioned on Lessee's preventing any liens from being levied on the Site or on Lessor (other than the statutory lien of Revenue and Taxation Code Section 2187).

- 3.5 Proof of Compliance. Lessee shall furnish to Lessor, at least three (3) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Lessee may comply with this requirement by retaining a tax service to notify Lessor whether the taxes have been paid.

ARTICLE IV

USES; PURPOSES

- 4.1 Uses. Lessee shall use and permit the use of the Site for park space and recreational purposes, which shall consist of the following: Greenbelts (grass, shrubs, and trees with a fifteen (15) foot maximum height nature growth species limitation), pedestrian hiking and non-motorized biking trails, which is consistent with the purposes of Prop 40 and Prop 50, or other consistent laws and regulations or future bond measures that may follow Prop 40 and Prop 50, upon the terms and conditions set forth in this Agreement and for which Lessee has obtained Lessor's prior written consent, consistent with Lessor's use of the Site for its power lines and equipment (the "Approved Use"). In no event shall the Approved Use be inconsistent with the Secondary Land Use Requirements, attached hereto as Exhibit "B" and as may be reasonably amended from time to time or otherwise not further the purposes of Prop 40 and Prop 50 as set forth upon the effective date of this Agreement. No uses other than the Approved Use will be allowed on the Site.
- 4.2 Land Use Restrictions. Lessee may obtain land entitlements (e.g. conditional use permit), required for the Approved Use, provided that Lessee first obtains Lessor's prior written consent to do so, and further provided that in no event shall the potential land entitlements interfere or otherwise constrain SCE's current or future primary use of the Site for utility purposes.
- 4.3 Condition of Site. Lessee hereby accepts the Site in its condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Site. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the condition of the Site or the suitability thereof for Lessee's intended use, nor has Lessor agreed to undertake any modification, alteration or improvement to the Site except as provided in this Agreement.
- 4.4 Acceptance of the Site. Except as may be otherwise expressly provided in this Agreement, the taking of possession of the Site by Lessee shall in and of itself constitute acknowledgment that the Site is in good and leaseable condition, and Lessee agrees to accept the Site in its presently existing "as is" condition. Lessor shall not be obligated to make any improvements or modification thereto except to the extent otherwise expressly provided for in this Agreement.
- 4.5 Site Investigation. Lessee represents to Lessor that it has made a sufficient investigation of the condition of the Site existing immediately prior to executing this Agreement (including investigation of the surface, subsurface and groundwater for contamination and hazardous substances) and is satisfied (a) that the Site will safely support the Approved Use, (b) that the Site is otherwise fully fit physically and lawfully for the uses required and permitted by this Agreement, and (c) that the Lessee accepts all risks associated therewith. Lessee acknowledges that, prior to the execution of this Agreement, Lessor provided Lessee access to the Site for a reasonable time and upon reasonable terms and conditions for purposes of providing to Lessee the opportunity to investigate, sample and analyze the soil and groundwater on the Site for the presence of hazardous substances. The phrase "hazardous substance", as used herein, has the same meaning as that phrase has under Sections 25316 and 25317 of the California Health and Safety Code.

- 4.6 Compliance with Laws. Lessee shall, except as otherwise expressly provided in this Agreement, be solely responsible, without any cost or expense to Lessor, to take all actions necessary to improve and continuously use the Site as required by this Agreement and in compliance with all applicable laws, statutes, zoning requirements, ordinances, governmental rules or regulations or requirements of any duly constituted public authority now or later in force, or with the requirements of the State Fire Marshall or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Site. The judgment of any court of competent jurisdiction or the admission of Lessee in any action against Lessee, whether Lessor is a party thereto or not, that Lessee has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Lessor and Lessee. Lessee shall not allow the Site to be used for any unlawful purpose, nor shall Lessee cause, maintain or permit any nuisance in, on or about the Site. Lessee shall not commit or suffer to be committed any waste in or upon the Site. Lessee shall not interfere with Lessor's access to and use, repair, maintenance, replacement, alteration and operation of Lessor's improvements, equipment and facilities located on the Site, which rights of access, use, repair, maintenance, replacement, alteration and operation are hereby expressly reserved by Lessor.
- 4.7 Petroleum Products. Except as otherwise expressly permitted by Lessor, Lessee shall not install facilities for, or operate on the Site, a gasoline or petroleum supply station, nor shall the transportation or storage of gasoline or petroleum products be permitted.
- 4.8 Explosives And Flammable Materials. The Site shall not be used for the manufacture of flammable materials or explosives, or for any storage of flammable materials or explosives. Further, the Site shall not be used by Lessee for any other purposes deemed by Lessor to be a potential fire or other hazard. The operation and maintenance of the Site shall be subject to regulations issued by Lessor so as to protect against fire or other hazard impairing the use, safety and appearance of the Site. The occupancy and use of the Site shall not be such as will permit hazardous or objectionable smoke, fumes, vapors or odors to rise above the surface of the Site.
- 4.9 Hazardous Substances. Lessee shall not use, create, store or allow any hazardous substances on the Site. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted. In no case shall Lessee cause or allow the deposit or disposal of any hazardous substances on the Site. Lessor, its agents and its contractors shall at all times have the right, but not the obligation, to go upon and inspect the Site and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking soil, soil vapor and/or groundwater samples and analyzing or testing such samples to determine whether hazardous substances are present. In the event that analysis or testing indicates that hazardous substances are present on the Site, Lessee shall be responsible for and bear the entire cost of removal and disposal of hazardous substances introduced to and/or released on the Site during the Lease Term. Lessee shall also be responsible for and bear the entire cost to remediate and clean up any contaminated soil and/or groundwater, both on-Site and off-Site, resulting from the hazardous substances introduced to and/or released on the Site during the Lease Term. Lessee shall not be responsible for or bear the cost of removal or disposal of hazardous substances introduced to the Site prior to the Lease Term (excepting any such hazardous substances introduced by Lessee or its agents). Lessee shall indemnify, defend, release and hold harmless Lessor and its affiliates, agents, directors, officers and employees (collectively "Lessor Parties") from and against any and all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) resulting from or arising out of the use, storage, disposal, release or other

presence of hazardous substances on, in, under or about the Site during the Lease Term, except to the extent caused by Lessor's gross negligence or willful misconduct.

4.10 Height Limitations. Any equipment used by Lessee or its agents, employees or contractors, on and/or adjacent to the Site, will be used and operated so as to maintain a minimum of twenty seven (27) feet of vertical ground clearance from all overhead electrical conductors and otherwise maintain clearances in accordance with the results of line clearance evaluations performed by SCE in connection with SCE's review of Lessee's plans and specifications.

4.11 Access and Clearances. Lessee will provide Lessor with adequate access to all of Lessor's facilities on the Site and at no time will there be any interference with the free movement of Lessor's equipment and materials over the Site. Lessor may require Lessee to provide and maintain access roads within the Site, at a minimum of sixteen (16) feet in width, together with commercial driveway aprons and curb depressions capable of supporting a gross load of forty (40) tons on a three-axle vehicle. Lessee will make no use of the area directly underneath Lessor's towers and will maintain the following minimum clearances at all times, except as otherwise approved by Lessor in writing:

- (a) One Hundred (100) feet from all towers.
- (b) Ten (10) feet from all steel poles, wood poles and anchors.

NOTE: Additional clearance shall be required for structures and other material improvement.

4.12 Parkways, Landscaping and Weed Abatement. Lessee will keep parkway and sidewalk areas within and adjacent to the Site free of weeds and trash. Lessee will maintain parkways and provide landscaping that is satisfactory to Lessor. Lessee will be responsible for all weed abatement on the Site.

4.13 Fencing. Lessee may install fencing on the Site with prior written approval from Lessor. Such fencing will include double drive gates or electronic gates, a minimum of sixteen (16) feet in width, designed to accommodate Lessor's locks, in locations specified by Lessor. Lessee will ground and maintain all fencing.

4.14 Wrecked Vehicles and Parking. Lessee shall not park or store wrecked or inoperable vehicles of any kind on the Site. Vehicle parking shall be limited to those areas which are shown on Lessee's plans and specifications which have received Lessor's prior written approval, and further provided that such parking shall be limited to overflow and or short-term (no overnight) parking.

4.15 Reservations for Billboards. Lessor reserves the right to license a portion of the Site to third parties for construction and maintenance of billboards. The location of the billboards will be mutually agreed upon by Lessee and Lessor. Lessee shall not unreasonably withhold its concurrence.

4.16 Cell Sites. Lessor reserves the right to lease a portion of the site from time to time to third parties for construction and maintenance of cell sites with the consent of the Lessee, which consent shall not be unreasonably withheld, conditioned or delayed.

4.17 Environmental Mitigation. Lessee understands and agrees that the Site may not be used for the purpose of mitigation under the California Environmental Quality Act

(CEQA), or any other law or regulation, or for any other mitigation purpose whatsoever. Lessee agrees for itself and for its contractors, agents, licensees, invitees and employees, to indemnify, defend, release and hold harmless Lessor and the other Lessor Parties from and against any and all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) resulting from or arising out of the use of the Site for any environmental mitigation purpose(s).

- 4.18 Creeks or Streams. Under no circumstances shall Lessee develop or allow the formation of creeks, rivers, streams, waterways, lakes, pools or other bodies of water or riparian features on the Site.
- 4.19 Signs. Lessee shall be required to construct, erect, maintain trail signage and other signage which clearly identifies Lessor's access roads and otherwise identifies Lessor's primary use of the Site for utility purposes, and that passage through the Site is subject to Lessor's rules and other restrictions. All signage shall be in accordance with Lessor's specifications and shall require Lessor's prior written consent. No signs shall be of a nature or content that injures the reputation of Lessor.
- 4.20 Anti-Climbing Guards. Lessee shall pay, at its sole cost and expense, for Lessor to design, fabricate and install anti-climbing guards. The anti-climbing guards shall be installed on Lessor's transmission towers located on the Site for the protection of the general public.
- 4.21 Electric and Magnetic Fields. There are numerous sources of power frequency electric and magnetic field ("EMF"), including household or building wiring, electrical appliances and electric power transmission and distribution facilities. There have been numerous scientific studies about the potential health effects of EMF. Interest in a potential link between long-term exposures to EMF and certain diseases is based on the combination of this scientific research and public concerns.

While some 30 years of research have not established EMF as a health hazard, some health authorities have identified magnetic field exposures as a possible human carcinogen. Many of the questions about specific diseases have been successfully resolved due to an aggressive international research program. However, potentially important public health questions remain about whether there is a link between EMF exposures in homes or work and some diseases including childhood leukemia and a variety of other adult diseases (e.g. adult cancers and miscarriages).

While scientific research is continuing on a wide range of questions relating to exposures at both work and in our communities, a quick resolution of the remaining scientific uncertainties is not expected.

Since the Site is in close proximity to Lessor's electric facilities, Lessor wants to share with Lessee and those who may enter the Site under this agreement, the information available about EMF. Accordingly, Lessor has attached to this document a brochure that explains some basic facts about EMF and that describes Lessor's policy on EMF. Lessor also encourages Lessee to obtain other information as needed to assist it in understanding the EMF issues with respect to its planned use of the Site. More information regarding EMF is found within Exhibit "C" attached hereto and incorporated herein by this reference.

- 4.22 Induced Voltage. Lessee hereby acknowledges that any structures (including, but not limited to buildings, fences, light poles) it may construct or erect under the terms of this Lease will be in close proximity to one or more high voltage (66 kilovolt or above) electric

transmission lines and/or substation facilities. Such structures ("Structures") may be susceptible to induced voltages, static voltages and/or related electric fault conditions (hereinafter collectively referred to as "Induced Voltages") unless appropriate grounding or other mitigation measures are incorporated into the Structures. If not properly mitigated, Induced Voltages can result in a variety of safety and/or nuisance conditions, including, but not limited to, electric shocks or other injury to individuals contacting the Structures or other utilities connected to the Structures (including, but not limited to, natural gas lines, water lines or cable television lines), or interference with or damage to sensitive electronic equipment located in or around the Structures. Appropriate measures to mitigate Induced Voltages, if required, will vary from case to case because of factors such as electric facility configuration and voltage, other utilities involved, or sensitivity of electronic equipment. Lessee will be responsible to determine what, if any, Induced Voltages mitigation measures should be undertaken regarding the Structures, and to implement such mitigation measures at its sole cost and expense.

Lessee agrees for itself and for its contractors, agents, licensees, invitees and employees, to indemnify, defend, release and hold Lessor, its parent, subsidiaries, and affiliated entities and their respective officers and employees harmless from and against any and all claims, loss, damage, actions, causes of action, expenses (including, without limitation, attorneys' fees) and/or liability arising from or growing out of loss or damage to property, including without limitation Lessor's own property, or injury to or death of persons, including without limitation employees, contractors, agents, licensees and invitees of Lessor or Lessee, caused by or resulting from or connected to Induced Voltages on or related to the Structures.

ARTICLE V

IMPROVEMENTS

- 5.1 Construction. No later than one hundred twenty (120) days after the Lease Commencement Date, Lessee shall comply with the conditions set forth in Section 5.2 below.
- 5.2 Conditions to Construction. Before any major work of construction, alteration, or repair (except for that work described in Section 6.2) is commenced on the Site, and before any building materials have been delivered to the Site by Lessee or under Lessee's authority, Lessee shall comply with the following conditions:
- (a) Preliminary Plans, Specifications. Lessee shall deliver to Lessor for Lessor's approval in its sole and absolute discretion, five (5) sets of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of California, including but not limited to preliminary grading and drainage plans, soil tests, electric service for park lighting, locations of ingress and egress to and from public thoroughfares, lighting, designs and locations for signs, and landscaping, all sufficient to enable Lessor to make informed judgment about the design and quality of construction and about any effect on the reversion. All improvements shall be constructed within the exterior property lines of the Site; provided that required work beyond the Site with regards to design of the improvements, landscaping, waterways, utilities, access, and conditional use requirements, among other things, do not violate this provision.
- (b) Lessor's Approval. Approval or disapproval of the preliminary construction plans and specifications shall be communicated in the manner provided for notices; and disapproval shall be accompanied by specification of the grounds for disapproval.

Lessee shall not deliver working drawings to any government body for a building permit or any other final approval until preliminary plans are approved by Lessor as in this paragraph. Disapproval and election to submit revised plans and specifications shall not extend the time for commencing or completing constructing.

(c) Submittal of Preliminary Plans to Government Bodies. Upon Lessor's approval of the preliminary plans and specifications, Lessee shall submit such plans to the appropriate governmental agencies, if any, for approval. If such governmental agencies require changes or revisions to the preliminary plans and specifications, then Lessee shall submit such revised preliminary plans and specifications to Lessor for re-approval in the same manner set forth in Section 5.2 (a) and (b) above. Lessor shall have no obligation to concur with any changes or revisions to the preliminary plans and specifications required by any governmental agencies. In the event Lessor does not concur with changes, Lessor may require that Lessee request that the appropriate governmental agencies waive or otherwise modify the requested change or revision to Lessor's satisfaction. In the event that Lessee fails to acquire the modifications or waiver of the Lessor's requested change or revision, Lessor, may, at its election, immediately terminate this Agreement.

(d) Final Plans; Specifications. After Lessee has received approvals required under Sections 5.2(a), (b) and (c) above, Lessee shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by Lessor as set forth above, and deliver to Lessor five (5) complete sets to Lessor.

(e) Notice of Intent to Construct. Lessee shall notify Lessor of Lessee's intention to commence a work of improvement at least ten (10) days before commencement of any such work or delivery of any materials. The notice shall specify the approximate location and nature of the intended improvements. Lessor shall have the right to post and maintain on the Site any notices of nonresponsibility provided for under applicable law, and to inspect the Site in relation to the construction at all reasonable times.

(f) Required Governmental Permits. Lessee shall procure and deliver to Lessor at Lessee's expense evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to grading permits, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction.

5.3 Diligent Prosecution to Completion. Upon the Lease Commencement Date, Lessee shall with reasonable diligence pursue to completion all construction of improvements, additions, or alterations. Failure to complete all improvements as shown on the final plans and specification within twenty four (24) months after the Lease Commencement Date shall be a material default under this Agreement.

5.4 Protection of Lessor Against Cost or Claim. Lessee shall pay or cause to be paid the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics' Lien Law in effect when the work begins. No such payment shall be construed as Rent. Lessee shall not suffer or permit to be enforced against the Site or any part of it any mechanic's, materialmen's contractor's or subcontractor's lien arising from any work of improvement, however it may arise. However, Lessee may in good faith and at Lessee's own expense contest the validity of any such asserted lien, claim, or demand, provided Lessee has furnished the bond required in California Civil Code Section 3143 (or any comparable statute hereafter enacted for providing a bond freeing the Site from the effect of such a lien claim).

Lessee shall defend and indemnify Lessor against any liability and loss of any type arising out of work performed on the Site by Lessee, together with reasonable attorneys' fees and all costs and expenses incurred by Lessor in negotiating, settling, defending, or otherwise protecting against such claims.

- 5.5 Lessor's Right to Discharge Lien. If Lessee does not cause to be recorded the bond described in California Civil Code Section 3143 or otherwise protect the Site under any alternative or successor statute, and a final judgment has been rendered against Lessee by a court of competent jurisdiction for the foreclosure of a mechanic's, materialmen's, contractor's, or subcontractor's lien claim, and if Lessee fails to stay the execution of the judgment by lawful means or to pay the judgment, Lessor shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or lien or both. Lessee shall reimburse Lessor for all sums paid by Lessor under this paragraph, together with all Lessor's reasonable attorneys' fees and costs, plus interest on those sums, fees, and costs at the rate of ten percent (10%) per year from the date of payment until the date of reimbursement.
- 5.6 Notice of Completion. On completion of any substantial work of improvement during the Lease Term, Lessee shall file a notice of completion.

ARTICLE VI

MAINTENANCE AND REPAIRS

- 6.1 Lessee Required to Maintain Site. Throughout the Lease Term, Lessee shall, at Lessee's sole cost and expense, maintain the Site and all improvements in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of (i) federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials; (ii) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction; and (iii) all insurance companies insuring all or any part of the Site or improvements or both.
- 6.2 Damage or Destruction. In the event of any damage to or destruction of Lessee's improvements located on the Site, then Lessee shall promptly and diligently repair and/or restore such improvements as required to comply with Section 6.1 above; provided, however, that if following such damage or destruction in Lessee's reasonable judgment the repair and/or restoration of such improvements is not commercially practical, then in lieu of such repair or restoration Lessee shall (i) promptly and diligently raze and remove from the Site any and all damaged improvements which Lessee does not elect to repair or restore and any associated debris, and restore the surface of the Site on which such improvements were formerly located to a clean, safe and sightly condition, with all excavations filled and the surface graded, and (ii) deliver to Lessor all insurance proceeds received by Lessee relative to the improvements that are not restored, less (I) the unamortized portion of the cost of the original construction of such non-restored improvements, which unamortized portion shall be calculated on a straight-line basis by comparing the number of years in the initial Lease Term (plus any extension terms which have been exercised by Lessee) remaining after the date of the damage or destruction, as compared to the total number of originally scheduled years in the initial Lease Term (plus any extension terms which have been exercised by Lessee) remaining after the completion of the initial construction of such improvements, and less (II) the cost of the demolition and removal from the Site of the subject improvements. No damage to or destruction of any improvements on the Site shall affect Lessee's obligations under this Lease (including without limitation, the obligation to pay the Base

Rent payable hereunder) nor entitled Lessee to terminate this Lease. The Parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for rights contrary to the terms and provisions of this Lease.

ARTICLE VII

OWNERSHIP OF IMPROVEMENTS

- 7.1 Exclusion of Existing Improvements. Title to improvements on the Site at the Lease Commencement Date is retained by Lessor and this Agreement is subject to any rights of ownership in the improvements. The Parties covenant for themselves and all persons claiming under them that the improvements are real property.
- 7.2 Ownership of New Improvements During Lease Term. All improvements constructed on the Site by Lessee as permitted by this Agreement shall be owned by Lessee until expiration of the Lease Term or sooner termination of this Agreement. Lessee shall not, however, remove any Improvements from the Site, nor waste, destroy, or modify any improvements on the Site, except as permitted by this Agreement. The parties covenant for themselves and all persons claiming under them that the improvements are real property.
- 7.3 Ownership at Termination. All improvements constructed on the Site by Lessee as permitted or required by this Agreement shall, during the term of this Agreement, be and remain the property of Lessee; provided, however, that Lessee's rights and powers with respect to the improvements are subject to the terms and limitations of this Agreement and Lessee's interest in such improvements shall terminate upon the expiration or earlier termination of this Agreement (including, without limitation, any termination pursuant to Section 11.5 below).

Notwithstanding the foregoing, at the expiration or earlier termination of this Agreement (except in the case of a condemnation pursuant to Section 12.1), Lessor may, at Lessor's election, demand the removal from the Site of all fixtures and improvements or of certain fixtures or improvements or both, as specified in the notice provided for below. A demand to take effect at the normal expiration of the Lease Term shall be effected by notice given at any time not later than six (6) months before the expiration date. A demand to take effect on any other termination of this Agreement shall be effected by notice given in or concurrently with notice of such termination or within ten (10) days after such termination. Lessee shall comply with the notice before the expiration date, for normal termination, and within sixty (60) days after the notice for other termination. The duty imposed by this provision includes but is not limited to the duty to demolish and remove all foundations, fill all excavations, return the surface to grade, and leave the Site safe and free from debris and hazards; provided that, after compliance with a demand for removal of less than all fixtures and improvements, Lessee shall be required to remedy only willful and negligent injuries to the Site or remaining improvements or fixtures.

ARTICLE VIII

ENCUMBRANCE: SUBORDINATION

- 8.1 No Mortgage. Lessee shall not mortgage or otherwise encumber this Lease without the prior written consent of Lessor.
- 8.2 Subordination. Lessee acknowledges that the Site may be subject to certain liens, deeds of trust, mortgages, covenants, conditions, restrictions, reservations, exceptions, rights and easements, whether or not of record. Lessee represents that it has conducted its own title review and has obtained such insurance as Lessee deems appropriate. At the option of Lessor or any lender of Lessor that obtains a security interest in the Site, this Agreement shall be either superior or subordinate to all ground or underlying leases, mortgages and deeds of trust, if any, which may hereafter affect the Site, and to all renewals, modifications, consolidations, replacements and extensions thereof; provided, however, that this Agreement is subordinate to all recorded ground or underlying leases, mortgages and deeds of trust existing as of the date of this Agreement. Lessee shall, upon written request of Lessor, execute and deliver all instruments as may be required from time to time to subordinate the rights of Lessee under this Agreement to any ground or underlying lease or to the lien of any mortgage or deed of trust, or, if requested by Lessee, to subordinate, in whole or in part, any ground or underlying lease or the lien of any mortgage or deed of trust to this Agreement. Lessee agrees that any purchaser at a foreclosure sale or lender taking title under a deed-in-lieu of foreclosure shall not be responsible for any act or omission of a prior landlord, shall not be subject to any offsets or defenses Lessee may have against a prior landlord, and shall not be liable for the return of the security deposit to the extent it is not actually received by such purchaser or bound by any rent paid for more than the current month in which the foreclosure occurred.

ARTICLE IX

ASSIGNMENT

- 9.1 Lessee's Right to Assign. The Parties acknowledge that this Agreement is not a market rate lease negotiated between private parties. Accordingly, Lessee acknowledges that the restrictions and limitations on its rights to assign, transfer, convey, encumber or sublease its interest in this Agreement are reasonable. Under no circumstances shall Lessee assign, transfer, convey, encumber or sublease its interest in this Agreement or the Site. Any such assignment, transfer, conveyance, encumbrance or sublease shall be a material default under this Lease and shall give rise to an immediate termination of this Agreement. In addition, Lessee's decision to terminate the Approved Use of the Site shall also terminate the Agreement. Notwithstanding the foregoing, in the event that Lessee desires to terminate this lease prior to the expiration of the term in order to have another governmental agency succeed it as a lessee, then Lessee shall notify Lessor, identifying such governmental agency. Thereafter, Lessor shall evaluate and engage such third-party for purposes of determining if Lessor shall accept such governmental agency as a new lessee under a new lease. In the event that Lessee's successor: (i) will engage in the same use of the Site as Lessee, (ii) is subject to the same restrictions governing the use of the bond funds that were originally used by Lessee to enter into this Agreement, (iii) use of the Site by the successor will not interfere with Lessor's operations, (iv) use of the Site by the successor will be consistent with Lessor's Secondary Land Use Requirements, and (v) agrees to any such additional terms and

requirements as Lessor deems reasonably necessary (including, without limitation, potential CPUC approval), Lessor shall enter into a new Lease Agreement with Lessee's successor. In the event Lessor and the potential successor reach agreement on a lease, then Lessor and Lessee shall terminate this Agreement and thereafter Lessor and the potential successor shall enter into a new lease, the form of which shall be substantially similar to this Lease, except for any changes that Lessor deems necessary.

ARTICLE X

INSURANCE AND INDEMNITY

10.1 Insurance Requirements. During the term of this Agreement, Lessee, and its contractors and subcontractors, which perform any work on the Site or on Lessee's improvements thereon, shall maintain insurance as described below:

(a) All-risk Insurance covering any improvements on the Site. Such insurance shall: (i) be of Replacement Cost form with limits sufficient to insure not less than ninety five percent (95%) of the value of the replacement cost new of the improvements, excluding the costs to replace excavations and foundations; (ii) have limits for the amount of insurance the Lessee is required to maintain pursuant to any encumbrance of the leasehold interest; and (iii) be endorsed to add Lessor as an additional insured and Loss Payee.

(b) All-risk Builder's Risk Insurance covering the construction of any improvements on the Site. Such insurance shall: (i) have limits of not less than the value of the improvements and (ii) include Lessor and Lessee's contractors and subcontractors as insureds as their interests may appear.

(c) Commercial General Liability Insurance, including contractual liability, broad form property and damage and products/completed operations, liability, with a combined single limit and annual aggregates of not less than Two Million and 00/100 Dollars (\$2,000,000.00), or such larger amount as Lessor shall reasonably require from time to time. Such insurance shall: (i) be of the "occurrence" form; (ii) be primary for all purposes; (iii) contain standard cross-liability or severability of interest provisions; and (iv) name Lessor as an additional insured.

(d) Commercial Automobile Insurance with a combined single limit of not less than one million and 00/100 Dollars (\$1,000,000.00). Such insurance shall: (i) cover the liability for the use of owned, non-owned and hired vehicles on the Site; (ii) be primary for all purposes; and (iii) name Lessor as additional insured.

(e) Worker's Compensation with statutory limits, in accordance with the laws of the State of California, and Employer's Liability with limits of not less than one million and 00/100 Dollars (\$1,000,000.00). Lessee and its contractors shall require their insurers furnishing such insurance to waive all rights of subrogation against Lessor, its officers, agents, and employees.

10.2 Evidence of Insurance. Lessee shall provide Lessor with evidence of such insurance by submission of certificates of insurance, pursuant to Section 14.10 "Notices" at least ten (10) days prior to Execution of this Agreement or entry upon the Site. Such certificates shall document that the insurance shall not be canceled or allowed to expire or be materially reduced without thirty (30) days prior written notice to Lessor and that such insurance is primary and noncontributing with any insurance carried by Lessor and that Lessor shall have no liability for payment of premiums for such insurance.

- 10.3 Indemnification and Waiver. To the extent not prohibited by law, Lessor and the other Lessor Parties shall not be liable for any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Lessee or by other persons claiming through Lessee. Lessee shall indemnify, defend, protect, and hold harmless Lessor Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising by reason of this Agreement or the use or occupancy of the Site by Lessee or any person claiming under Lessee. The provisions of this Section 10.3 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.
- 10.4 Subrogation. Lessor and Lessee agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance carried by Lessor and Lessee, respectively, is not invalidated thereby. As long as such waivers of subrogation are contained in their respective insurance policies, Lessor and Lessee hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is required to be insured against hereunder under policies of insurance for fire and all risk coverage, theft, or other similar insurance.
- 10.5 Self-Insurance. Lessee shall have the right to self-insure for the requirements set forth herein, provided Lessee provides appropriate documentation evidencing such self-insurance which is reasonably acceptable to Lessor.

ARTICLE XI

RIGHT OF ENTRY

- 11.1 Lessor's Right are Superior. Lessee acknowledges that Lessor's use of the Site for its electric transmission and subtransmission lines and other facilities necessary and useful to Lessor's business of providing electrical power to its customers is senior and superior to the rights of Lessee to use the Site for the Approved Use. Lessee further acknowledges that but for Lessor's rights under this Article XI, Lessor would not enter into this Agreement or would otherwise require a much greater Base Rent (the Parties acknowledging that the Base Rent hereunder is well below the market value rental rate).

Lessee shall conduct its operations on the Site in such a manner so as not to interfere with the operation of the electrical facilities on the Site and/or Lessor's or its contractor's performance of any work done on or above the Site. Lessee acknowledges that the performance of the work may cause damage to paving or other improvements constructed by Lessee on the Site. Lessee expressly agrees to hold Lessor harmless from all such damage to Lessee's improvements.

- 11.2 Lessor's Use and Access of Site. Lessor, through its employees, agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the Site at any and all reasonable times during the term of the Lease without interference or hindrance by Lessee, its agents or representatives for the following purposes: (i) inspecting the Site, (ii) doing of any and all acts necessary, useful or proper in connection with the protection, maintenance, repair, upgrade, replacement, expansion, reconstruction and/or operation of Lessor's electrical lines, structures and ancillary and incidental

improvements and property, and (iii) accessing its billboard and cell sites located on the Site and otherwise doing those things which Lessor is permitted to do under this Agreement. Further, Lessor reserves the right, at its discretion, to immediate possession of the same in case of any national, local or other emergency, or for the purpose of preventing sabotage, and for the protection of said electrical facilities.

Lessor's access to and use of the Site shall be consistent with its need to operate and service its equipment and access billboards, cell sites or for such other reasons as may be reasonably necessary to comply with CPUC orders and requirements and otherwise comply with applicable laws, regulations, policies, judgments and orders which are binding on Lessor.

- 11.3 Modification of Premises, Re-entry and Repossession of the Site. Without limiting Lessor's rights set forth in Section 11.2, Lessor shall have the rights set forth in this Section 11.3. Lessee agrees that Lessor may perform operational and maintenance activities on all or a part of the electrical facilities which are situated on and above the Site. In addition, Lessor may need to otherwise use the Site to install new or additional facilities within the Site. In connection therewith, Lessor shall have the right to impose temporary or permanent restrictions on Lessee's right to enter, occupy, and use all or a portion of the Site, and to repossess portions of, or all of the Site as reasonably necessary for its utility purposes without interference from Lessee, and to otherwise construct improvements thereon as Lessor deems are reasonably necessary or useful for its utility purposes without interference from Lessee.
- 11.4 Insulator Washing. Lessee acknowledges that from time to time, Lessor, its employees, agents and/or contractors will enter the Site to wash insulators located on Lessor's overhead electrical facilities with water. Lessee agrees to indemnify and hold harmless Lessor from any and all claims and/or damage resulting from said operation except to the extent such damage or claim results from Lessor's negligence or willful misconduct.
- 11.5 Advance Notice. In the event Lessor determines that it needs to obtain temporary or permanent possession of all or a portion of the Site, or needs to place restrictions on Lessee's use of the Site, Lessor shall, at least thirty (30) days prior to the effective date of the commencement of such temporary possession or restriction, or in the case of a permanent restriction or possession of all or a portion of the site, six (6) months prior to the effective date of the commencement of such permanent restriction or possession, notify Lessee in writing describing the extent of the possession or restrictions and the effective date of their commencement; the notice periods described above shall not apply to any emergency actions taken by Lessor. Upon the effective date of said notice, Lessee shall peaceably surrender possession of the Site and comply with the restriction as stated therein.
- 11.6 Waiver of Damages; Lease Termination. Notwithstanding anything to the contrary contained in this Agreement, the exercise of any of Lessor's rights under this Article XI shall not give rise to any liability to Lessor, and Lessee's sole and exclusive remedy against Lessor shall be as follows: (a) if the exercise of Lessor's rights under this Article XI results in a temporary possession or restriction of all or any portion of the Site or results in the permanent possession or restriction of less than all of the Site (such that the remainder of the Site can continue to be utilized for the Approved Use), then Base Rent shall be reduced for the period of repossession by an amount equal to the proportion which the area of the portion of the Site which Lessee is restricted from using or which has been surrendered to Lessor is to the total area of the Site (provided, however, that such rental abatement shall not be available for minor closures in connection with regular and ordinary maintenance activities); and (b) if the exercise of

Lessor's rights under this Article XI results in a permanent possession or restriction of all of the Site or results in the permanent possession or restriction of a material portion of the Site (such that the remainder of the Site cannot continue to be utilized for the Approved Use), then Lessee shall have the right to terminate this Agreement. Further, in the event that Lessor's exercise of its rights under this Article XI results in a permanent possession or restriction of all of the Site or results in the permanent possession or restriction of a material portion of the Site (such that the remainder of the Site cannot continue to be utilized for the Approved Use), then Lessor shall have the right to terminate this Agreement.

ARTICLE XII

CONDEMNATION

12.1 Definitions. The following definitions apply in construing provisions of this Agreement relating to a taking by a entity other than Lessor, of all or part of the Site by eminent domain or condemnation:

(a) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by an entity, other than Lessor, having that power, or by inverse condemnation, or (2) a voluntary sale or transfer to any condemnor, either under the threat of condemnation or while legal proceedings in condemnation are pending.

(b) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the Site.

(c) "Substantial taking" means a taking of a portion of the Site by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Lessor's ability to use the remainder, and in the case of Lessee, the Lessee's ability to use the remainder for the purposes permitted under this Agreement.

(d) "Partial taking" means any taking of the Site that is not either a total or substantial taking.

12.2 Termination of Lease As To Part Condemned. In the event the whole or any part of the Site is taken by condemnation, the Lease shall cease as to the part condemned upon the date possession of that part is taken by the entity.

12.3 Partial Taking. If a part of the Site is taken by condemnation but there is no substantial taking of the Site, Lessee shall continue to be bound by the terms, covenants, and conditions of this Agreement except the Base Rent shall be reduced in the same ratio as the value of the portion of the Site taken bears to the value of the total Site (excluding improvements then in existence) as of the date possession of the part is taken.

12.4 Substantial Taking. If the part taken by condemnation constitutes a substantial taking of the Site, Lessee shall either:

(a) Terminate the Lease and be absolved of obligations hereunder which have not accrued at the date possession is taken by condemnation; or

(b) Continue to occupy the remainder of the Site and remain bound by the terms, covenants and conditions of this Agreement, except that Base Rent shall be reduced in the same ratio as the value of the portion or the Site taken bears to the value of the total

Site (excluding improvements then in existence) as of the date possession of the part is taken by condemnation.

Lessee shall give written notice of its election to terminate the Lease within thirty (30) days of the date possession of the part is taken by condemnation. If Lessee fails to give Lessor its written notice of termination within the time specified, this Agreement shall remain in full force and effect except that the Base Rent shall be reduced as provided in this section. If Lessee continues to occupy the remainder, Lessee, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the Site as nearly as possible to its value, condition and character immediately prior to such taking; provided, however that in the case of a taking for temporary use, Lessee shall not be required to effect restoration until such taking is terminated. Lessee shall submit to Lessor its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by condemnation.

- 12.5 Adjustment of Rent. Should a portion of the Site be condemned and the Rent be reduced as provided above, the reduced Rent shall continue to be subject to adjustment in accordance with Section 2.1.
- 12.6 Compensation. If during the term of this Agreement, the Site, or any portion thereof, is condemned by an entity other than Lessor, Lessor and Lessee shall have the right to seek a separate award from the court in such condemnation proceedings to compensate such party for the value of its interest in the Site so taken. Neither party shall have any interest in the other party's award.
- 12.7 Condemnation by Lessor. Lessee acknowledges that Lessor has the power of eminent domain, generally, to acquire real Site for public purposes. Under no circumstances shall Lessor be required to exercise its power of eminent domain to repossess and take temporary or permanent possession of all or a portion of the Site. The Parties' acknowledge that Lessor has the right to obtain possession or exclusive use of all or a portion of the Site pursuant to Article XI (and the relative rights and remedies of the Parties is set forth in said Article XI).

ARTICLE XIII

DEFAULT; REMEDIES

- 13.1 Lessee's Default. Each of the following events shall be a default by Lessee and a breach of this Agreement:
- (a) Failure to Perform Agreement Covenants. Abandonment or surrender of the Site, or failure or refusal to pay when due any installment of Rent or any other sum required by this Agreement to be paid by Lessee, or the failure to perform as required or conditioned by any other covenant or condition of this Agreement.
- (b) Attachment or Other Levy. The subjection of any right or interest of Lessee in the Site to attachment, execution, or other levy, or to seizure under legal process, if not released within sixty (60) days.
- (c) Insolvency, Bankruptcy. The filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment, or satisfaction of Lessee's liabilities; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or

insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing, or other initial event.

13.2 Notice and Right To Cure.

(a) Lessee's Right To Cure Defaults. If the alleged default is nonpayment of Rent, taxes, or other sums to be paid by Lessee as provided in this Agreement, Lessee shall have ten (10) days after notice is given to cure the default. For the cure of any other default, Lessee shall promptly and diligently after the notice, commence curing the default and shall have thirty (30) days after notice is given, to complete the cure; provided, however, if the nature of the breach is such that it is not susceptible of being cured within such thirty (30) day period, then Lessee shall be required to promptly commence cure and diligently prosecute such cure to completion as soon as reasonably possible.

(b) Lessor's Right To Cure Lessee's Defaults. After expiration of the applicable time for curing a particular default, or before the expiration of that time in the event of emergency, Lessor may at Lessor's election, but is not obligated to, make any payment required of Lessee under this Agreement, or perform or comply with any covenant or condition imposed on Lessee under this Agreement or any such note or document. Without in any manner limiting Lessor's rights under the immediately preceding sentence, Lessee expressly agrees and acknowledges that any breach by Lessee of the terms and provisions of Sections 4.8 through 4.10 of this Lease shall constitute an emergency and Lessor shall, upon written notice to Lessee, immediately have the right to take action to cure the breach. Any amounts paid by Lessor on Lessee's behalf under this Lease, and all costs and expenses incurred by Lessor in the performance of any obligations of Lessee under this Lease, plus interest on such sum at the rate of ten percent (10%) per year from the date of payment, performance, or compliance (herein called act), shall be deemed to be payable by Lessee with the next succeeding installment of Rent. No such act shall constitute a waiver of default or of any remedy for default or render Lessor liable for any loss or damage resulting from any such act.

13.3 Lessor's Remedies. If any default by Lessee shall continue uncured, following notice of default as required by this Agreement for the period applicable to the default under the applicable provision of this Agreement, Lessor has the following remedies in addition to all other rights and remedies provided by law or equity, to which Lessor may resort cumulatively or in the alternative:

(a) Termination. Lessor may at Lessor's election terminate this Agreement by giving Lessee notice of termination. On the giving of the notice, all Lessee's rights in the Site and in all improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Site and all improvements in broom-clean condition, and Lessor may reenter and take possession of the Site and all remaining improvements. Termination under this paragraph shall not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee.

(b) Reentry Without Termination. Lessor may at Lessor's election reenter the Site, and, without terminating this Agreement, at any time and from time to time re-lease the Site and improvements or any part or parts of them for the account and in the name of Lessee or otherwise. Any re-leasing may be for the remainder of the term or for a longer or shorter period. Lessor may execute any lease made under this provision either in

Lessor's name or in Lessee's name and shall be entitled to all rent from the use, operation, or occupancy of the Site or improvements or both. Lessee shall nevertheless pay to Lessor on the due dates specified in this Agreement the equivalent of all sums required of Lessee under this Agreement, plus Lessor's expenses less the avails of any releasing. No act by or on behalf of Lessor under this provision shall constitute a termination of this Agreement unless Lessor gives Lessee notice of termination.

(c) Lessee's Personal Property. Lessor may at Lessor's election use Lessee's personal property or any of such property and fixtures without compensation and without liability for wear and tear caused by ordinary usage, or store them for the account and at the cost of Lessee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

(d) Damages. If upon the event of an uncured default, Lessor elects to terminate Lessee's lease of the Site under this Agreement, Lessor may recover from Lessee the following:

(i) the worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(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 Lessee proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus

(iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new Lessee, whether for the same or a different use, and any special concessions made to obtain a new Lessee; and

(v) At Lessor's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this paragraph (e) shall be deemed to be and to mean all sums of every nature required to be paid by Lessee pursuant to the terms of this Lease, whether to Lessor or to others. As used in clauses (i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the then prevailing prime or reference rate of interest plus three percent (3%), but in no case greater than the maximum amount of such interest permitted by law. As used in clause (iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

13.4 Notice of Lessor's Default; Lessee's Waiver. Lessor shall not be considered to be in default under this Agreement unless (a) Lessee has given written notice specifying the default and (b) Lessor shall have failed to cure the default within thirty (30) days after notice is given, plus any additional time that is reasonably required for the curing of the

default if the default is not reasonably susceptible to being cured during this period, so long as Lessor continuously and diligently proceeds to cure the default.

- 13.5 Unavoidable Default or Delay. Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Agreement for the payment of Rent, taxes, insurance, or obligations to pay money. The causes referred to above are: strikes, acts of public enemies of this state or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Agreement), casualties not contemplated by insurance provisions of this Agreement, or other causes beyond the reasonable control of the party obligated to perform.
- 13.6 Waiver; Voluntary Acts. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of Rent pursuant to this Agreement shall not constitute a waiver of any preceding default by Lessee other than default in the payment of the particular Rent payment so accepted, regardless of Lessor's knowledge of the preceding breach at the time of accepting the Rent, nor shall acceptance of Rent or any other payment after termination constitute a reinstatement, extension, or renewal of the Agreement or revocation of any notice or other act by Lessor.
- 13.7 Attorneys' Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees.

13.8 ARBITRATION OF DISPUTES.

THE PARTIES DESIRE TO AVOID AND SETTLE WITHOUT LITIGATION FUTURE DISPUTES WHICH MAY ARISE BETWEEN THEM RELATIVE TO THIS AGREEMENT. ACCORDINGLY, THE PARTIES AGREE TO ENGAGE IN GOOD FAITH NEGOTIATIONS TO RESOLVE ANY SUCH DISPUTE. IN THE EVENT THEY ARE UNABLE TO RESOLVE ANY SUCH DISPUTE BY NEGOTIATION, THEN SUCH DISPUTE CONCERNING ANY MATTER WHOSE ARBITRATION IS NOT PROHIBITED BY LAW AT THE TIME SUCH DISPUTE ARISES SHALL BE SUBMITTED TO ARBITRATION IN ACCORDANCE WITH THE ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (HEREINAFTER 'RULES') THEN IN EFFECT AND THE AWARD RENDERED BY THE ARBITRATORS SHALL BE BINDING AS BETWEEN THE PARTIES AND JUDGMENT ON SUCH AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. NOTWITHSTANDING THE FOREGOING, THIS SECTION 14.8 SHALL NOT BE APPLICABLE TO (i) ANY CLAIMS FOR RESTRAINING ORDER OR OTHER INJUNCTIVE RELIEF, OR (ii) LESSOR'S EXERCISE OF ANY UNLAWFUL DETAINER RIGHTS PURSUANT TO CALIFORNIA LAW OR RIGHTS OR REMEDIES USED BY LESSOR TO TERMINATE LESSEE'S RIGHT OF POSSESSION TO THE SITE.

THREE NEUTRAL ARBITRATORS SHALL BE APPOINTED BY THE AMERICAN ARBITRATION ASSOCIATION AND AT LEAST ONE OF SUCH ARBITRATORS SHALL BE AN ATTORNEY-AT-LAW AND ALL DECISIONS AND AWARDS SHALL BE MADE BY A MAJORITY OF THEM EXCEPT FOR DECISIONS RELATING TO DISCOVERY AND DISCLOSURES AS SET FORTH HEREIN.

NOTICE OF A DEMAND FOR ARBITRATION OF ANY DISPUTE SUBJECT TO ARBITRATION BY ONE PARTY SHALL BE FILED IN WRITING WITH THE OTHER PARTY AND WITH THE AMERICAN ARBITRATION ASSOCIATION. THE PARTIES AGREE THAT AFTER ANY SUCH NOTICE HAS BEEN FILED, THEY SHALL, BEFORE THE HEARING THEREOF, MAKE DISCOVERY AND DISCLOSURE OF ALL MATTERS RELEVANT TO SUCH DISPUTE, TO THE EXTENT AND IN THE MANNER PROVIDED BY THE CALIFORNIA CODE OF CIVIL PROCEDURE. ALL QUESTIONS THAT MAY ARISE WITH RESPECT

TO THE OBLIGATION OF DISCOVERY AND DISCLOSURE AND THE PROTECTION OF THE DISCLOSED AND DISCOVERED MATERIAL SHALL BE REFERRED TO A SINGLE ARBITRATOR WHO SHALL BE AN ATTORNEY-AT-LAW AND ONE OF THE THREE NEUTRAL ARBITRATORS APPOINTED FOR DETERMINATION, AND HIS DETERMINATION SHALL BE FINAL AND CONCLUSIVE. DISCOVERY AND DISCLOSURE SHALL BE COMPLETED NO LATER THAN NINETY (90) DAYS AFTER FILING OF SUCH NOTICE OF ARBITRATION UNLESS EXTENDED BY SUCH SINGLE ARBITRATOR UPON A SHOWING OF GOOD CAUSE BY EITHER PARTY TO THE ARBITRATION. THE ARBITRATORS MAY CONSIDER ANY MATERIAL WHICH IS RELEVANT TO THE SUBJECT MATTER OF SUCH DISPUTE EVEN IF SUCH MATERIAL MIGHT ALSO BE RELEVANT TO AN ISSUE OR ISSUES NOT SUBJECT TO ARBITRATION HEREUNDER. A STENOGRAPHIC RECORD SHALL BE MADE OF ANY ARBITRATION HEARING.

THE PARTIES SHALL SHARE THE COST OF ARBITRATION.

THIS AGREEMENT SHALL BE CONSTRUED, AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE DETERMINED, IN ACCORDANCE WITH THE SUBSTANTIVE LAW OF THE STATE OF CALIFORNIA.

NOTICE; BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

LESSOR _____ LESSEE _____

ARTICLE XIV

ADDITIONAL PROVISIONS

- 14.1 Captions, Attachments, Defined Terms. The captions of the articles of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Agreement. Exhibits attached hereto and addenda and schedules initiated by the Parties, are deemed by attachment to constitute part of this Agreement and are incorporated herein. The words "Lessor" and "Lessee", as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Lessor or Lessee, the obligations hereunder imposed upon Lessor or Lessee shall be joint and several.
- 14.2 Entire Agreement. This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Lessor and Lessee relative to the Site and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Lessor and Lessee. Lessor and Lessee agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to the leasing of the Site are merged in or revoked by this Agreement.
- 14.3 Severability. If any terms or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the

remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

- 14.4 Costs of Suit. If Lessee or Lessor shall bring any action for any relief (including in arbitration) against the other, declaratory or otherwise, arising out of this Agreement, including any suit by Lessor for the recovery of Rent or possession of the Site, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Lessor, without fault on Lessor's part, be made a party to any litigation instituted by Lessee or by any third party against Lessee, or by or against any person holding under or using the Site by lease of Lessee, or for the foreclosure of any lien for labor or materials furnished to or for Lessee or any such other person or otherwise arising out of or resulting from any act or transaction of Lessee or of any such other person, Lessee shall save and hold Lessor, harmless from any judgment rendered against Lessor or the Site or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Lessor in connection with such litigation.
- 14.5 Time, Joint and Several Liability. Time is of the essence of this Agreement and each and every provision hereof. All the terms, covenants and conditions contained in this Agreement to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.
- 14.6 Binding Effect; Choice of Law. The Parties hereto agree that all the provision hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof; and all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of California.
- 14.7 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Lessor of any performance by Lessee after the time the same shall have become due shall not constitute a waiver by Lessor of the breach or default of a covenant, term or condition unless otherwise expressly agreed to by Lessor in writing.
- 14.8 Holding Over. If Lessee remains in possession of all or any part of the premises after the expiration of the term hereof, with or without the express or implied consent of Lessor, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and in such case, Rent and other monetary sums due hereunder shall be payable in the amount of one hundred fifty percent (150%) of the Rent otherwise payable under this Lease and at the time specified in this Agreement and such holding over shall be subject to every other term, covenant and agreement contained herein.
- 14.9 Recording. Lessee shall not record this Agreement without Lessor's prior written consent, and such recordation shall, at the option of Lessor, constitute a noncurable default of Lessee hereunder. Either party shall, upon request of the other, execute,

acknowledge and deliver to the other a short form memorandum of this Agreement for recording purposes.

14.10 Notices. All notices or demands of any kind required or desired to be given by Lessor or Lessee hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the Lessor or Lessee respectively at the addresses set forth below:

Lessee: City of Los Alamitos
 City Manager
 3191 Katella Avenue
 Los Alamitos, CA 90720-5600

Lessor: Southern California Edison
 Real Properties
 Land Management, Metro
 2131 Walnut Grove Avenue
 G.O. 3, 2nd Floor
 Rosemead, CA 91770

14.11 No Partnership. Nothing in this Agreement shall be construed to render the Lessor in any way or for any purpose a partner, joint venturer or associate of Lessee.

14.12 Days. All references to days in this Agreement shall mean business days.

/// Signature page follows ///

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

LESSOR
SOUTHERN CALIFORNIA EDISON COMPANY

By: _____ Dated: _____, 2011
Cecil R. House
Senior Vice President
Operations Support and Chief Procurement Officer

LESSEE
CITY OF LOS ALAMITOS
a municipal corporation

By: _____ Dated: _____, 2011
City Manager

Approved as to form:

City Attorney

Attest:

City Clerk

SCHEDULE "1"

Rent

<u>Year</u>	<u>Annual Amount</u>
1	\$1,750.00
2	\$1,750.00
3	\$1,750.00
4	\$1,750.00
5	\$1,750.00
6	\$1,925.00
7	\$1,925.00
8	\$1,925.00
9	\$1,925.00
10	\$1,925.00
11	\$2,117.50
12	\$2,117.50
13	\$2,117.50
14	\$2,117.50
15	\$2,117.50
16	\$2,329.25
17	\$2,329.25
18	\$2,329.25
19	\$2,329.25
20	\$2,329.25
21	\$2,562.18
22	\$2,562.18
23	\$2,562.18
24	\$2,562.18
25	\$2,562.18

EXHIBIT "A"

Site Depiction

[Attach site depiction]

EXHIBIT "B"

Secondary Land Use (SLU) Requirements

[See Exhibits B-1, B-2 and B-3]

EXHIBIT "B-1"

Constraints Guidelines

[Please See Attached]

EXHIBIT "B-1" (page 1 of 3)
Constraints Guidelines
for Fee-Owned Transmission Rights-of-Way
In support of Secondary Land Use Policy
January 30, 2007

The guidelines below are to implement the new policy on Secondary Land Use declared by Southern California Edison (SCE) in March 2006. That new policy declares that because the primary purpose and use of SCE's transmission rights-of-way (ROW) are for the safe construction, operation and maintenance of SCE's electric transmission system, new secondary land uses will, in general, not be allowed. No new agreements for high-intensity uses of the ROW will be entered into. Unlike prior practice, SCE will no longer actively market its rights-of-way for secondary uses.

However, on a case-by-case basis, SCE will consider exceptions to this prohibition and may agree to licenses for low-intensity secondary uses of its fee-owned ROW¹ that are compatible with these primary purposes and do not impose unacceptable burdens on SCE's ability to maintain and operate its current facilities and that do not interfere with any future operating facility needs. Examples of possible low-intensity green or passive recreational uses include greenbelts; horticultural/agricultural; parks; horseback riding trails; and hiking and non-motorized biking trails. On an even less frequent basis, in certain circumstances, additional low-intensity uses such as short-term overflow parking lots and equestrian stables may be permitted. In no case, however, will permanent or metallic structures be permitted.

In addition to the foregoing general guidance, any proposed low-intensity secondary land use must satisfy the following criteria:

- SCE's access to its property and facilities must be maintained and cannot be encumbered, in order to ensure SCE's access for system operations, maintenance, and emergency response.
- Adequate clearance around SCE towers and poles shall be maintained:
 - 100-foot radius from tower footings
 - 10-foot radius around anchors/guy wires, tubular steel and wood poles
- Whatever other clearances are specified in this document, in all cases adequate clearance from overhead lines (conductors) to the ground conforming to General Order (GO) 95 of the California Public Utilities Commission, as the same may be revised from time to time, shall be provided.
- Access roads must be fully available to SCE, with a minimum of 16 feet usable width and capable of supporting 40-ton, three-axle trucks:
 - All curves shall have a radius of not less than 50 feet measured at the inside edge of the usable road surface

¹ SCE's rights in many of its rights-of-way are only by easement, granted by a third-party property owner. The terms of such easement restrict the underlying fee owner and require SCE's written consent to the waiver or modification of any of such restrictions. SCE does not favor secondary uses of easement rights-of-way because of the difficulty of controlling and terminating such uses.

EXHIBIT "B-1" (page 2 of 3)

- o Maximum cross slope for all access roads shall not exceed 2% and shall slope to the inside
- There are restrictions on underground facilities, such as irrigations systems, with any proposed facility required to have a minimum cover of three feet from the top of the facility and be able to withstand a gross load of 40 tons.
- Structures are not allowed, and other restrictions imposed on specific uses may differ depending on the operating voltage of the electric lines in question. However, portable trailers and the like that can be easily and quickly removed from the site without the aid of special equipment may be permitted. In the case of permitted equestrian stables, the permittee may install facilities constructed primarily of treated wood. In the case of permitted parks, the permittee may install landscaping, trails, benches or other forms of seating, and children's climbing structures provided the same are construed primarily of non-metallic substances and are consistent with required line clearances. Backstops or other metal structures may not be used in the ROW even in otherwise approved parks. Additional technical requirements and prohibitions may apply and will be assessed in discussions with SCE
- Flammable substances are not allowed on SCE rights-of-way.
- Shrubs and trees maintained in the right-of-way may not exceed a 15-foot maximum height mature growth and shall be subject to species limitations specified by SCE. SCE may change acceptable species designations from time to time by SCE upon 90 days' notice.
- As used in SCE's new Secondary Land Use policy, "equestrian stables" shall refer to facilities operated for the domiciling and care of horses. All boarding agreements must authorize the stables operator and SCE to remove horses without notice should emergency circumstances require, and agreements by the horse owner and stables operator to defend, indemnify, and hold SCE harmless should such occur. When stables are permitted, the same shall be only in right-of-way that connects to existing parks, trails, or other open space of at least five acres, or the adjoining area is zoned for equestrian activities.
- Trails, other than those utilizing the existing utility access road, may run longitudinally along the right-of-way, provided the permitted proximity to the "drip line" shall be at SCE's discretion depending on circumstances. Trails crossing the ROW at angles less than 90 degrees may be permitted, again at SCE's discretion. The greater clearances around tower footings and dead-end towers shall be as specified herein shall continue to govern.
- Because they are inconsistent with SCE's primary operating needs, creating wetlands or other sensitive natural habitat, vegetation, or related natural plant areas within SCE's right-of-way is not allowed.
- Trespass discouragers (e.g., "anti-climbing guards") must be installed if deemed necessary by SCE on all existing and future towers. Work will be done by SCE and all costs will be paid in advance by the project proponent or developer.
- Permitted low-intensity secondary land uses will be authorized by means of a license agreement only, for a term not to exceed five years, and terminable at will by SCE on 30 days' notice for no cause required.

EXHIBIT "B-1" (page 3 of 3)

This document is intended only to provide general guidance, and is by no means an exhaustive statement of the requirements that will govern any secondary land use to which SCE may agree. In particular circumstances, more-restrictive constraints than those set out above may be required. It is essential and most productive for all involved parties to contact SCE as soon as possible in the project concept stage and prior even to preparing proposed plans. SCE must approve any proposed project design and construction plans in writing before the project can proceed to negotiation of a license agreement. Depending on the nature and scope of the project, SCE may require fees to be paid to cover the costs of planning, research, calculations of the "sag" of the overhead electrical conductors, and other project-related costs. In addition, a license or consent agreement and related fee will be required for any secondary use. All details and questions can be addressed during the project concept and approval process.

30 January 2007

EXHIBIT "B-2"

Rivers & Mountains Conservancy (RMC) State Funded (Proposition 40, 50, 84 and other such applicable funding sources) Projects Proposed on SCE's Site

PROCESS AND PLAN CHECKLIST

1. Letter from City of Los Alamitos identifying requested use of the Site for State funded (Proposition 40, 50, 84 and other such applicable funding sources) RMC project in accordance with the State provision for the bond measures. The proposed project must be compatible with SCE's Secondary Land Use Policy (low intensity uses only) and Constraints Guidelines.
2. SCE verification of Site availability.
3. If the Site is available, SCE to provide City of Los Alamitos an Application for Use and estimated processing fee to commence review process (SCE review to include electrical conductor clearance evaluations, as required).
4. City of Los Alamitos provides to SCE: (i) the completed Application, (ii) RMC funding approval, and (iii) four (4) copies of a conceptual plan depicting City of Los Alamitos proposed project.
5. SCE shall conduct a review of the conceptual plan, meet with City of Los Alamitos and provide comments for developing preliminary site plans in accordance with SCE's operational requirements and constraints guidelines.
6. City of Los Alamitos shall submit preliminary site plans to comply with SCE's requirements and guidelines. Preliminary site plans must clearly identify and plot:
 - A. SCE property lines and easements
 - B. All SCE structures
 - C. All SCE clearances which comply with SCE Constraints Guidelines
 - D. All proposed improvements

Note: Proposed use must not have open space requirements that can impose additional requirements on the Site or prohibit or limit SCE's ability to construct and install additional facilities on the Site. No environmental mitigation is permitted on SCE's Site. No waterways, creeks, or rivers are to be proposed on SCE's Site.

7. Subsequent to SCE's reviews and approval of the preliminary site plans, SCE shall provide the Agreement to the City of Los Alamitos. The Agreement term would be structured based upon state funding requirements, with a maximum term of twenty five (25) years.
8. Subsequent to the City of Los Alamitos securing all required land entitlements, as referenced in Article 4.2 of the Agreement, SCE will prepare and file an application with the

CPUC to secure approval to lease the Site to the City of Los Alamitos pursuant to Article 1.2 of the Agreement

9. Subsequent to the acceptance of the CPUC order by SCE and the City of Los Alamitos, pursuant to Article 1.2 of the Agreement, the City of Los Alamitos will submit final construction plans for SCE's review and approval, in accordance with Article 5 of the Agreement.

All correspondence shall be submitted to:

Southern California Edison
Real Properties
Land Management, Metro
2131 Walnut Grove Avenue
G.O.3, 2nd Floor
Rosemead, CA 91770

Attention: Betty Perez

EXHIBIT "B-3"

Application to Use SCE Site & RMC Approval Verification of Funding (Proposition 40, 50, 84 and other such applicable funding sources)

Name of Requestor: City of Los Alamitos

Point of Contact on Project: Deborah Enos (WCA PM) and Dave Hunt (City Engineer)
denos@wca.ca.gov Dhunt@ci.los-alamitos.ca.us

Funded by: Rivers and Mountains Conservancy Grant Is it under Proposition 40, 50, 84 and other such applicable funding sources? Yes

Project Name: Coyote Creek Los Alamitos Improvement Project

Location of the Site: Project site is bounded by Cerritos Ave, 605 Freeway, Coyote Creek Channel, and Los Alamitos Channel in the City of Los Alamitos (33.808085,-118.077922)

In order for SCE to process this request, Requestor must obtain approval from San Gabriel Rivers and Mountains Conservancy to ensure that this project falls within Proposition 40, 50 and other such applicable funding source programs.

Submitted By:

Jeff Stewart

Requestor

Requestor Signature

City Manager, Los Alamitos

Requestor Title

Date

Approved By:

Rivers & Mountains Conservancy

Valorie Shatynski, Interim Executive Officer

RMC Title

Date

Please use the attached Constraints Guidelines and Process & Plan Checklist in the development of your proposed project. Your project must comply with the all SCE requirements.

SCE will provide requestor an estimated processing fee amount. In order to process this request, requestor understands that a check for payment of the processing fee must be made payable to Southern California Edison Company (SCE) prior to SCE reviewing plans.

The processing fee is based upon the scope and complexity of the proposed project the number of reviews required.

EXHIBIT "C"

EMF Information Understanding EMF: Electric Magnetic Fields

Reaching over to turn off the electric clock, relaxing in front of the television or making breakfast- electric and magnetic fields, or EMF, are present throughout our environment.

Electric and magnetic fields are a natural consequence of our use of electricity. Whenever an electric charge or current is present- either natural or manmade-fields of electric and magnetic force occur. The earth itself has an intense magnetic field. Think about the natural relationship between the earth and a compass. What causes the compass needle to point north is the earth's magnetic field. Electric charges, currents and fields are naturally found in all living organisms-including humans.

Manmade fields surround any wire that is carrying electricity, including household wiring, electrical appliances, and transmission lines. These are called power frequency electric and magnetic fields because they are created from manmade electricity. The electric current from manmade fields is much weaker than the electric current that naturally flows through our body too weak to be felt.

In the past few years, there has been an increasing amount of public attention focused on the subject of power frequency electric and magnetic fields, even though the subject has been under the scrutiny of researchers since the early 1970s. However, while progress has been made and we've learned a lot, more research is necessary to determine whether these fields are a health hazard. The needed research is being done by the California Department of Health Services and leading state and national research institutions.

ELECTRIC FIELDS. Electric pressure on a wire, or voltage, produces an electrical field around the wire carrying the electricity. By plugging an ordinary lamp into an electrical outlet, voltage enters the lamp cord and creates an electrical field. The higher the voltage the stronger the electrical field. The strength of these fields is measured by the unit of volts per meter (V/M).

MAGNETIC FIELDS. A magnetic field is the force produced by current, or the flow, of electricity through a wire. For example, when you switch a lamp on, current flows through the cord and this movement of electricity creates a magnetic field. There is no magnetic field when the lamp is turned off. The strength of magnetic fields is measured in gauss. Since a gauss is such a large unit of measure, you will see magnetic fields reported in units or milliGauss (mG) (1 gauss = 1000 milliGauss).

HOW STRONG ARE THEY? The strength of both electric and magnetic fields diminishes quickly as you move away from the electrical object, just like the heat and light from a candle falls off with distance. In addition to distance, trees, buildings and most other objects shield the electric field, but have no effect on the magnetic field.

As a rule, household appliances and wiring create magnetic fields higher than or equal to those typically found near power lines. In any situation, exposure to electric and magnetic fields may depend on the source, the distance from you to the source, and the time spent near the source.

ARE THEY HARMFUL? Most scientists agree that health effects from EMF have not been established. Dozens of studies have been completed since the 1970s and new research will continue until scientists agree on whether or not a health hazard exists. However, current scientific data about electric and magnetic fields is inconsistent. Some studies report a relationship between residential and occupational exposure to EMF and an elevated risk of various cancers while other studies, equally well done, do not find this relationship.

Coverage by local newspapers, magazines and major television networks have generated stories on the possible health risk from exposure to EMF from electric power lines and electrical appliances. Some of the media coverage referred to research studies that reported an increase in cancer, especially childhood cancer, for people living near power lines.

You may want to measure the level of electric or magnetic fields in your home. However, we do not know how to interpret the readings to determine any potential health impacts. There is no safe or unsafe level of electric or magnetic fields established and agreed upon by health scientists. Because of this, measurements in your home cannot be compared to any kind of benchmark level to determine a degree of safety. At a customer's request, Edison will provide magnetic field readings.

WHAT IS EDISON DOING? At Edison, we understand the public's concern about EMF at home, at work and around power lines. First and foremost is our commitment to providing reasonably-priced electricity to our customers in a safe, reliable and environmentally sound manner. That's why Edison is pursuing an integrated research approach that:

- Provides Funding for Research Studies - Edison has joined with other agencies to provide funding to leading universities for research and direct funding to outside laboratories.
- Participates in Joint Studies - Edison is currently participating with the California Public Utilities Commission and the California Department of Health Services to determine a range of options to reduce EMF from electric utility facilities.
- Conducts Research Within Edison - We are reviewing the designs of our transmission lines, substations and other facilities should a health hazard be found. We are also trying to determine the effect EMF has on our electrical workers.
- Keeps Current on All Literature and Research Studies - We continually monitor current studies on the issue and participate in national and international seminars to review the results of ongoing research.

OUR COMMITMENT. If future research shows that electric and magnetic fields associated with electricity are a health hazard, we will take every reasonable action necessary to protect our customers and employees.

To date, the scientific literature is not convincing enough to justify expensive measures to reduce electric or magnetic fields. In the meantime, there are questions that need to be

answered and we will continue to search for those answers. We are conducting research to develop and evaluate engineering steps for reducing fields from electric facilities.

Since more research is needed to resolve this controversy, we will continue to support studies, and encourage outside agencies and governmental bodies to do the same.

Edison will continue to provide the most up-to-date information and services available to customers, employees, legislators, local governments and public interest groups about EMF.

MAGNETIC FIELDS AT HOME.

(Measurements are in milligauss)

1.2	12	39
Microwave Oven		
750	40	1
to	to	to
2,000	80	8

1.2	12	39
Clothes Washer		
8	2	0.1
to	to	to
8	2	0.1

60	4	0.1
Electric Range		
to	to	to
2,000	40	1

400	5	0.1
Fluorescent Lamp		
to	to	to
4,000	20	3

60	4	0.1
Hair Dryer		
to	to	to
20,000	70	3
1.2	12	39

25	0.4	0.1
Television		
to	to	to
500	20	2
1.2	12	39

MAGNETIC FIELDS OUTSIDE.

Distribution Lines
1 to 80 mG
Under the Line

Transmission Lines
5 to 300 mG
Under the Line

More detailed information about EMF is contained in a brochure called "Questions & Answers about EMF." To receive a free copy and to find out about other free services Edison provides, including EMF testing and workshops, contact the EMF Education Center at (800) 200-4SCE.

EDISON'S POLICY ON ELECTRIC AND MAGNETIC FIELDS. After many years of research, scientists have not found that exposure to power-frequency electric and magnetic fields (EMF) causes disease in humans. Research on this topic is continuing.

We are aware that some members of the public are concerned about the potential health effects of power-frequency electric and magnetic fields. We recognize and take seriously our responsibilities to help resolve these concerns. Realizing that we need to better understand

electric and magnetic fields and respond to the current uncertainty, we believe Edison's responsibilities are to:

- Provide balanced, accurate information to our employees, customers, and public agencies, including providing EMF measurements and consultation to our customers upon request.
- Support existing research programs at the California Department of Health Services and National Institute of Environmental Health Sciences to resolve the key scientific questions about EMF.
- Conduct research to develop and evaluate no- and low-cost designs for reducing fields from electric utility facilities.
- Take appropriate no- and low-cost steps to minimize field exposures from new facilities and continue to consult and advise our customers with respect to existing facilities.
- Research and evaluate occupational health implications and provide employees who work near energized equipment with timely, accurate information about field exposure in their work environment.
- Assist the California Department of Health Services, the California Public Utilities Commission, and other appropriate local, state, and federal governmental bodies to provide reasonable, uniform regulatory guidance.

City of Los Alamitos

Agenda Report Discussion Item

July 18, 2011
Item No: 8D

To: Mayor Kenneth Stephens and Members of the City Council

Via: Jeffrey L. Stewart, City Manager

From: Steven Mendoza, Director of Community Development
Dave Hunt P.E., City Engineer

Subject: Steps Necessary to Modify Intersection at Lexington Drive and Katella Avenue to Allow Southbound Lexington Drive Traffic to Travel through the intersection into the Apartment Row Neighborhood.

Summary: On January 18, 2011 Councilmember Mejia requested staff to research methods of modifying the traffic signal at the intersection of Lexington Drive and Katella Avenue to allow southbound traffic to cross Katella Avenue into the Apartment Row neighborhood. In researching the issue, staff learned that the traffic signal was constructed to not allow through traffic on southbound Lexington Drive in compliance with the terms of a three-party agreement between the cities of Los Alamitos and Cypress, and Cottonwood Church. Because the modification, if effected would require a change in the street markings on Lexington Drive, immediately north of Katella Avenue, staff was obligated also to discuss the issue with Arrowhead Products, with whom the City has a separate agreement regarding traffic modifications.

Staff researched the request by Councilmember Mejia, determined that modification of the signal to allow southbound traffic on Lexington Drive, south of Katella Avenue would provide additional convenience to persons living in the Apartment Row and Carrier Row neighborhoods, and met with the affected parties seeking input and concurrence. Accordingly, staff has prepared draft letters to the City of Cypress, Cottonwood Church, and Arrowhead Products requesting the modification discussed above in exchange for modifications of the three-party agreement that reflects additional traffic modifications requested by the City of Cypress and Cottonwood Church.

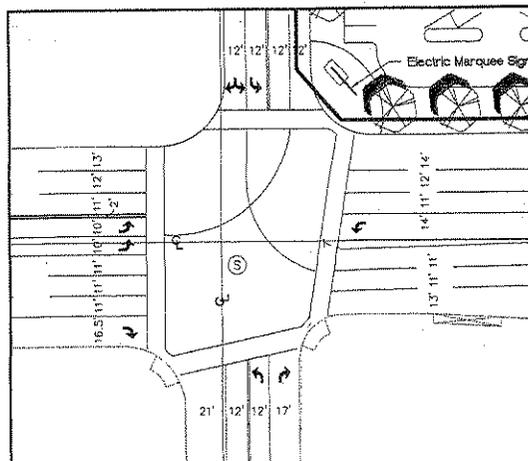
Recommendations: If the City Council desires that the lane configuration be changed to allow southbound Lexington Drive traffic to be able to drive through the Katella Avenue intersection, staff recommends that the City Manager be authorized to sign the attached letters to the City of Cypress, Cottonwood Church, and Arrowhead Products requesting those parties to take the actions necessary to amend the three-way agreement governing the configuration of the traffic signal at Katella Avenue and Lexington Drive.

Background

In March 2004, the Cypress City Council approved the proposed Cottonwood Christian Center Inc., ("Cottonwood") project to construct a seven building, 495,000 square foot church campus and three parking structures on a 31.07 acre parcel of land located on a portion of the Cypress Golf Course at the northeast corner of Katella Avenue and Lexington Drive in the City of Cypress. This action, referred to as the Cypress Approvals, resulted in litigation against the City of Cypress and Cottonwood by the City of Los Alamitos for failure to adequately identify and mitigate traffic impacts associated with the Cottonwood Project.

In July 2004 a Settlement and Mutual Release Agreement pertaining to the litigation was entered into by Cottonwood, City of Cypress and City of Los Alamitos. In essence, the Parties agreed to cooperate to develop the new Cottonwood Property in a manner consistent with the Traffic Improvement Plan (TIP) as shown in the attached Settlement Agreement. A summary of the TIP is as it relates to Lexington Drive and Katella Avenue is as follows:

Lexington Drive intersection at Katella Ave - This intersection will be modified in a number of ways. The existing driveway off Katella Avenue into Arrowhead Products will be eliminated, and the signal mast relocated easterly to serve the new alignment of Lexington Drive north of Katella Avenue. The signal shall continue to operate in the current split-phase manner. Cat track lane markings shall be incorporated to assist drivers with these turn movements and correct alignments to enter the appropriate lane after the turning movement. Dual left-turn pockets for the eastbound Katella Avenue to northbound Lexington Drive turn movement shall be provided. Traffic northbound on Lexington Drive, south of Katella Avenue, may turn right from the curb lane, and turn left or continue through this intersection from the center lane. Traffic southbound on Lexington Drive approaching this intersection may turn right or left onto Katella Avenue, but may not travel southbound through the intersection; appropriate directional signage shall be added. See Exhibit below.



Katella Ave. & Lexington Dr.

Scale: 1" = 20'

There are two sections in the Settlement Agreement that discuss that all Parties must agree in writing with any changes made to the Traffic Improvement Plans.

Discussion

The request from Councilmember Mejia was premised on the view that some residents in Apartment Row and Carrier Row would like the restriction at Lexington Drive at Katella Avenue to be removed and allow southbound traffic to travel through the intersection to improve traffic flow in their surrounding neighborhoods. Subsequent to that request, staff has received correspondence from local residents stating a similar request. However, as indicated above, to effect any change in the configuration of the traffic signal, it is necessary to gain compliance among all parties in the three-way agreement between Los Alamitos, Cypress and the Cottonwood Church.

City of Cypress

City staff met with the City of Cypress. Cypress indicated preliminary agreement to the change on the following conditions:

- 1) The City of Los Alamitos send a letter to Cypress, Cottonwood Church and Arrowhead Products requesting that the three-party agreements mentioned above be modified to allow southbound traffic on Lexington Drive to continue south through the intersection at Katella Avenue;
- 2) The letter should include Los Alamitos' willingness to modify Section 10 of the agreement to eliminate the annual traffic study requirement on northbound Lexington Drive from Katella Ave to Denni Street and the northbound Lexington Drive left-turns to Cerritos Avenue; substitute that requirement with a follow-up study in five (5) years and eliminate the requirement completely after five years if the traffic volumes do not exceed the following:
 - Northbound Lexington Drive from Katella to Denni Street:
 - Not exceed 175 vehicles for the weekday peak "am" hour and
 - Not exceed 250 vehicles for the weekday peak "pm" hour.
 - Northbound left turn vehicles from Lexington Drive onto Cerritos Drive:
 - Not exceed 440 vehicles during weekday peak "am" hour and
 - Not exceed 520 vehicles during weekday peak "am" hour.
- 3) Allow the eastbound Katella Avenue left-turn lane into the 24-Hour Fitness Center parking lot as shown on the attached plans titled "City of Cypress, Median Improvements on Katella Avenue West of Siboney Street". Additionally, Cypress is requesting that a City of Los Alamitos Encroachment Permit would be provided to the City Of Cypress on this project prior to the Katella Avenue at Lexington Drive modification being made.

Cottonwood Church

City staff met with Reverend Mike Wilson, Facilities & Property Development Manager. Reverend Wilson is requesting two items to be considered as a condition of approval for allowing the signal modifications to allow southbound Lexington Drive through traffic to cross Katella Avenue:

- 1) The Cottonwood Church owns the old railroad right of way north of Arrowhead Products and west of Lexington Drive, and would like to build a parking lot on it. In the City's General Plan it shows a future Class 1 Bike Path on this property and the parking lot request was denied in the past because of the bike path designation. The Church is requesting that a parking lot be allowed on this property.
- 2) A commitment from the City Council that the City will not oppose a future request by the Cottonwood Church to install a signal at the Church's expense at Katella Avenue and Enterprise Drive.

Arrowhead Products

City staff met with Ray Evans, Plant Engineer/Facilities Manager at Arrowhead Products. He said the President, himself, and the staff would very much like the change to allow southbound Lexington Drive traffic to be able to cross the Katella Avenue intersection.

The City's Traffic Engineer has evaluated the requests made by all parties and determined them to be reasonable. The southbound Lexington Drive through traffic across Katella Avenue would not create any delays in the signal and provide a safer means of entering the Apartment Row neighborhood. The eastbound left-turn request into the 24-Hour Fitness would not cause any slowdown in the movement along Katella Avenue and the signals on either side of this left-turn pocket would not be affected. If Cottonwood Church requests a new signal at Enterprise Drive it would be synchronized with all the signals on Katella Ave and therefore not affect the flow of traffic along Katella Avenue.

Recommendation

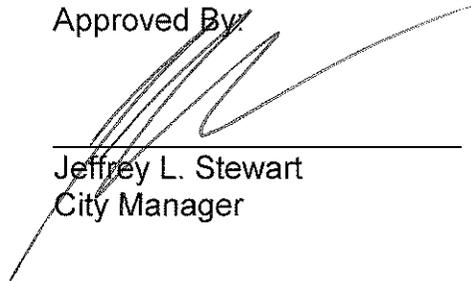
If the City Council desires that the lane configuration be changed to allow southbound Lexington Drive traffic to be able to drive through the Katella Avenue intersection, it would be appropriate to direct the City Manager to sign the attached letters to the City of Cypress, Cottonwood Christian Church and Arrowhead products to obtain the necessary approvals to amend the three-way agreements.

Prepared By:



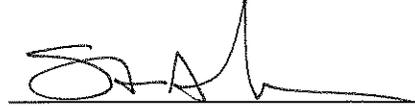
David L Hunt, PE
City Engineer

Approved By



Jeffrey L. Stewart
City Manager

Reviewed By:



Steven Mendoza
Community Development Director

- Attachments:*
- 1) *Settlement and Mutual Release Agreement*
 - 2) *Memorandum of Construction License Agreement*
 - 3) *City of Cypress, Department of Public Works, Median Improvements on Katella Avenue West of Siboney Street, Project No. 2008-XX*
 - 4) *Draft letter to the City of Cypress and Cottonwood Church*

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement ("Agreement"), dated for reference purposes July 12, 2004, is entered into by and among Cottonwood Christian Center, Inc., a California non-profit religious corporation ("Cottonwood"), the City of Cypress, a charter city and municipal corporation ("Cypress"), and the City of Los Alamitos, a charter city and municipal corporation ("Los Alamitos"). Cottonwood, Cypress, and Los Alamitos are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

A. Cottonwood is the owner of an approximate 31.07 acre parcel of land located on a portion of the Cypress Golf Course at the northeast corner of Katella Avenue and Lexington Drive, the legal description of which is set forth on Exhibit "B," attached hereto and incorporated herein by this reference (the "New Cottonwood Property"), and has entered into an agreement, dated as of February 24, 2003 (the "Cottonwood/Cypress Agreement"), to sell to Cypress an approximate 18 acre parcel of land on the northwest corner of Walker Street and Katella Avenue (the "Old Cottonwood Property").

B. Cottonwood plans to construct a new church campus on the New Cottonwood Property consisting of seven buildings, totaling approximately 495,000 square feet, and three parking structures known as the Cottonwood Christian Center Project (the "Cottonwood Project"). On or about January 12, 2004, Cypress prepared an initial study/draft mitigated negative declaration for the Project and circulated it with a notice of intent to adopt a mitigated negative declaration dated January 12, 2004. Cottonwood submitted various applications to Cypress in order to obtain the necessary approval(s) to build the Cottonwood Project.

C. On March 8, 2004, the Cypress City Council voted to approve the Cottonwood Project by, among other things, taking the following actions: (i) adopting Resolution No. 5742 which approved the Mitigated Negative Declaration/Mitigation Monitoring Program, Conditional Use Permit No. 2003-05, Design Review Committee Permit No. 2003-02, and Tentative Parcel Map No. 2003-138, and (ii) approved for first reading Ordinance No. 1053 for Development Agreement No. 2003-01 and Ordinance No. 1054 for Specific Plan Amendment 2003-01 (each such Ordinance was adopted, following a second reading, on March 22, 2004 and became effective April 22, 2004; and all of the foregoing approvals are hereinafter collectively referred to as the "Cypress Approvals").

D. On or about March 30, 2004, Los Alamitos filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against Cypress asserting causes of action arising out of and related to the Cottonwood Project and the Cypress Approvals in Orange County Superior Court, Case No. 04CC00136 (the "Los Alamitos Petition"). The Los Alamitos Petition named Cottonwood as a real party in interest.

E. In the interest of settlement and consistent with the terms of this Agreement, the Parties have agreed to cooperate to develop the New Cottonwood Property in a

manner consistent with the traffic improvement plan ("Traffic Improvement Plan"), depicted on Exhibit "A" attached hereto and incorporated herein by this reference.

F. The Parties have agreed to use this Agreement to achieve a full and complete resolution of all claims asserted by Los Alamitos in the Los Alamitos Petition and to eliminate, to the fullest extent possible, any further governmental impediments to the development of the Cottonwood Project.

NOW, THEREFORE, in full consideration of the terms set forth below, the Parties agree as follows:

AGREEMENT

1. RECITALS INCORPORATED

The foregoing Recitals are incorporated herein and made a part of this Agreement.

2. LEXINGTON DRIVE EXTENSION

(a) If the Cottonwood Project is pursued and constructed, Cottonwood and/or Cypress will cause to be constructed, at no cost or expense to Los Alamitos, an extension of Lexington Drive in substantial conformance with the Traffic Improvement Plan (the "Lexington Extension"). The Lexington Extension shall be completed before the first certificate of occupancy is issued for the Cottonwood Project.

(b) Cypress acknowledges that the allocation of the costs of constructing the Lexington Extension is one of the terms of the entitlements for the development of the New Cottonwood Property that will have to be resolved to Cottonwood's satisfaction as a condition of Cottonwood's obligation to close the sale of the Old Cottonwood Property, which acknowledgment by Cypress shall not be deemed to be a commitment or agreement by either Party regarding allocation of construction costs of the Lexington Extension.

(c) Cypress further acknowledges that construction of the Lexington Extension will require the consents of the owner of the property immediately west of the New Cottonwood Property and of the owner of the race track property immediately north of the New Cottonwood Property. Cypress agrees that, in addition to any other conditions of closing provided for in the Cottonwood/Cypress Agreement, Cottonwood's obligation to close the sale of the Old Cottonwood Property shall be conditioned on the granting of such consents on terms and conditions acceptable to Cottonwood in its sole and unfettered discretion.

(d) While Cypress and/or Cottonwood have agreed to construct the Lexington Extension, at no cost or expense to Los Alamitos, Los Alamitos has agreed to discuss, in good faith, the possibility of contributing toward the cost of such extension. This Agreement, however, is not conditioned in any way on the Parties reaching any understanding or agreement concerning Los Alamitos' contribution to such costs, and the failure of the Parties to reach an agreement shall not diminish or impair the rights of any Party under this Agreement in any way.

(e) Los Alamitos shall be solely responsible for the costs of maintenance and operation of the traffic signal at Katella Avenue and Lexington Drive.

3. **MODIFICATION OF COTTONWOOD'S PLANS REGARDING ENTERPRISE DRIVE**

Cypress and Cottonwood will abandon the previously contemplated eastbound left turn lane from eastbound Katella Avenue onto northbound Enterprise Drive, the contemplated southbound left turn lane from southbound Enterprise Drive onto eastbound Katella Avenue, and the contemplated traffic signal at Enterprise Drive. Instead, Cypress and/or Cottonwood will cause the extension of Enterprise Drive to be constructed, at no cost or expense to Los Alamitos, in substantial conformance with the Traffic Improvement Plan. Such improvements shall be completed before the first certificate of occupancy is issued for the Cottonwood Project.

4. **ADDITION OF COTTONWOOD WAY**

(a) In order to accommodate onsite traffic circulation, and in part to compensate for the elimination of an eastbound left turn lane and a signal at Enterprise Drive, Los Alamitos will permit, and Cottonwood will cause to be constructed, at no cost or expense to Los Alamitos and Cypress, a new entry point on or from Katella Avenue to the New Cottonwood Property, to be designated Cottonwood Way. Cottonwood Way will be configured in substantial conformance with the Traffic Improvement Plan, including a pedestrian crosswalk at the intersection of Katella Avenue. Such improvements shall be completed before the first certificate of occupancy is issued for the Cottonwood Project.

(b) The signal at the intersection of Cottonwood Way and Katella Avenue shall be a demand/response signal and will be synchronized within the Katella Avenue Smart Street parameters such that it is coordinated with the traffic signalization patterns at the intersection of Lexington Avenue and Katella Avenue. Cypress shall be solely responsible for the costs of maintenance and operation of the traffic signal at Katella Avenue and Cottonwood Way.

5. **COMMUNITY PARK**

The Parties acknowledge that Cypress has previously prepared a conceptual master plan for the redevelopment of the Los Alamitos Race Track & Golf Course Project Area (the "LART") which includes the possible construction of a 24-acre community park. Los Alamitos and Cypress agree that it may be beneficial to both communities to have this possible public park in the general vicinity of the New Cottonwood Property. To that end, Cypress and Los Alamitos agree to discuss, in good faith, the possible joint development of such a community park. This Agreement, however, is not conditioned in any way on Cypress and Los Alamitos reaching any understanding or agreement concerning such park, and the failure of Cypress and Los Alamitos to reach agreement shall not diminish or impair any Party's rights under this Agreement in any way.

6. **CEQA REVIEW**

(a) The Parties agree the Cottonwood Project, as further delineated in the Traffic Improvement Plan, is consistent with the Cypress Approvals such that the Cottonwood Project, as further delineated in the Traffic Improvement Plan, does not require any further review under the California Environmental Quality Act ("CEQA"). In any event, the Parties acknowledge and agree that if any further analysis or action is required under CEQA regarding the Cottonwood Project, Cypress shall act, at no cost or expense to Los Alamitos, as the "lead agency" in connection with such CEQA analysis or action, if any.

(b) Los Alamitos specifically agrees that the Cottonwood Project, as further delineated by the Traffic Improvement Plan, adequately addresses all of the concerns it has raised, whether based on CEQA or otherwise, and acknowledges that whatever environmental issues that were or are raised by the Cottonwood Project have been adequately mitigated by the conditions of approval adopted by Cypress on March 8, 2004 (the "Conditions of Approval"), as further delineated in the Traffic Improvement Plan. Accordingly, Los Alamitos covenants and agrees that it will not further challenge, participate in any challenge, join in any challenge, financially contribute to any challenge, nor will the law firm acting as the Los Alamitos City Attorney accept any engagement that would involve a further challenge to, the Cypress Approvals, as further delineated in the Traffic Improvement Plan, on the basis of CEQA or on any other grounds. Nothing herein, however, shall limit or impair any Party's ability to enforce the terms of this Agreement.

7. **NOTICE REGARDING DEVELOPMENT OF ADJACENT PROPERTIES**

Cypress agrees that, in the event an application for a discretionary land use entitlement is timely submitted and deemed complete to develop any property located within the LART, and to the extent that such application requires the giving of written notice to property owners within 300 feet of the property that is the subject of the application, Cypress will also give written notice, in the manner prescribed by law and current Cypress municipal practice, to the owners of the residential properties located in the areas east of Lexington Drive commonly known as the "New Dutch Haven" and "Carrier Row" neighborhoods. Cypress shall notify Los Alamitos not later than two (2) business days in advance of the time that Cypress is required to give notice to the owners of such residential properties, and Los Alamitos shall provide Cypress with mailing labels for this purpose. The obligation of Cypress to give the additional notice set forth herein shall not arise until after Los Alamitos has provided Cypress with the necessary mailing labels. Nothing herein will create any obligation to provide any additional notice with respect to this Agreement, the Cottonwood Project, or the implementation of any of the terms and conditions of this Agreement, including implementation of the Traffic Improvement Plan.

8. **PERMITS FOR COTTONWOOD PROJECT AND TRAFFIC IMPROVEMENT PLAN**

(a) Los Alamitos acknowledges that Cottonwood will need to obtain certain permits and approvals from Los Alamitos to construct some of the improvements contemplated by the Cottonwood Project, and that either Cypress or Cottonwood will also need

certain permits and approvals from Los Alamitos to implement the Traffic Improvement Plan. These permits and approvals may include, without limitation, construction easements, encroachment permits, grading and building permits relating to the design and construction, or modification, of the Lexington Extension, Cottonwood Way, and the extension of Enterprise Drive, together with related intersection, drainage, and pedestrian improvements.

(b) Los Alamitos acknowledges and agrees that these approvals and entitlements are ministerial in law and will be issued or approved without need for public hearing or discretionary review. With respect to the approval of ministerial permits, Los Alamitos agrees to issue the same not later than two (2) business days following submittal of a request for the same. With respect to the processing of plan check reviews, Los Alamitos agrees to complete such reviews within ten (10) business days following submittal of a request for the same.

(c) To the extent that any needed permits, approvals, or entitlements are not ministerial in law, Los Alamitos and its staff agree to cooperate in good faith with Cottonwood and/or Cypress in obtaining issuance of the same, and will, to the fullest extent allowed by law, expedite the processing of any such permits, approvals, or entitlements, and will, if required, support and recommend to the appropriate legislative body(ies) the issuance of any such permits, approvals, or entitlements.

9. CONDITIONS OF APPROVAL

Cypress and Cottonwood acknowledge that to the extent there may be conflicts between the terms of this Agreement and the terms of the Cottonwood Project's Conditions of Approval, the terms of this Agreement shall control.

10. COOPERATION BETWEEN CYPRESS AND LOS ALAMITOS REGARDING TRAFFIC FLOWS ON LEXINGTON

(a) Cypress and Los Alamitos both are committed to minimizing traffic in residential neighborhoods as a result of the construction of the Lexington Extension. To that end, within sixty (60) days of the effective date of this Agreement, Cypress and Los Alamitos agree to jointly fund (with each city paying one-half of such cost) and complete a traffic monitoring program for weekday and Sunday traffic (the "Existing Conditions Study") under terms and conditions jointly agreed to by the respective traffic engineers for these two Parties.

(b) This Existing Conditions Study shall study, using a 24 hour directional machine technology, the following arterial segments:

(i) Lexington Drive between Cerritos Avenue and the former railroad right-of-way; and

(ii) Cerritos Avenue between Bloomfield Avenue and Denni Street; and

(iii) Cerritos Avenue between Denni Street and Moody Street; and

(iv) Denni Street between Cerritos Avenue and Ball Road.

(c) This Existing Conditions Study shall also study weekday "a.m." and "p.m." peak hour, and Sunday peak hour turning movement counts, including an Intersection Capacity Utilization ("ICU") analysis, for the intersections of Cerritos Avenue at Lexington Drive/Denni Street and Cerritos Avenue at Bloomfield Avenue.

(d) Twelve (12) months after Cottonwood is issued its first certificate of occupancy, Cypress and Los Alamitos shall jointly fund (with each city paying one-half of such cost) and complete a "Post-Cottonwood Conditions Study," which study shall consist of an up-date in the turning movement counts and an up-dated ICU analysis, all as required by Section 10(c), above, and peak hour turning movement counts and an ICU analysis for the intersection of Katella Avenue and Lexington Drive.

(e) Cypress shall have the right, in its sole and unfettered discretion and at Cypress' sole cost and expense, to divert northbound through traffic from Lexington Drive onto Cerritos Avenue if the Post-Cottonwood Conditions Study demonstrates that northbound Lexington Drive to Denni Street through vehicle trip counts for weekday peak "a.m." traffic exceeds 175 vehicles; provided, however, that, at the time of the installation of the traffic diversion measures noted below, diversion of northbound left turn vehicles from Lexington Drive onto Cerritos Drive during the weekday peak "a.m." hour will not, at that time, already exceed 440 vehicles. Such traffic diversion measures, if installed, shall include, but not be limited to, modified stripping, pavement markings, signing, and traffic signal indicators at the intersection of Cerritos Avenue at Lexington Drive/Denni Street.

(f) Cypress shall have the right, in its sole and unfettered discretion and at Cypress' sole cost and expense, to divert northbound through traffic from Lexington Drive onto Cerritos Avenue if the Post-Cottonwood Conditions Study demonstrates that northbound Lexington Drive to Denni Street through vehicle trip counts for weekday peak "p.m." traffic exceeds 250 vehicles; provided, however, that, at the time of the installation of the traffic diversion measures noted below, diversion of northbound left turn vehicles from Lexington Drive onto Cerritos Drive during the weekday peak "p.m." hour will not, at that time, already exceed of 520 vehicles. Such traffic diversion measures, if installed, shall include, but not be limited to, modified stripping, pavement markings, signing, and traffic signal indicators at the intersection of Cerritos Avenue at Lexington Drive/Denni Street.

(g) Twelve (12) months following completion of the Post-Cottonwood Conditions Study, Cypress and Los Alamitos agree to jointly fund (with each city paying one-half of such cost) and complete an up-dated peak hour turning movement count and ICU analysis for the intersection of Cerritos Avenue and Lexington Drive/Denni Street, which up-date shall be repeated annually (there shall be no mid-year up-dates) thereafter (the "Annual Post-Cottonwood Conditions Up-Dates").

(h) Following the completion of each Annual Post-Cottonwood Conditions Up-Date, Los Alamitos shall have the right, upon written request, to require Cypress to remove the traffic diversion measures authorized above, at Cypress' sole cost and expense, in the event that total northbound left turn vehicles from Lexington Drive onto Cerritos Drive

during the weekday peak "a.m." hour exceed 440 vehicles. Such removal shall be completed within sixty (60) days of receipt of the written request to do so from Los Alamitos; provided, however, that should Cypress advise Los Alamitos, in writing, of its desire to maintain such traffic diversion measures and of the willingness of Cypress to fund such intersection improvement measures as may be necessary to maintain the same level of service ("LOS") as will exist at the weekday peak "a.m." 440 vehicle diversion level, then Los Alamitos agrees to negotiate, in good faith, the retention of such diversion measures. This Agreement, however, is not conditioned in any way on the Parties reaching any understanding or agreement concerning Los Alamitos' willingness to maintain traffic diversion measures in the event that any Annual Post-Cottonwood Conditions Up-Date demonstrates that the total northbound left turn vehicles from Lexington Drive onto Cerritos Drive during the weekday peak "a.m." hour exceed 440 vehicles, and the failure of the Parties to reach an agreement on retention of such traffic diversion measures shall not diminish or impair the right of Los Alamitos to require removal of such traffic diversions measures in its sole and absolute discretion.

(i) Following the completion of each Annual Post-Cottonwood Conditions Up-Date, Los Alamitos shall have the right, upon written request, to require Cypress to remove the traffic diversion measures authorized above, at Cypress' sole cost and expense, in the event that total northbound left turn vehicles from Lexington Drive onto Cerritos Drive during the weekday peak "p.m." hour exceed 520 vehicles. Such removal shall be completed within sixty (60) days of receipt of the written request to do so from Los Alamitos; provided, however, that should Cypress advise Los Alamitos, in writing, of its desire to maintain such traffic diversion measures and of the willingness of Cypress to fund such intersection improvement measures as may be necessary to maintain the same level of service ("LOS") as will exist at the weekday peak "p.m." 520 vehicle diversion level, then Los Alamitos agrees to negotiate, in good faith, the retention of such diversion measures. This Agreement, however, is not conditioned in any way on the Parties reaching any understanding or agreement concerning Los Alamitos' willingness to maintain traffic diversion measures in the event that any Annual Post-Cottonwood Conditions Up-Date demonstrates that the total northbound left turn vehicles from Lexington Drive onto Cerritos Drive during the weekday peak "p.m." hour exceed 520 vehicles, and the failure of the Parties to reach an agreement on retention of such traffic diversion measures shall not diminish or impair the right of Los Alamitos to require removal of such traffic diversions measures in its sole and absolute discretion.

(j) Unless otherwise precluded by the TMA (as defined in paragraph 13), nothing in this Section 10 shall prevent Los Alamitos from commenting on or challenging (administratively or judicially) the traffic impacts of any proposed discretionary land use approval within the LART, including, but not limited to, commenting on or challenging (administratively or judicially) whether any pending discretionary land use approval warrants construction of additional lanes of traffic on Lexington Avenue north of the former rail-road right-of-way; provided, however, that if the traffic analysis prepared for any pending discretionary land use approval demonstrates that traffic resulting from such approval or project will not result in traffic diversion in excess of that specified in sub-sections (h) or (i), above, Los Alamitos shall not demand or seek to compel (either administratively or judicially) removal of any then-existing traffic diversion measures installed pursuant to this Section 10, if any, as a condition of Cypress' approval of any pending discretionary land use approval or project.

11. DISMISSAL OF LOS ALAMITOS' PETITION

Within five days of the Effective Date of this Agreement, Los Alamitos agrees to dismiss the Los Alamitos Petition with prejudice, subject to the Court entering an order pursuant to California Code of Civil Procedure Section 664.6 (or other appropriate section) retaining jurisdiction to enforce, to the extent necessary, the terms and conditions of this Agreement. In the event that this provision prevents Cottonwood from obtaining financing for the Cottonwood Project on commercially reasonable terms, the Parties agree to discuss, in good faith, a possible amendment to this Agreement to address alternative means of terminating the Los Alamitos Petition. This Agreement, however, is not conditioned in any way on the Parties reaching any understanding or agreement concerning an amendment to this Agreement, and the failure of the Parties to reach an agreement shall not diminish or impair the rights of any Party under this Agreement in any way.

12. SURVIVAL OF COTTONWOOD/CYPRESS AGREEMENT

Cottonwood and Cypress are parties to the Cottonwood/Cypress Agreement and to a Settlement and Mutual Release Agreement, dated February 24, 2003, providing, among other things, for the resolution of various disputes between Cottonwood and Cypress (the "Cottonwood/Cypress Settlement Agreement"). Except for the modification of the Cottonwood/Cypress Agreement provided for in Paragraph 2 above, Cypress and Cottonwood agree that this Agreement is not intended to alter, amend or effect the Cottonwood/Cypress Agreement or the Cottonwood/Cypress Settlement Agreement in any way, and Cottonwood and Cypress agree that except for such modification, the provisions of the Cottonwood/Cypress Agreement and the Cottonwood/Cypress Settlement Agreement shall survive, in their existing form, despite the execution of this Agreement.

13. TRAFFIC MITIGATION FEES

The Parties acknowledge and agree that Cottonwood shall have no obligation to pay any traffic mitigation fee within the meaning of that certain Cypress Business & Professional Center Traffic Mitigation Agreement, by and between Los Alamitos and Cypress (among others), dated August 20, 1990 ("TMA") as a result of the Cottonwood Project. Notwithstanding the foregoing, by entering into this Agreement, neither Cypress nor Los Alamitos waive any argument either city may have with respect to the TMA, the provisions of, obligations of, or interpretations to be given to the TMA, or the enforceability (or lack thereof) of the TMA.

14. MUTUAL RELEASES

Except as otherwise expressly provided in this Agreement, Cypress and Cottonwood, on the one hand, and Los Alamitos, on the other hand, for themselves, and for each and all of their respective successors in interest, assigns, heirs, executors, agents, representatives, consultants, transferees, predecessors, employees, affiliates, officers, directors, partners, co-venturers, attorneys, insurers, administrators, and all others who may take any interest in the matters herein released, hereby fully and forever release, acquit and discharge each other and all of their respective affiliates, parent and/or subsidiary companies, predecessors and successors, together with any and all past and present employees, agents (whether ostensible or actual),

officers, directors, shareholders, partners, assignees, representatives, consultants, attorneys, insurers, accountants and servants from any and all claims, demands, damages, costs, attorneys' fees, losses, rights, and causes of action of any character, nature, and kind, whether known or unknown, suspected or unsuspected, matured or contingent, which Cottonwood and Cypress on the one hand, and Los Alamitos on the other hand, now has or hereafter may have against any other Party by reason of any cause, occurrence, matter, or thing based upon the Los Alamitos Petition, or any cause of action that could have been asserted in the Los Alamitos Petition related to the Cottonwood Project and the Cypress Approvals ("Released Claims").

15. WAIVER OF CIVIL CODE SECTION 1542

Except as set forth herein, it is the intention of the parties hereto that the foregoing release shall be effective as a bar to all demands, liens, assignments, contracts, covenants, actions, suits, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, controversies, judgments, orders and liabilities of any character, nature and kind, known or unknown, suspected or unsuspected based upon the Released Claims. In furtherance of this intention, Cypress, Cottonwood, and Los Alamitos expressly, knowingly, and voluntarily waive (except as otherwise expressly provided for in this Agreement), to the fullest extent permitted by law, all provisions, rights and benefits conferred upon them by the provisions of section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Cypress, Cottonwood, and Los Alamitos, expressly consent that, with respect to the Released Claims, this release shall be given full force and effect in accordance with each and all of its express terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, to the same effect as those terms and provisions relating to any other claims, demands and causes of action hereinabove specified.

Notwithstanding the foregoing, nothing stated in Paragraph 14 or in this Paragraph 15 shall release or be deemed to release any of the Parties from its executory obligations arising expressly under this Agreement.

By initialing below, each Party has read and understands the nature and effect of the releases given herein and of the waiver of Civil Code Section 1542 and has been advised by legal counsel of the nature and effect of the such releases and waiver or has knowingly chosen not to consult legal counsel in this regard.

Cottonwood
Initials: _____

Cypress
Initials: _____

Los Alamitos
Initials:

officers, directors, shareholders, partners, assignees, representatives, consultants, attorneys, insurers, accountants and servants from any and all claims, demands, damages, costs, attorneys' fees, losses, rights, and causes of action of any character, nature, and kind, whether known or unknown, suspected or unsuspected, matured or contingent, which Cottonwood and Cypress on the one hand, and Los Alamitos on the other hand, now has or hereafter may have against any other Party by reason of any cause, occurrence, matter, or thing based upon the Los Alamitos Petition, or any cause of action that could have been asserted in the Los Alamitos Petition related to the Cottonwood Project and the Cypress Approvals ("Released Claims").

15. WAIVER OF CIVIL CODE SECTION 1542

Except as set forth herein, it is the intention of the parties hereto that the foregoing release shall be effective as a bar to all demands, liens, assignments, contracts, covenants, actions, suits, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, controversies, judgments, orders and liabilities of any character, nature and kind, known or unknown, suspected or unsuspected based upon the Released Claims. In furtherance of this intention, Cypress, Cottonwood, and Los Alamitos expressly, knowingly, and voluntarily waive (except as otherwise expressly provided for in this Agreement), to the fullest extent permitted by law, all provisions, rights and benefits conferred upon them by the provisions of section 1542 of the California Civil Code, which provides as follows:

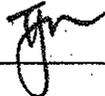
A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Cypress, Cottonwood, and Los Alamitos, expressly consent that, with respect to the Released Claims, this release shall be given full force and effect in accordance with each and all of its express terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, to the same effect as those terms and provisions relating to any other claims, demands and causes of action hereinabove specified.

Notwithstanding the foregoing, nothing stated in Paragraph 14 or in this Paragraph 15 shall release or be deemed to release any of the Parties from its executory obligations arising expressly under this Agreement.

By initialing below, each Party has read and understands the nature and effect of the releases given herein and of the waiver of Civil Code Section 1542 and has been advised by legal counsel of the nature and effect of the such releases and waiver or has knowingly chosen not to consult legal counsel in this regard.

Cottonwood
Initials: _____

Cypress
Initials:  _____

Los Alamitos
Initials: _____

officers, directors, shareholders, partners, assignees, representatives, consultants, attorneys, insurers, accountants and servants from any and all claims, demands, damages, costs, attorneys' fees, losses, rights, and causes of action of any character, nature, and kind, whether known or unknown, suspected or unsuspected, matured or contingent, which Cottonwood and Cypress on the one hand, and Los Alamitos on the other hand, now has or hereafter may have against any other Party by reason of any cause, occurrence, matter, or thing based upon the Los Alamitos Petition, or any cause of action that could have been asserted in the Los Alamitos Petition related to the Cottonwood Project and the Cypress Approvals ("Released Claims").

15. WAIVER OF CIVIL CODE SECTION 1542

Except as set forth herein, it is the intention of the parties hereto that the foregoing release shall be effective as a bar to all demands, liens, assignments, contracts, covenants, actions, suits, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, controversies, judgments, orders and liabilities of any character, nature and kind, known or unknown, suspected or unsuspected based upon the Released Claims. In furtherance of this intention, Cypress, Cottonwood, and Los Alamitos expressly, knowingly, and voluntarily waive (except as otherwise expressly provided for in this Agreement), to the fullest extent permitted by law, all provisions, rights and benefits conferred upon them by the provisions of section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Cypress, Cottonwood, and Los Alamitos, expressly consent that, with respect to the Released Claims, this release shall be given full force and effect in accordance with each and all of its express terms and provisions, relating to unknown and unsuspected claims, demands, causes of action, if any, to the same effect as those terms and provisions relating to any other claims, demands and causes of action hereinabove specified.

Notwithstanding the foregoing, nothing stated in Paragraph 14 or in this Paragraph 15 shall release or be deemed to release any of the Parties from its executory obligations arising expressly under this Agreement.

By initialing below, each Party has read and understands the nature and effect of the releases given herein and of the waiver of Civil Code Section 1542 and has been advised by legal counsel of the nature and effect of the such releases and waiver or has knowingly chosen not to consult legal counsel in this regard.

Cottonwood
Initials: 

Cypress
Initials: _____

Los Alamitos
Initials: _____

16. ACCORD AND SATISFACTION

This Agreement constitutes an accord and satisfaction as to all outstanding issues between the Parties that arise from or are based on the Released Claims.

17. LATER DISCOVERED FACTS

The Parties acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the claims, demands, causes of action, obligations and liabilities that are the subject of the releases set forth hereinabove, and the Parties expressly agree to assume the risk of the possible discovery of additional or different facts, and agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

18. CHOICE OF FORUM AND APPLICABLE LAW

The Parties agree that venue is proper in Orange County in any action brought concerning this Agreement. The Parties further agree that any action brought concerning this Agreement shall be governed by the laws of the State of California.

19. COMPROMISE OF DISPUTED CLAIMS

The Parties acknowledge that the Parties admit no liability or responsibility to each other with respect to the Released Claims. The Parties specifically deny any such liability or responsibility. The Parties acknowledge that the promises, covenants and release set forth in this Agreement are in consideration of a settlement and compromise.

20. ADDITIONAL REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to each other Party that it has not assigned or transferred or purported to assign or transfer to any person, firm, entity, or corporation any claim, demand, right, damage, liability, debt, account, action, cause of action, or any other matter herein released or discharged, and they respectively have the full right and authority to enter into this Agreement. The Parties agree to indemnify and hold one another harmless against any claim, demand, right, damage, debt, liability, account, action, cause of action, cost or expense, including attorneys' fees actually paid or incurred, arising out of or in connection with any such transfer or assignment or any such purported or claimed transfer or assignment in violation of this representation and warranty.

Each Party represents and warrants to each other Party that it has the ability to carry out the obligations assumed and promised hereunder, and is not presently aware of any pending event which would, or could, hamper, hinder, delay, or prevent its timely performance of said obligations.

21. SUCCESSORS AND ASSIGNS

This Agreement, and all the terms and provisions hereof, are for the benefit of each of the Parties and shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

22. ATTORNEYS' FEES

Each Party shall bear its own attorneys' fees and costs in connection with the Los Alamos Petition and this Agreement. However, in the event any Party to this Agreement commences any legal proceeding concerning any aspect of this Agreement, including, but not limited to, the interpretation or enforcement of any of its provisions, the prevailing party shall be entitled to recover its expert witness fees, reasonable attorneys' fees, and all other costs and expenses incurred in connection with the action or proceeding. The "prevailing party" means the party determined by the court to have most nearly prevailed, even if such party did not prevail in all matters, not necessarily the one in whose favor a judgment is rendered. If the court fails or refuses to make a determination of the prevailing party, the party who is awarded costs of suit shall also be deemed to be the prevailing party for purposes of awarding attorneys' fees.

23. SEVERABILITY

Each of the Parties hereto acknowledges and agrees that the terms and conditions of this Agreement are valid, binding, and enforceable as to it. In the event, however, that any term, provision, covenant, or condition of this Agreement shall be declared invalid, void, or unenforceable by a final judgment or other final judicial determination, such portion shall be deemed severed from this Agreement, and the remaining parts shall remain in full force and effect so long as the economic and legal substance of the transaction contemplated thereby is not affected in any manner materially adverse to any Party to this Agreement. Upon any binding determination that any term or other provision of this Agreement is invalid, void, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties hereto as closely as possible in an acceptable and legally enforceable manner in order that the transaction contemplated hereby may be effected to the full extent possible.

24. SPECIFIC PERFORMANCE

The Parties expressly acknowledge and agree that no adequate remedy is available at law for breach of this Agreement and that, in addition to any other remedies available, to the extent this Agreement continues in existence, specific performance of this Agreement may be ordered and/or a breach hereof may be enjoined, or both.

25. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same Agreement.

26. **SECTION HEADINGS**

The captions, subject, section and paragraph headings in this Agreement are included for convenience and reference only. They do not form a part hereof, and do not in any way modify, interpret, or reflect the intent of the parties. Said headings shall not be used to construe or interpret any provision of this Agreement.

27. **RIGHT TO CONSULT WITH ATTORNEY, TERMS UNDERSTOOD**

The Parties acknowledge that each has read this Agreement; that each fully understands his rights, privileges and duties under this Agreement; and that each enters into this Agreement freely and voluntarily. Each Party further acknowledges that each has had the opportunity to consult with an attorney of his or her choice to explain the terms of this Agreement and the consequences of signing it.

28. **NO PRESUMPTION AGAINST DRAFTING PARTY**

This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because said Party drafted or caused the Party's legal representative to draft any of its provisions.

29. **WAIVER**

The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor shall such failure prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.

30. **FURTHER ACTS AND AMENDMENTS**

Each Party to this Agreement agrees to perform all further acts and execute all further documents necessary to carry out the intent and purposes of this Agreement. Each Party further agrees that no change(s) shall be made to the Traffic Improvement Plan without the prior written consent of all Parties to this Agreement, which consent shall not be unreasonably withheld; provided, however, that no party to this Agreement shall be required to consent to changes to the Traffic Improvement Plan which would result in a substantial deviation from the street alignment, extensions or connections, lane configuration, or number of lanes set forth in such plan.

31. **NOTICES**

All notices, requests, demands and other communications required to or permitted to be given under this Agreement shall be in writing and shall be conclusively deemed to have been duly given (a) when hand delivered to the other Party; or (b) when received when sent by facsimile at the address and number set forth below (provided that any notice given by facsimile

shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a nonbusiness day); or (c) three business days after the same have been deposited in a United States post office with first class or certified mail return receipt requested postage prepaid and addressed to the Parties as set forth below; or (d) the next business day after same have been deposited with a national overnight delivery service reasonably approved by the Parties (Federal Express, Overnight Express Parcel Service, and DHL WorldWide Express being deemed approved by the Parties), postage prepaid, addressed to the Parties as set forth below with next business day delivery guaranteed (or to such other address as the Party to whom notice is to be given may have furnished to the other in writing in accordance herewith):

If to Cottonwood:

Cottonwood Christian Center, Inc.
3311 Sausalito Street
Los Alamitos, California 90720
Attention: Pastor Bayless Conley
Phone: (562) 493-4442
Fax: (562) 493-1963

With a copy to:

Sheppard, Mullin, Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, California 92626-1925
Attention: R. Marshall Tanner, Esq. and
Sean P. O'Connor, Esq.
Phone: (714) 513-5100
Fax: (714) 513-5130

If to Cypress:

City of Cypress
5275 Orange Avenue
Cypress, CA 90630
Attention: Jill Ingram-Guertin, City Clerk
Phone: (714) 229-6683
Fax: (714) 229-6682

With a copy to:

Aleshire & Wynder, LLP
18881 Von Karman
Irvine, CA 92612
Attention: William W. Wynder, Esq.
Phone: (949) 223-1170
Fax: (949) 223-1180

and

Rutan & Tucker, LLP
611 Anton Boulevard, Fourteenth Floor
Costa Mesa, California 92626-1931
Attention: Dan Slater, Esq.
Phone: (714) 641-3437
Fax: (714) 546-9035

and

Community Development Department
City of Cypress
5275 Orange Ave.
Cypress, CA 90630
Attention: David Belmer
Phone: (714) 229-6720
Fax: (714) 229-0154

If to Los Alamitos:

City of Los Alamitos
3191 Katella Avenue
Los Alamitos, California 90720
Attention: Robert C. Dominguez
Phone: (562) 431-3538
Fax: (562) 493-1255

With a copy to:

Best, Best & Krieger, LLP
5 Park Plaza, Suite 1500
Irvine, CA 92614
Attention: Dean Derleth, Esq.
Phone: (949) 263-2600
Fax: (949) 260-0972

32. NONDISCRIMINATION

Cypress, Cottonwood and Los Alamitos each covenants that in their respective performance of this Agreement they shall not discriminate against person or group of persons on account of any impermissible classification including but not limited to race, color, religion,

gender, marital status, national origin, or ancestry, to the extent such discrimination violates applicable law.

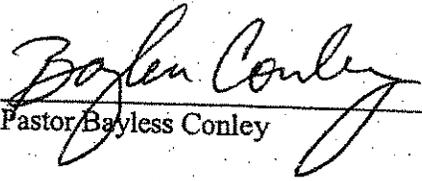
33. ENTIRE AGREEMENT; AMENDMENT

This Agreement supersedes all prior negotiations and understanding of any kind with respect to the subject matter hereof between the Parties and contains all the terms and provisions of the agreement between the Parties with respect to the subject matter hereof. The Parties acknowledge that there are no oral understandings, statements or stipulations between any of them bearing upon the effect of this Agreement which have not been incorporated herein. No waiver, modification, amendment, discharge or change in the terms of this Agreement shall be valid unless the same is in writing signed by the Party against which the enforcement of such waiver, modification, amendment, discharge or charge is sought. This Agreement may be amended by agreement of the Parties hereto by an instrument in writing signed by all the Parties after approval of such amendment by the governing boards of each Party hereto.

IN WITNESS WHEREOF, the Parties hereto have each executed this Agreement on the date indicated below, with the latest of the dates set next to the signatures of the Parties being the effective date of this Agreement (the "Effective Date").

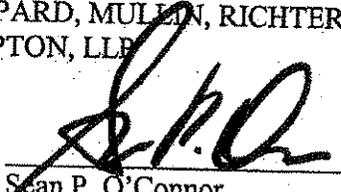
COTTONWOOD CHRISTIAN CENTER, INC.

DATE: 7-19-04

BY: 
Pastor Bayless Conley

APPROVED AS TO FORM:

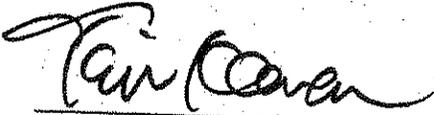
SHEPPARD, MULLEN, RICHTER &
HAMPTON, LLP

BY: 
Sean P. O'Connor
Attorneys for Cottonwood Christian Center

[Signatures Continued on Following Page]

CITY OF CYPRESS

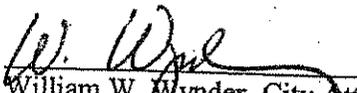
DATE: 7/20/04

BY: 
Tim Keenan, Mayor

ATTEST:

BY: 
Jill R. Guertin, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

BY: 
William W. Wynder, City Attorney

[Signatures Continued on Following Page]

CITY OF LOS ALAMITOS

DATE: 7-16-04

BY:

Alice Jempsa
Alice Jempsa, Mayor

ATTEST:

BY: Susan C. Vanderpool
Susan Vanderpool, City Clerk

APPROVED AS TO FORM:
BEST, BEST & KRIEGER.

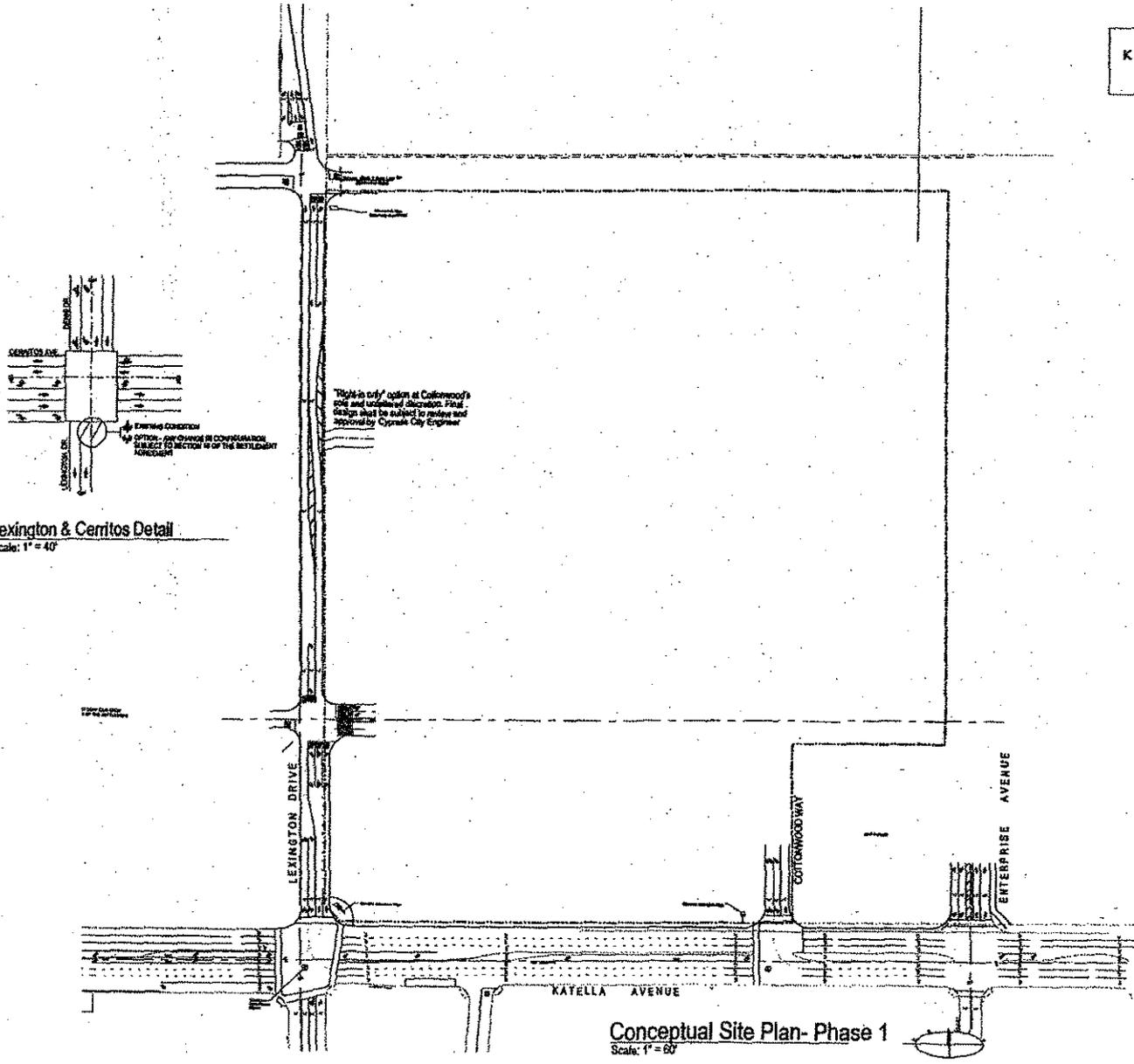
BY:

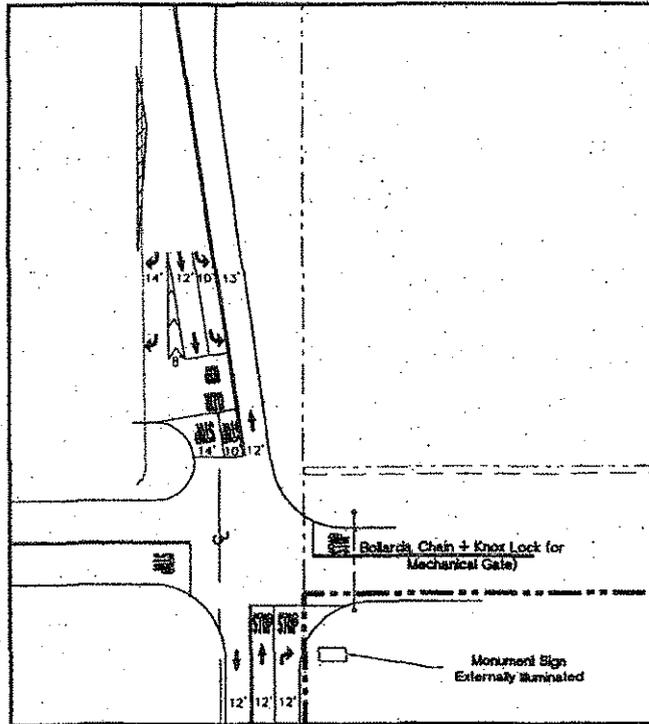
Dean Berleth
Dean Berleth
Attorneys for the City of Los Alamitos

EXHIBIT "A"

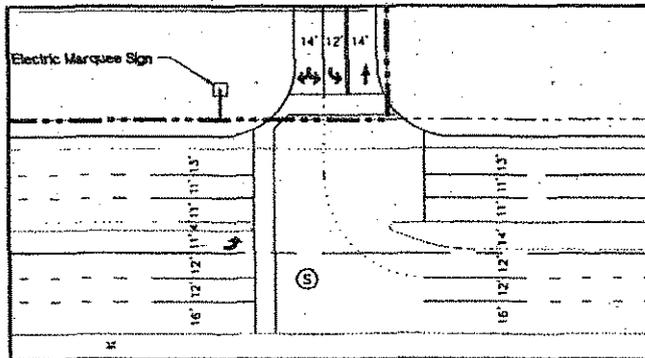
TRAFFIC IMPROVEMENT PLAN

[SEE ATTACHED SHEETS 1 THROUGH 3]

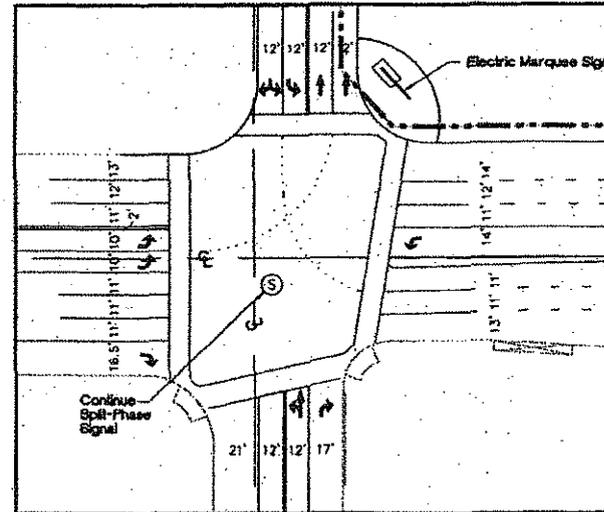




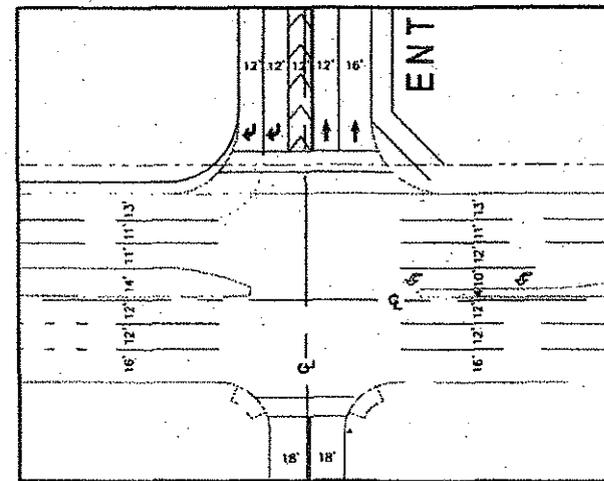
Lexington Dr. & Railroad R.O.W.
Scale: 1" = 20'



Katella Ave. & Cottonwood Wy.
Scale: 1" = 20'



Katella Ave. & Lexington Dr.
Scale: 1" = 20'



Katella Ave. & Enterprise Ave.
Scale: 1" = 20'



Cottonwood Christian Center
 Cottonwood
 Cypress, CA

Exhibit A
SHEET 2 OF 3

Notes on Traffic Improvement Plan:

1. **Lexington Drive intersection at the former Union Pacific Railroad Right-of-Way** - This new intersection shall be a four-way configuration, allowing through traffic on Lexington Drive, north- and southbound, in a 2-lane configuration (one travel lane in each direction). Turn pockets shall be provided on Lexington Drive for southbound left turns, and northbound right turns, into the Cottonwood Christian Center Project site. In addition, a fourth leg of this intersection shall provide 2-lane access to property owned by Cottonwood Christian Center west of Lexington Drive. North- and south-bound turn movements onto Lexington Drive shall be allowed through this intersection for traffic entering from the east and west. The intersection shall be governed by all-way Stop signs. The intersection shall be skewed with respect to north/south traffic to allow for the transition from the east 1/2 section of Lexington south on this intersection to the west 1/2 section of Lexington north of this intersection. No on-street parking shall be permitted in this area.
2. **Lexington Drive roadway segment between the Union Pacific Railroad Right-of-Way and the southerly Lexington Drive intersection with the Cottonwood driveway** - This paved roadway segment shall be approximately 36 feet wide curb face to curb face, allowing one lane northbound and one lane southbound with a variable striped median. At the southern end, a left-turn pocket will allow turns into the Cottonwood Project, and at the north end right turns into the Project will be accommodated from a turn pocket. Pavement striping shall be added to allow for northbound traffic to transition from the easternmost lane to the center lane, thus allowing for creation of both turn pockets in this roadway segment. No on-street parking shall be permitted in this area.
3. **Lexington Drive intersection at the new east-west oriented Cottonwood Driveway into the Project site** - This intersection shall be a three- or four-way intersection, depending on the ultimate location of a new point-of-access driveway for Arrowhead Products and shall be a fully controlled intersection with stop signs and related limit line lane markings for traffic in all directions. As illustrated on Sheet 1 of 3, Arrowhead Products may gain access at this intersection of Lexington and the Cottonwood Driveway. In the alternative, a new right-in/right-out only driveway may be created for Arrowhead Products somewhere between this driveway and the former Union Pacific Railroad Right-of-Way mentioned in Item 2, above. A left-turn pocket for southbound Lexington traffic will be provided for entry into the Cottonwood Driveway. The northbound curb lane will be right-turn only into the Cottonwood Driveway.
4. **Lexington Drive roadway segment between the Cottonwood driveway and Katella** - This roadway segment shall be comprised of four approximately 12' wide lanes. At the Lexington/Cottonwood Driveway intersection, the westernmost curb lane shall be southbound, the next lane for northbound left turns into Arrowhead Products, the third lane east shall be dual through/right-turn and the fourth lane shall be right-turn only into the Cottonwood Driveway. Nearest Katella, there shall be a southbound right or left-turning lane adjacent to the western curb adjoined by a left-only center lane east of the curb lane, while the easterly two lanes shall both be for northbound traffic.
5. **Lexington Drive intersection at Katella** - This intersection will be modified in a number of ways. The existing driveway off Katella Avenue into Arrowhead Products will be eliminated, and the signal mast relocated easterly to serve the new alignment of Lexington Drive north of Katella. The signal shall continue to operate in the current split-phase manner. Cat track lane markings shall be incorporated to assist drivers with these turn movements and correct alignments to enter the appropriate lane after the turning movement. Dual left-turn pockets for the eastbound Katella to northbound Lexington turn movement shall be provided. Traffic northbound on Lexington south of Katella may turn right from the curb lane, and turn left or continue through this intersection from the center lane. Traffic southbound on Lexington approaching this intersection may turn right or left onto Katella, but may not travel southbound through the intersection; appropriate directional signage shall be added.
6. **Cottonwood Way intersection at Katella** - This new private drive shall have a three-lane 40' wide paved cross-section, with the westernmost curb lane allowing right and left turns for southbound Cottonwood Way traffic onto Katella. The center lane at this intersection shall be left-only turn movements onto Katella, and the eastern lane shall be for northbound traffic. A new Katella eastbound left turn pocket shall be created for this intersection. The new signal at this intersection shall be interconnected to the one at Lexington Drive, operate on a demand basis, and synchronized to function within the parameters of the Katella Smart Street Program.
7. **Enterprise Drive intersection at Katella** - This new intersection shall have a five-lane 64' wide paved cross-section on the north side of Katella. The two westernmost southbound lanes shall allow for right-turn only movements. The center lane shall be chevroned (striped) out of use, and the two easternmost lanes shall be for northbound traffic. There shall be no signal at this intersection, nor any left-turn movements/pockets for eastbound Katella traffic onto Enterprise Drive north of Katella.
8. **Lexington/Denni intersection at Carritos Avenue** - Refer to Section 10 of the Settlement Agreement.

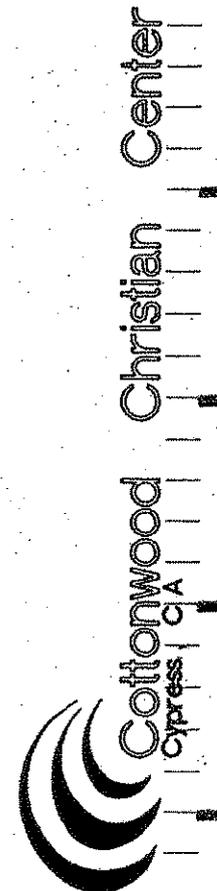


EXHIBIT "B"

LEGAL DESCRIPTION
NEW COTTONWOOD PROPERTY

[SEE 1 ATTACHED PAGE]

PARCEL A:

PARCEL 1, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT NO. LL 2003-03 RECORDED DECEMBER 31, 2003 AS INSTRUMENT NO. 2003001534655 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM A PORTION OF THE LAND, ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UNDERLYING THE PROPERTY, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO GRANTOR, ITS SUCCESSORS AND ASSIGNS, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE PROPERTY, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE OF THE PROPERTY, OR INTERFERE WITH THE USE THEREOF BY GRANTEE, ITS SUCCESSORS OR ASSIGNS, PROVIDED HOWEVER, THAT GRANTOR, ITS SUCCESSORS OR ASSIGNS, WITHOUT THE PRIOR WRITTEN PERMISSION OF THE GRANTEE, ITS SUCCESSORS OR ASSIGNS, SHALL NOT CONDUCT ANY MINING ACTIVITIES OF WHATSOEVER NATURE ABOVE A PLANE FIVE HUNDRED FEET (500') BELOW THE SURFACE OF THE PROPERTY, AS RESERVED BY UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION IN QUITCLAIM RECORDED DECEMBER 31, 2003 AS INSTRUMENT NO. 2003001534651 OF OFFICIAL RECORDS.

PARCEL A-1:

A PERPETUAL NON-EXCLUSIVE EASEMENT FOR VEHICULAR INGRESS, EGRESS AND ACCESS, AND FOR BACKING, MANEUVERING AND TURNING OF VEHICLES, AS SET FORTH IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 31, 2003 AS INSTRUMENT NO. 2003001534665 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL B:

LEXINGTON DRIVE, AS SHOWN AND DEDICATED ON PARCEL MAP NO. 90-241 FILED IN BOOK 259, PAGES 1 TO 12 INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA.

PARCEL C:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, AS SHOWN ON MAP NO. 2 ATTACHED TO THE FINAL DECREE OF PARTITION OF SAID RANCHO, A CERTIFIED COPY OF WHICH WAS RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS, RECORDS OF ORANGE COUNTY, CALIFORNIA, INCLUDED WITHIN A STRIP OF LAND SIXTY (60) FEET WIDE, CONVEYED TO SOUTHERN PACIFIC RAILROAD COMPANY JANUARY 13, 1897 IN BOOK 29, PAGE 328 OF DEEDS, RECORDS OF ORANGE COUNTY, CALIFORNIA, SAID PORTION BEING BOUNDED EASTERLY BY THE EASTERLY LINE OF SAID SOUTHWEST QUARTER AND BOUNDED WESTERLY BY A LINE PARALLEL WITH AND 1260.00 FEET WESTERLY OF SAID EASTERLY LINE OF SAID SOUTHWEST QUARTER.

EXCEPTING THEREFROM ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UNDERLYING THE PROPERTY, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO GRANTOR, ITS SUCCESSORS AND ASSIGNS, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE PROPERTY, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE OF THE PROPERTY, OR INTERFERE WITH THE USE THEREOF BY GRANTEE, ITS SUCCESSORS OR ASSIGNS, PROVIDED HOWEVER, THAT GRANTOR, ITS SUCCESSORS OR ASSIGNS, WITHOUT THE PRIOR WRITTEN PERMISSION OF THE GRANTEE, ITS SUCCESSORS OR ASSIGNS, SHALL NOT CONDUCT ANY MINING ACTIVITIES OF WHATSOEVER NATURE ABOVE A PLANE FIVE HUNDRED FEET (500') BELOW THE SURFACE OF THE PROPERTY, AS RESERVED BY UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION IN QUITCLAIM RECORDED DECEMBER 31, 2003 AS INSTRUMENT NO. 2003001534651 OF OFFICIAL RECORDS.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Sheppard Mullin Richter & Hampton LLP
650 Town Center Drive, 4th Floor
Costa Mesa, CA 92626
Attention: Susan Matsuda

THIS SPACE ABOVE FOR RECORDER'S USE

MEMORANDUM OF CONSTRUCTION LICENSE AGREEMENT

THIS MEMORANDUM OF CONSTRUCTION LICENSE AGREEMENT ("Memorandum") is made as of October 16, 2006 by and among COTTONWOOD CHRISTIAN CENTER, INC., a California nonprofit corporation ("Cottonwood"), the CITY OF CYPRESS, a charter city and municipal corporation organized and existing under the Constitution of the State of California ("Cypress," and together with Cottonwood, "Licensees") and ARROWHEAD PRODUCTS CORPORATION, a Delaware corporation ("Arrowhead").

1. Cottonwood is the owner of a fee interest in property located in the City of Cypress, County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated herein (the "Cottonwood Property"). Arrowhead is the holder of leasehold interest in that certain real property adjacent to the Cottonwood Property and located in the City of Los Alamitos, County of Orange, State of California, more particularly described in Exhibit B attached hereto and incorporated herein (the "Arrowhead Property").

2. Licensees and Arrowhead entered into that certain Construction License Agreement dated as of September 3, 2004 (the "Original Agreement") regarding Licensee's access rights over the Arrowhead Property for the purpose of constructing an extension of Lexington Drive starting at Katella Avenue and then proceeding along the boundary line between the Cottonwood Property and the Arrowhead Property to and through an abandoned right of way formerly owned by Union Pacific.

3. Arrowhead hereby grants to Licensees, and Licensees hereby accept from Arrowhead, a temporary and exclusive license for construction activities on, over and across a twenty foot wide strip along the eastern boundary of the Arrowhead Property starting at Katella Avenue and ending at a former Union Pacific right of way approximately 1200 feet north of Katella Avenue for the term and on the terms, conditions and provisions set forth in the Original Agreement, as amended by that certain First Amendment to Construction License Agreement dated October 16, 2006 between Licensees and Arrowhead (collectively, the "License Agreement"). All the terms, conditions and provisions of the License Agreement are incorporated into this Memorandum as though fully set forth herein.

4. This Memorandum is prepared for the purpose of recordation and in no way modifies or otherwise affects the terms, conditions and provisions of the License Agreement.

IN WITNESS WHEREOF, Licensees and Arrowhead have executed this Memorandum as of the date set forth above.

LICENSEES:

COTTONWOOD CHRISTIAN CENTER,
INC., a California nonprofit corporation

By: Michael C. Wilson
Name: Michael G. Wilson
Title: Project Director

CITY OF CYPRESS

By: Lidia Sondhi
Name: LIDIA SONDHI
Title: Mayor

ATTEST:

Denise Basham
Denise Basham, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: W. Wynder
William W. Wynder, City Attorney

[Signatures Continued on Next Page]

ARROWHEAD:

ARROWHEAD PRODUCTS
CORPORATION, a Delaware corporation

By: 
Brian Williams, President

Acknowledged and consented to this ____ day of
October, 2006 by

TINICUM CORPORATION, a Delaware
corporation

By: _____
John V. Curci, Chief Financial Officer

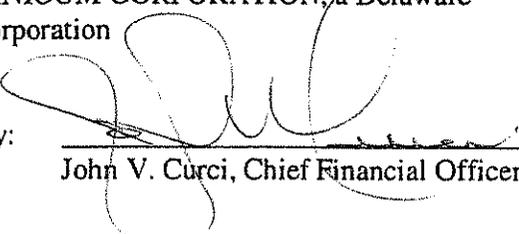
ARROWHEAD:

**ARROWHEAD PRODUCTS
CORPORATION, a Delaware corporation**

By: _____
Brian Williams, President

Acknowledged and consented to this 17th day of
October, 2006 by

**TINICUM CORPORATION, a Delaware
corporation**

By: 

John V. Curci, Chief Financial Officer

EXHIBIT A
COTTONWOOD PROPERTY

PARCEL 1

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF CYPRESS, DESCRIBED AS FOLLOWS:

PARCEL 1, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT NO. LL 2003-03 RECORDED DECEMBER 31, 2003 AS INSTRUMENT NO. 2003001534655 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL 2

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF CYPRESS, DESCRIBED AS FOLLOWS:

THAT PORTION OF LEXINGTON DRIVE, AS SHOWN AND DEDICATED ON PARCEL MAP NO. 90-241 FILED IN BOOK 259, PAGES 1 TO 12, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, SAID PORTION BEING BOUNDED NORTHERLY BY THE SOUTHERLY LINE OF THE SOUTHERN PACIFIC RAILROAD SHOWN ON SAID PARCEL MAP AND BOUNDED SOUTHERLY BY THE NORTHERLY LINE OF KATELLA AVENUE, 70.00 FEET WIDE, AS SHOWN ON SAID PARCEL MAP.

PARCEL 3

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF LOS ALAMITOS, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, AS SHOWN ON MAP NO. 2 ATTACHED TO THE FINAL DECREE OF PARTITION OF SAID RANCHO, A CERTIFIED COPY OF WHICH WAS RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS, RECORDS OF ORANGE COUNTY, CALIFORNIA, INCLUDED WITHIN A STRIP OF LAND SIXTY (60) FEET WIDE, CONVEYED TO SOUTHERN PACIFIC RAILROAD COMPANY JANUARY 13, 1897 IN BOOK 29, PAGE 328 OF DEEDS, RECORDS OF ORANGE COUNTY, CALIFORNIA, SAID PORTION BEING BOUNDED EASTERLY BY THE EASTERLY LINE OF SAID SOUTHWEST QUARTER AND BOUNDED WESTERLY BY A LINE PARALLEL WITH AND 1260.00 FEET WESTERLY OF SAID EASTERLY LINE OF SAID SOUTHWEST QUARTER.

EXHIBIT B

ARROWHEAD PROPERTY

AN ESTATE FOR A TERM OF YEARS TERMINATING ON DECEMBER 31, 2011 AND AFFECTING THE BELOW DESCRIBED REAL PROPERTY:

PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, CITY OF LOS ALAMITOS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON MAP NO. 2 ATTACHED TO THE FINAL DECREE OF PARTITION OF SAID RANCHO, A CERTIFIED COPY OF WHICH WAS RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 20, SOUTH 89° 48' 10" EAST 2141.01 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION; THENCE NORTH 0° 11' 42" EAST 1290.77 FEET PARALLEL WITH THE WESTERLY LINE OF SAID SECTION TO THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY, 60.00 FEET WIDE; THENCE SOUTH 89° 48' 10" EAST 500.00 FEET ALONG SAID SOUTH LINE TO THE EAST LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTHERLY 1290.77 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE NORTH 89° 48' 10" WEST 500.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS (INCLUDING THE BUILDING FIXTURES THEREIN, NOW OR HEREAFTER LOCATED ON AND PERMANENTLY ANNEXED TO THE LAND), AS EXCEPTED IN A CONVEYANCE FROM FEDERAL-MOGUL CORPORATION, A MICHIGAN CORPORATION, THE SUCCESSOR TO FEDERAL-MOGUL-BOWER BEARINGS, INC. TO KATELLA CORPORATION, A CALIFORNIA CORPORATION DATED DECEMBER 31, 1981 AND RECORDED JANUARY 7, 1982 AS INSTRUMENT NO. 82-005151, OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS, HYDROCARBONS AND MINERALS LOCATED MORE THAN 500.00 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED LAND, PROVIDED, HOWEVER, THAT NEITHER GRANTORS, THEIR HEIRS, SUCCESSORS OR ASSIGNS SHALL HAVE ANY RIGHT WHATSOEVER TO USE ANY PART OF SAID LAND LYING LESS THAN 500.00 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF EXPLORING FOR OR PRODUCING OIL, GAS, HYDROCARBONS OR MINERALS FROM SAID LAND, OR FOR ANY OTHER PURPOSE WHATSOEVER, AS RESERVED IN THE DEED FROM FRANK VESSELS AND GRACE M. VESSELS, RECORDED JULY 29, 1955 IN BOOK 3157, PAGE 203, OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, CITY OF LOS ALAMITOS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO FEDERAL-MOGUL-BOWER BEARINGS, INC., RECORDED JANUARY 12, 1961 IN BOOK 5586, PAGE 217, OFFICIAL RECORDS; THENCE NORTH 89° 48' 10" WEST 500.00 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE NORTH 0° 11' 42" EAST 1290.77 FEET PARALLEL WITH THE WESTERLY LINE OF SAID LAND, TO THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY (60.00 FEET WIDE); THENCE SOUTH 89° 48' 10" EAST 500.00 FEET ALONG SAID SOUTH LINE TO THE NORTHWEST CORNER OF SAID LAND; THENCE SOUTH 0° 11' 42" WEST 1290.77 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS (INCLUDING THE BUILDING FIXTURES THEREIN, NOW OR HEREAFTER LOCATED ON AND PERMANENTLY ANNEXED TO THE LAND), AS EXCEPTED IN A CONVEYANCE FROM FEDERAL-MOGUL CORPORATION, A MICHIGAN CORPORATION, THE SUCCESSOR TO FEDERAL-MOGUL-BOWER BEARINGS, INC. TO KATELLA CORPORATION, A CALIFORNIA CORPORATION DATED DECEMBER 31, 1981 AND RECORDED JANUARY 7, 1982 AS INSTRUMENT NO. 82-005151, OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS, HYDROCARBONS AND MINERALS LOCATED MORE THAN 500.00 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED LAND, PROVIDED, HOWEVER, THAT NEITHER GRANTORS, THEIR HEIRS, SUCCESSORS OR ASSIGNS SHALL HAVE ANY RIGHT WHATEVER TO USE ANY PART OF SAID LAND LYING LESS THAN 500.00 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF EXPLORING FOR OR PRODUCING OIL, GAS, HYDROCARBONS OR MINERALS FROM SAID LAND, OR FOR ANY OTHER PURPOSE WHATEVER, AS RESERVED IN THE DEED FROM FRANK VESSELS AND GRACE M. VESSELS, RECORDED JULY 29, 1955 IN BOOK 3157, PAGE 203, OFFICIAL RECORDS.

PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, CITY OF LOS ALAMITOS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON MAP NO. 2 ATTACHED TO THE FINAL DECREE OF PARTITION OF SAID RANCHO, A CERTIFIED COPY OF WHICH WAS RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 20, SOUTH 89° 48' 10" EAST 2141.01 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION; THENCE NORTH 0° 11' 42" EAST 1290.77 FEET PARALLEL WITH THE WESTERLY LINE OF SAID SECTION TO THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY, 60.00 FEET WIDE; THENCE SOUTH 89° 48' 10" EAST 500.00 FEET ALONG SAID SOUTH LINE TO THE EAST LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTHERLY 1290.77 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE NORTH 89° 48' 10" WEST 500.00 FEET TO THE POINT OF BEGINNING.

EXCEPT ALL OIL, GAS, HYDROCARBONS AND MINERALS LOCATED MORE THAN 500.00 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED LAND, PROVIDED, HOWEVER, THAT NEITHER GRANTORS, THEIR HEIRS, SUCCESSORS OR ASSIGNS SHALL HAVE ANY RIGHT WHATEVER TO USE ANY PART OF SAID LAND LYING LESS THAN 500.00 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF EXPLORING FOR OR PRODUCING OIL, GAS, HYDROCARBONS OR MINERALS FROM SAID LAND, OR FOR ANY OTHER PURPOSE WHATEVER, AS RESERVED IN THE DEED FROM FRANK VESSELS AND GRACE M. VESSELS, RECORDED JULY 29, 1955 IN BOOR 3157, PAGE 203, OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, CITY OF LOS ALAMITOS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO FEDERAL-MOGUL-BOWER BEARINGS, INC., RECORDED JANUARY 12, 1961 IN BOOK 5586, PAGE 217, OFFICIAL RECORDS; THENCE NORTH 89° 48' 10" WEST 500.00 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE NORTH 0° 11' 42" EAST 1290.77 FEET PARALLEL WITH THE WESTERLY LINE OF SAID LAND, TO THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY (60.00 FEET WIDE); THENCE SOUTH 89° 48' 10" EAST 500.00 FEET ALONG SAID SOUTH LINE TO THE NORTHWEST CORNER OF SAID LAND; THENCE SOUTH 0° 11' 42" WEST 1290.77 FEET TO THE POINT OF BEGINNING.

EXCEPT ALL OIL, GAS, HYDROCARBONS AND MINERALS LOCATED MORE THAN 500.00 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED LAND, PROVIDED, HOWEVER, THAT NEITHER GRANTORS, THEIR HEIRS, SUCCESSORS OR ASSIGNS SHALL HAVE ANY RIGHT WHATEVER TO USE ANY PART OF SAID LAND LYING LESS THAN 500.00 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF EXPLORING FOR OR PRODUCING OIL, GAS, HYDROCARBONS OR MINERALS FROM SAID LAND, OR FOR ANY OTHER PURPOSE WHATEVER, AS RESERVED IN THE DEED FROM FRANK VESSELS AND GRACE M. VESSELS, RECORDED JULY 29, 1955 IN BOOK 3157, PAGE 203, OFFICIAL RECORDS.

ACKNOWLEDGMENTS

STATE OF _____)
)
COUNTY OF _____)

On _____, 2006, before me, _____,
a Notary Public, personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

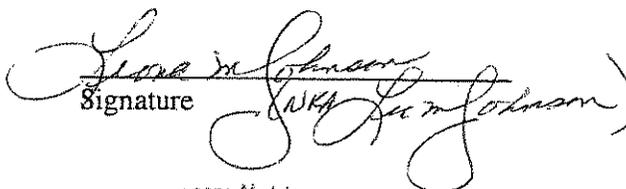
WITNESS my hand and official seal.

Signature

STATE OF Ohio)
)
COUNTY OF Cuyahoga)

On October 17, 2006, before me, LEONA M. JOHNSON NKA LEE M. JOHNSON
a Notary Public, personally appeared John V. Curci, C.F.O.,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.


Signature

Leona M. Johnson
Notary Public for the State of Ohio
My Commission Expires 09/26/07

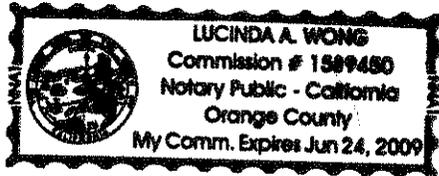
ACKNOWLEDGMENTS

STATE OF California)

COUNTY OF Orange)

On Oct. 18, 2006, before me, Lucinda A. Wong,
a Notary Public, personally appeared Micheal G. Wilson,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that
he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.



Lucinda A. Wong
Signature

STATE OF _____)

COUNTY OF _____)

On _____, 2006, before me, _____,
a Notary Public, personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

Signature

FIRST AMENDMENT TO CONSTRUCTION LICENSE AGREEMENT

This First Amendment to Construction License Agreement (the "First Amendment") is made and entered as of October 16, 2006 among COTTONWOOD CHRISTIAN CENTER, INC., a California nonprofit corporation ("Cottonwood"), the CITY OF CYPRESS, a charter city and municipal corporation organized and existing under the Constitution of the State of California ("Cypress," and together with Cottonwood, the "Licensees"), and ARROWHEAD PRODUCTS CORPORATION, a Delaware corporation ("Arrowhead").

RECITALS

A. Licensees and Arrowhead entered into that certain Construction License Agreement dated as of September 3, 2004 (the "Original Agreement") covering property located in the Cities of Los Alamitos and Cypress, California. Capitalized terms used in this First Amendment shall, unless otherwise defined or the context otherwise requires, have the same meaning as capitalized terms used in the Original Agreement.

B. The Licensees and Arrowhead desire to amend the Original Agreement on the terms and conditions of this First Amendment.

AGREEMENT

NOW, THEREFORE, with reference to the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensees and Arrowhead hereby agree as follows:

1. Affirmation of Obligations. Licensees and Arrowhead hereby affirm each and every one of its obligations under the Original Agreement, as modified by this First Amendment.

2. License Duration. The term of the License shall be extended to end the earlier of: (a) June 30, 2008, or (b) the date of completion of both the Lexington Extension and the restoration of the Construction Area.

3. Construction. Section 3 of the Original Agreement is hereby deleted in its entirety and replaced with the following paragraph:

"3. Construction.

(a) Cottonwood and Cypress shall construct the Improvements based on construction plans approved by the applicable government authority. Development of the Cottonwood Property is scheduled to commence soon after the Effective Date, with construction of the Improvements to be done in accordance with Cottonwood's construction schedule. Cottonwood and Cypress shall utilize the Construction Area in such a manner as to reasonably minimize any interference with, and so as not to interrupt, the operation of any other portions of the Arrowhead Property.

(b) Before or concurrently with such removal (if necessary) of the existing fencing so that use of the Construction Area can commence, Cottonwood and Cypress shall obtain a permit for (if a permit is required) and install (at the cost and expense of Cottonwood and Cypress as mutually agreed between them) temporary fencing that shall maintain a secure perimeter with respect to the Construction Area and the affected portion of the Arrowhead Property described in Section 6 below. Neither of the Licensees, however, shall be responsible or liable for the security, or any breach of security, of the Arrowhead Property during the period the temporary fencing is in place, their responsibility being limited to the installation of such temporary fencing. Licensees shall complete the Improvements, or those portions of the Improvements whose construction requires use of the Construction Area, not later than six (6) months after the existing fencing is removed and the temporary fencing is installed."

4. Construction. Section 6 of the Original Agreement is hereby deleted in its entirety and replaced with the following paragraph:

"6. Arrowhead Driveways and Other Street Improvements.

(a) Cottonwood shall construct, at Cottonwood's sole cost and expense, a three-lane driveway on the Arrowhead Property in the location shown on Exhibit C attached hereto, which is near the northeast corner of the Arrowhead Property. Cottonwood and Cypress shall construct, at their cost and expense as mutually agreed between them, the curb cuts and drive apron connecting such three-lane driveway to Lexington Avenue. The "drive apron" means the sloped portion of a driveway connecting to the street.

(b) Cottonwood and Cypress shall construct, at their cost and expense as mutually agreed between them, a two-lane driveway on the Arrowhead Property in the location shown on Exhibit C attached hereto, which is near the southeast corner of the Arrowhead Property. Cottonwood and Cypress shall construct, at their cost and expense as mutually agreed between them, the curb cuts and drive apron connecting such two-lane driveway to Lexington Avenue.

(c) Cottonwood and Cypress shall be responsible for, at their cost and expense as mutually agreed between them, the installation of street and entrance lighting in the form of staggered light poles alternating between the west side and east side of Lexington Drive as generally shown on Exhibit C attached hereto.

(d) The City of Los Alamitos requires that Arrowhead abandon Arrowhead's use of the existing driveway located near the intersection of Lexington Drive and Katella Avenue (the "Katella Driveway"). Cottonwood and Cypress shall be responsible, at their cost and expense as mutually agreed between them, for the following: (i) removing the drive apron portion of the Katella Driveway, adjacent sidewalk and curb, and nearby traffic signals, (ii) constructing and installing the new sidewalk and curb in the area at or near the drive apron of the Katella Driveway, and (iii) relocating any water, fire, sewer or other utility lines to the extent such relocation is necessary to complete the work described the aforementioned subsections (i) and (ii).

(e) Cottonwood, at its sole cost and expense, shall remove the existing asphalt portion of the Katella Driveway as shown on Exhibit C, except for that section which is to provide a handicap accessible wheel chair path (also as shown on Exhibit C). Cottonwood shall, at its sole cost and expense, seed with grass the area of the Katella Driveway where the asphalt was removed (as shown on Exhibit C) to create a lawn area and install a system connecting with Arrowhead's existing sprinkler system to irrigate such lawn area. Arrowhead agrees to cooperate with the abandonment of the Katella Driveway at such time as Arrowhead is able to have full access to the new driveways on Lexington Drive constructed pursuant to this Section 6.

(f) The location of the improvements required to be constructed under this Section 6 shall be subject to the approval and changes required by the City of Los Alamitos. Cypress acknowledges and agrees that no further permits or approvals will be required to be obtained by Cottonwood from Cypress to complete all the work described in this Section.

(g) The installation and construction work under this Section 6 shall be completed in a good and workmanlike manner.

(h) If the obligations under this Section 6 have not been fulfilled, the obligations of the parties under Sections 6, 8 and 9 of this License Agreement shall survive the expiration or termination of this License Agreement until such time as the work specifically described in this Section 6 is completed, as reasonably determined by Cottonwood and the City; provided, however, with respect to matters arising from such work, Section 8 of this License Agreement shall survive one year after such work has been completed."

5. Indemnification. The last sentence of Section 8 of the Original Agreement is hereby amended by replacing "ninety (90) days" with "one (1) year."

6. Exhibits. The Original Agreement is hereby amended by deleting Exhibits A, B and C and replacing them with Exhibits A, B and C attached hereto and made a part hereof.

7. Entire Agreement. This First Amendment constitutes the entire understanding and agreement between the parties with respect to the matters set forth herein, and supersedes all prior negotiations, agreements or understandings with respect to such subject matter, and can be amended, supplemented or changed only by written instrument signed by the parties hereto.

8. Continuation of License. Except as hereinabove amended, the terms and conditions of the Original Agreement shall remain the same and the Original Agreement, as amended by this First Amendment, shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this First Amendment as of the date first set forth above.

COTTONWOOD CHRISTIAN CENTER, a
California nonprofit corporation

By: _____
Name: _____
Title: _____

CITY OF CYPRESS

By: Lydia Sondhi
Name: LYDIA SONDI
Title: Mayor

ATTEST:

Denise Basham
Denise Basham, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: W. Wynder
William W. Wynder, City Attorney

ARROWHEAD PRODUCTS CORPORATION,
a Delaware Corporation

By: Brian Williams
Brian Williams, President

IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this First Amendment as of the date first set forth above.

COTTONWOOD CHRISTIAN CENTER, a
California nonprofit corporation

By: Michael G. Wilson
Name: Michael G. Wilson
Title: Project Director

CITY OF CYPRESS

By: Lydia Sondhi
Name: LYDIA SONDHI
Title: Mayor

ATTEST:

Denise Basham
Denise Basham, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: W. Wynder
William W. Wynder, City Attorney

ARROWHEAD PRODUCTS CORPORATION,
a Delaware Corporation

By: _____
Brian Williams, President

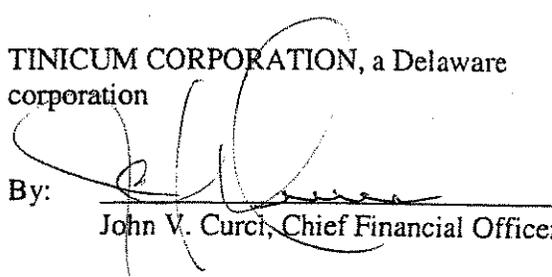
ACKNOWLEDGEMENT AND CONSENT

In connection with that certain Construction License Agreement dated September 3, 2004 among Arrowhead Products Corporation, a Delaware corporation ("Arrowhead"), Cottonwood Christian Center, Inc., a California nonprofit corporation ("Cottonwood"), and the City of Cypress, a charter city and municipal corporation organized and existing under the Constitution of the State of California ("Cypress"), as amended by that certain First Amendment to Construction License Agreement between Arrowhead, Cottonwood and Cypress dated October 16, 2006 (collectively, the "Agreement"), the undersigned, as the sole owner of the fee interest to the Arrowhead Property and the holder of any and all reversionary rights to the Arrowhead Property, hereby acknowledges and consents to the execution of the Agreement and the grant by Arrowhead to Cottonwood and Cypress of the License described therein. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

The undersigned further acknowledges and agrees that the Arrowhead Property shall be subject to the License in accordance with the terms and conditions contained in the Agreement, notwithstanding the occurrence of an event, if any, terminating the lease pursuant to which Arrowhead occupies the Arrowhead Property.

IN WITNESS WHEREOF, the undersigned has executed this Acknowledgement and Consent as of October 17, 2006.

TINICUM CORPORATION, a Delaware
corporation

By: 

John V. Curci, Chief Financial Officer

EXHIBIT A

COTTONWOOD PROPERTY

PARCEL 1

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF CYPRESS, DESCRIBED AS FOLLOWS:

PARCEL 1, AS SHOWN ON EXHIBIT "B" ATTACHED TO LOT LINE ADJUSTMENT NO. LL 2003-03 RECORDED DECEMBER 31, 2003 AS INSTRUMENT NO. 2003001534655 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA.

PARCEL 2

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF CYPRESS, DESCRIBED AS FOLLOWS:

THAT PORTION OF LEXINGTON DRIVE, AS SHOWN AND DEDICATED ON PARCEL MAP NO. 90-241 FILED IN BOOK 259, PAGES 1 TO 12, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, SAID PORTION BEING BOUNDED NORTHERLY BY THE SOUTHERLY LINE OF THE SOUTHERN PACIFIC RAILROAD SHOWN ON SAID PARCEL MAP AND BOUNDED SOUTHERLY BY THE NORTHERLY LINE OF KATELLA AVENUE, 70.00 FEET WIDE, AS SHOWN ON SAID PARCEL MAP.

PARCEL 3

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF ORANGE, CITY OF LOS ALAMITOS, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, AS SHOWN ON MAP NO. 2 ATTACHED TO THE FINAL DECREE OF PARTITION OF SAID RANCHO, A CERTIFIED COPY OF WHICH WAS RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS, RECORDS OF ORANGE COUNTY, CALIFORNIA, INCLUDED WITHIN A STRIP OF LAND SIXTY (60) FEET WIDE, CONVEYED TO SOUTHERN PACIFIC RAILROAD COMPANY JANUARY 13, 1897 IN BOOK 29, PAGE 328 OF DEEDS, RECORDS OF ORANGE COUNTY, CALIFORNIA, SAID PORTION BEING BOUNDED EASTERLY BY THE EASTERLY LINE OF SAID SOUTHWEST QUARTER AND BOUNDED WESTERLY BY A LINE PARALLEL WITH AND 1260.00 FEET WESTERLY OF SAID EASTERLY LINE OF SAID SOUTHWEST QUARTER.

EXHIBIT B

ARROWHEAD PROPERTY

AN ESTATE FOR A TERM OF YEARS TERMINATING ON DECEMBER 31, 2011 AND AFFECTING THE BELOW DESCRIBED REAL PROPERTY:

PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, CITY OF LOS ALAMITOS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON MAP NO. 2 ATTACHED TO THE FINAL DECREE OF PARTITION OF SAID RANCHO, A CERTIFIED COPY OF WHICH WAS RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SECTION 20, SOUTH 89° 48' 10" EAST 2141.01 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION; THENCE NORTH 0° 11' 42" EAST 1290.77 FEET PARALLEL WITH THE WESTERLY LINE OF SAID SECTION TO THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY, 60.00 FEET WIDE; THENCE SOUTH 89° 48' 10" EAST 500.00 FEET ALONG SAID SOUTH LINE TO THE EAST LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTHERLY 1290.77 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE NORTH 89° 48' 10" WEST 500.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS (INCLUDING THE BUILDING FIXTURES THEREIN, NOW OR HEREAFTER LOCATED ON AND PERMANENTLY ANNEXED TO THE LAND), AS EXCEPTED IN A CONVEYANCE FROM FEDERAL-MOGUL CORPORATION, A MICHIGAN CORPORATION, THE SUCCESSOR TO FEDERAL-MOGUL-BOWER BEARINGS. INC. TO KATELLA CORPORATION, A CALIFORNIA CORPORATION DATED DECEMBER 31, 1981 AND RECORDED JANUARY 7, 1982 AS INSTRUMENT NO. 82-005151, OFFICIAL RECORDS.

EXCEPT ALL OIL, GAS, HYDROCARBONS AND MINERALS LOCATED MORE THAN 500.00 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED LAND, PROVIDED, HOWEVER, THAT NEITHER GRANTORS, THEIR HEIRS, SUCCESSORS OR ASSIGNS SHALL HAVE ANY RIGHT WHATEVER TO USE ANY PART OF SAID LAND LYING LESS THAN 500.00 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF EXPLORING FOR OR PRODUCING OIL, GAS, HYDROCARBONS OR MINERALS FROM SAID LAND, OR FOR ANY OTHER PURPOSE WHATEVER, AS RESERVED IN THE DEED FROM FRANK VESSELS AND GRACE M. VESSELS, RECORDED JULY 29, 1955 IN BOOK 3157, PAGE 203, OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, CITY OF LOS ALAMITOS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP FILED IN DECREE OF PARTITION IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, CASE NO. 13527, A CERTIFIED COPY OF THE FINAL DECREE OF SAID CASE HAVING BEEN RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF SAID ORANGE COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE LAND DESCRIBED IN THE DEED TO FEDERAL-MOGUL-BOWER BEARINGS, INC., RECORDED JANUARY 12, 1961 IN BOOK 5586, PAGE 217, OFFICIAL RECORDS; THENCE NORTH 89° 48' 10" WEST 500.00 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE NORTH 0° 11' 42" EAST 1290.77 FEET PARALLEL WITH THE WESTERLY LINE OF SAID LAND, TO THE SOUTH LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY RIGHT OF WAY (60.00 FEET WIDE); THENCE SOUTH 89° 48' 10" EAST 500.00 FEET ALONG SAID SOUTH LINE TO THE NORTHWEST CORNER OF SAID LAND; THENCE SOUTH 0° 11' 42" WEST 1290.77 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS (INCLUDING THE BUILDING FIXTURES THEREIN, NOW OR HEREAFTER LOCATED ON AND PERMANENTLY ANNEXED TO THE LAND), AS EXCEPTED IN A CONVEYANCE FROM FEDERAL-MOGUL CORPORATION, A MICHIGAN CORPORATION, THE SUCCESSOR TO FEDERAL-MOGUL-BOWER BEARINGS, INC. TO KATELLA CORPORATION, A CALIFORNIA CORPORATION DATED DECEMBER 31, 1981 AND RECORDED JANUARY 7, 1982 AS INSTRUMENT NO. 82-005151, OFFICIAL RECORDS.

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PARCEL 1:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 4 SOUTH, RANGE 11 WEST, IN THE RANCHO LOS ALAMITOS, CITY OF LOS ALAMITOS, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON MAP NO. 2 ATTACHED TO THE FINAL DECREE OF PARTITION OF SAID RANCHO, A CERTIFIED COPY OF WHICH WAS RECORDED FEBRUARY 2, 1891 IN BOOK 14, PAGE 31 OF DEEDS OF ORANGE COUNTY, DESCRIBED AS FOLLOWS:

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EXCEPT ALL OIL, GAS, HYDROCARBONS AND MINERALS LOCATED MORE THAN 500.00 FEET BELOW THE SURFACE OF THE ABOVE DESCRIBED LAND, PROVIDED, HOWEVER, THAT NEITHER GRANTORS, THEIR HEIRS, SUCCESSORS OR ASSIGNS SHALL HAVE ANY RIGHT WHATEVER TO USE ANY PART OF SAID LAND LYING LESS THAN 500.00 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF EXPLORING FOR OR PRODUCING OIL, GAS, HYDROCARBONS OR MINERALS FROM SAID LAND, OR FOR ANY OTHER PURPOSE WHATEVER, AS RESERVED IN THE DEED FROM FRANK VESSELS AND GRACE M. VESSELS, RECORDED JULY 29, 1955 IN BOOR 3157, PAGE 203, OFFICIAL RECORDS.

PARCEL 2:

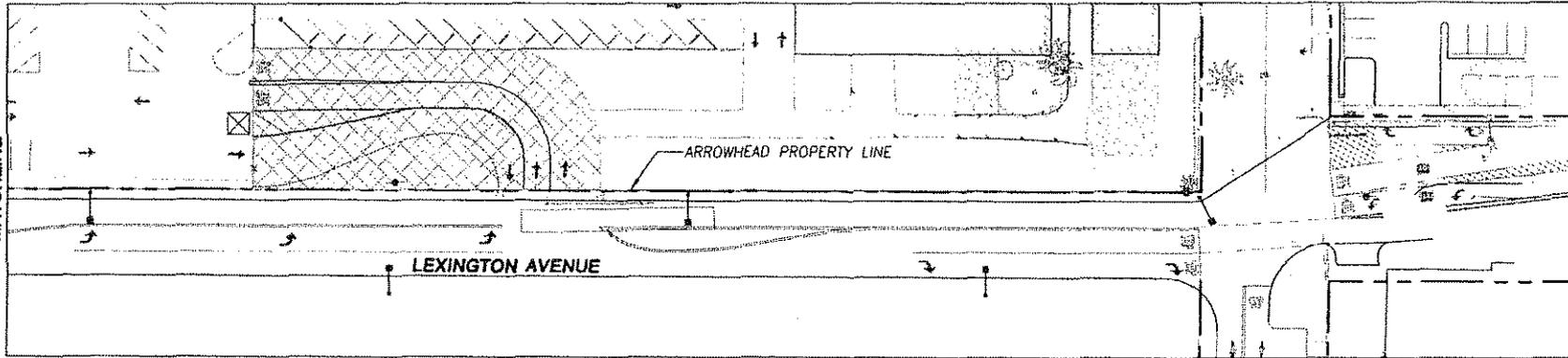
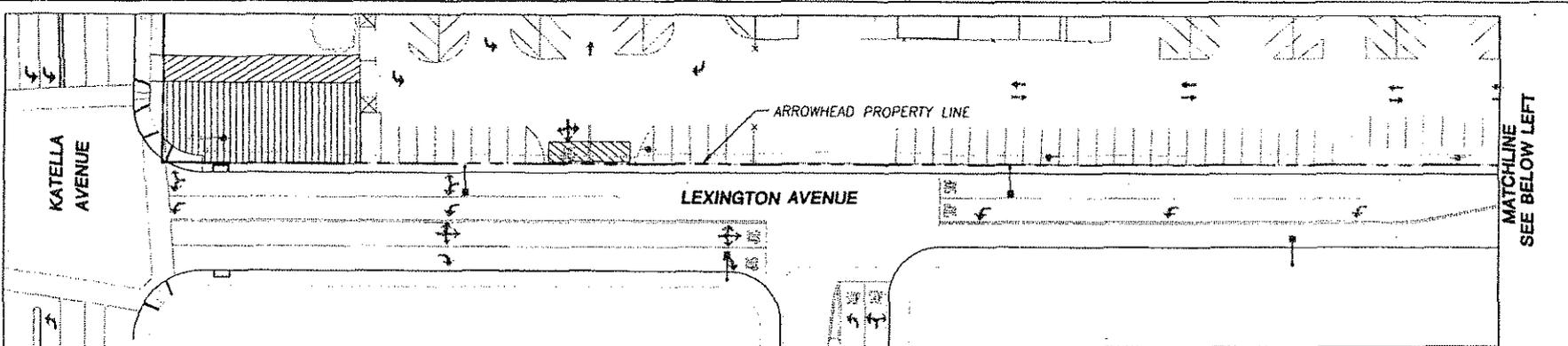
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EXHIBIT C
LEXINGTON EXTENSION RIGHT OF WAY

[See Attached]



LEGEND:

- 
0(a) THREE LANE DRIVEWAY AND A.C. PAVEMENT AT ENTRANCE WITH STRIPING
- 
0(b) TWO LANE DRIVEWAY
- 
0(c) STREET LIGHTING WITH LIGHT POLES ALTERNATING BETWEEN EAST AND WEST SIDES OF THE STREET
- 
0(e) PORTION OF EXISTING ASPHALT DRIVEWAY WHICH IS TO REMAIN FOR HANDICAP ACCESSIBLE PATH
- 
0(f) REMOVE INTERFERING PORTION OF EXISTING ASPHALT DRIVEWAY. INSTALL NEW GRASS AREA WITH SPRINKLERS ATTACHED TO ARROWHEAD'S EXISTING SPRINKLER SYSTEM. GRASS REPLACES REMOVED DRIVEWAY SECTION.



Scale: 1" = 50'
Date: 8/16/06

EXHIBIT "C"
ARROWHEAD DRIVEWAY AND OTHER STREET IMPROVEMENTS

FUSCOE
ENGINEERING
16795 Van Korman, Suite 100
Irvine, California 92606
tel 949.474.1960 • fax 949.474.5315
www.fuscoe.com

STANDARD PROJECT 1325/05/ENR/015/13202/01-CONSTRUCTION LICENSE AGREEMENT 008-17-06 01-13-05/04/05 Printed by: Carlos Aguirre

INDEMNITY AGREEMENT

This agreement to indemnify ("Indemnity Agreement") is made by and between INDUSTRIAL MANUFACTURING COMPANY LLC, a Delaware limited liability company and successor in interest to Vesper Corporation ("Indemnitor"), as the parent corporation of Arrowhead Products Corporation, a Delaware corporation ("Arrowhead"), on the one hand, and COTTONWOOD CHRISTIAN CENTER, INC., a California corporation ("Cottonwood"), and the CITY OF CYPRESS ("the City") ("Indemnitees") on the other hand (collectively, the "Parties").

WHEREAS Arrowhead, Cottonwood, and the City entered into a Construction License Agreement dated September 3, 2004 (the "Original Agreement"), as amended by that certain First Amendment to Construction License Agreement dated October 16, 2006 between Arrowhead, Cottonwood and the City (the "First Amendment," and together with the Original Agreement, the "Agreement"), affecting property adjacent to the Cottonwood Property that is the subject of a leasehold interest held by Arrowhead ("Arrowhead Property");

WHEREAS fee title to the Arrowhead Property is held by Tincum Corporation, a Delaware corporation and affiliate of Indemnitor ("Tincum"), pursuant to a deed dated as of and recorded on October 29, 1993 in the Official Records of Orange County, California as Instrument No. 93-0740211, under which Katella Avenue Associates ("Katella") retained an estate for years ending on December 31, 2006;

WHEREAS Katella is not a signatory to the Agreement; and

WHEREAS Cottonwood and the City, in entering into the Agreement, are relying upon assurances by Indemnitor that Katella need not be a signatory to the Agreement for it to be effective in granting the licenses and other rights provided for therein;

NOW, therefore, for valuable consideration for which receipt is acknowledged, the Parties agree as follows:

1. The defined terms in this Indemnity Agreement shall be given the same meaning as those provided in the Agreement unless otherwise provided.
2. Indemnitor hereby makes the following representations and warranties to Cottonwood and the City: (i) Tincum has the sole right, as owner of the Arrowhead Property, to execute the Acknowledgement and Consent attached as page 10 to the Original Agreement and page 5 of the First Amendment, and to execute a consent to a memorandum of the Agreement; (ii) Arrowhead has no obligation under the lease by which it occupies the Arrowhead Property to obtain the consent of Katella to grant the rights provided for in the Agreement; and (iii) the rights granted to Cottonwood and the City under the Agreement shall not be impaired or affected in any way by the failure of Katella or any other entity (other than Tincum) to execute such Acknowledgement and Consent or to otherwise give its consent to the Agreement.
3. Indemnitor agrees to indemnify and hold harmless the Indemnitees from and against any and all claims, costs, expenses (including expert witness fees and reasonable

attorneys' fees), demands, fines, causes of action (including those made or asserted by any third party, including a governmental agency), losses, damages, judgments or liabilities which may be suffered or sustained by the either of the Indemnities on account of a breach of the representation and warranty set forth in this Indemnity Agreement. This indemnification is limited solely to the representation and warranty set forth in this Indemnity Agreement and does not otherwise affect or amend the existing and future obligations and rights of any of the parties under the Agreement.

4. The terms of this Indemnity Agreement shall remain confidential and may not be disclosed to the extent permitted by law and except for in the enforcement of the Indemnity Agreement, and in no event may this Indemnity Agreement be recorded. This Indemnity Agreement shall become effective on the date last signed and shall terminate at the conclusion of the applicable statute of limitations following the later of (a) June 30, 2008 (as such date may be extended pursuant to the terms of the Agreement or by an agreement by the parties to the Agreement), or (b) the termination of the Agreement or the provisions thereunder.

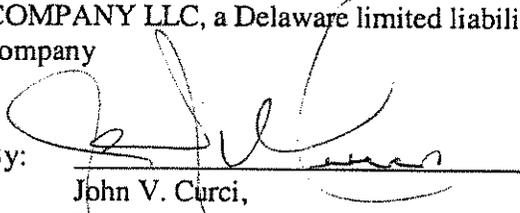
5. The persons executing this Indemnity Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Indemnity Agreement on behalf of said party, (iii) by so executing this Indemnity Agreement, such party is formally bound to the provisions of this Indemnity Agreement, and (iv) that entering into this Indemnity Agreement does not violate any provision of any other agreement to which said party is bound.

6. This Indemnity Agreement shall be governed by and construed under the internal laws of the State of California without regard to conflicts of law principles. The Orange County Superior Court shall have exclusive jurisdiction over any litigation between the parties hereto concerning this Indemnity Agreement.

INDUSTRIAL MANUFACTURING
COMPANY LLC, a Delaware limited liability
company

Date: October 17, 2006

By: _____


John V. Curci,
Vice President and Secretary

COTTONWOOD CHRISTIAN CENTER, INC.,
a California corporation

Date: October ____, 2006

By: _____
Name: _____
Title: _____

[Signatures continued on next page]

attorneys' fees), demands, fines, causes of action (including those made or asserted by any third party, including a governmental agency), losses, damages, judgments or liabilities which may be suffered or sustained by the either of the Indemnities on account of a breach of the representation and warranty set forth in this Indemnity Agreement. This indemnification is limited solely to the representation and warranty set forth in this Indemnity Agreement and does not otherwise affect or amend the existing and future obligations and rights of any of the parties under the Agreement.

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5. The persons executing this Indemnity Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Indemnity Agreement on behalf of said party, (iii) by so executing this Indemnity Agreement, such party is formally bound to the provisions of this Indemnity Agreement, and (iv) that entering into this Indemnity Agreement does not violate any provision of any other agreement to which said party is bound.

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INDUSTRIAL MANUFACTURING
COMPANY LLC, a Delaware limited liability
company .

Date: October ____, 2006

By: _____
John V. Curci,
Vice President and Secretary

COTTONWOOD CHRISTIAN CENTER, INC.,
a California corporation

Date: October 18, 2006

By: M. Wilson
Name: Michael G. Wilson
Title: Project Director

[Signatures continued on next page]

CITY OF CYPRESS

Date: October 23, 2006

By: Lydia Sondhi
Name: LYDIA SONDH
Title: Mayor

ATTEST:

Denise Basham
Denise Basham, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: W. Wynder
William W. Wynder, City Attorney

CITY OF CYPRESS, CALIFORNIA

DEPARTMENT OF PUBLIC WORKS

NPDES STANDARD NOTES REQUIREMENTS FOR CONSTRUCTION/GRADING PLANS

- ALL WORK SHALL BE IN CONFORMANCE WITH CHAPTER 7 OF THE COUNTY OF ORANGE DRAINAGE AREA NATIONAL PLAN (DAMP) AND CITY OF CYPRESS/CITY OF LOS ALAMITOS NATIONAL POLLUTANT DISCHARGE ELIMINATION PLAN (NPDES) LOCAL IMPLEMENTATION PLAN.
 - SEDIMENT FROM AREA DISTURBED BY CONSTRUCTION SHALL BE RETAINED ON SITE USING STRUCTURAL CONTROLS TO THE MAXIMUM EXTENT PRACTICABLE.
 - STACKPILES OF SOIL SHALL BE PROPERLY CONTAINED TO MINIMIZE SEDIMENT TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES OR ADJACENT PROPERTIES VIA RAINFALL, VEHICLE TRACKING, OR WIND.
 - APPROPRIATE BMPs FOR CONSTRUCTION-RELATED MATERIALS, WASTES, SPILLS OR RESIDUES SHALL BE IMPLEMENTED TO MINIMIZE TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES, OR ADJACENT PROPERTIES BY WIND OR RAINFALL.
 - RUNOFF FROM EQUIPMENT VEHICLE WASHING SHALL BE CONTAINED AT CONSTRUCTION SITES UNLESS TREATED TO REDUCE OR REMOVE SEDIMENT AND OTHER POLLUTANTS.
 - ALL CONSTRUCTION CONTRACTOR AND SUBCONTRACTOR PERSONNEL ARE TO BE MADE AWARE OF THE REQUIRED BEST MANAGEMENT PRACTICES AND GOOD HOUSEKEEPING MEASURES FOR THE PROJECT SITE AND ANY ASSOCIATED CONSTRUCTION STAGING AREAS.
 - AT THE END OF EACH DAY OF CONSTRUCTION ACTIVITY ALL CONSTRUCTION DEBRIS AND WASTE MATERIALS SHALL BE COLLECTED AND PROPERLY DISPOSED IN TRASH OR RECYCLE BINS.
 - CONSTRUCTION SHALL BE MAINTAINED IN SUCH A CONDITION THAT AN ANTICIPATED STORM DOES NOT CARRY WASTES OR POLLUTANTS OFF THE SITE. DISCHARGES OF MATERIAL OTHER THAN STORMWATER ARE ALLOWED ONLY WHEN NECESSARY FOR PERFORMANCE AND COMPLETION OF CONSTRUCTION PRACTICES AND WHERE THEY DO NOT CAUSE OR CONTRIBUTE TO A VIOLATION OF ANY WATER QUALITY STANDARD, CAUSE OR THREATEN TO CAUSE POLLUTION, CONTAMINATION OR NUISANCE, OR CONTAIN A HAZARDOUS SUBSTANCE IN A QUANTITY REPORTABLE UNDER FEDERAL REGULATIONS 40 CFR PARTS 117 AND 302.
 - POTENTIAL POLLUTANTS INCLUDE BUT ARE NOT LIMITED TO: SOLID OR LIQUID CHEMICAL SPILLS, WASTES FROM PAINTS, SEALANTS, GLUES, LIME, PESTICIDES, HERBICIDES, WOOD PRESERVATIVES AND SOLVENTS, ASBESTOS FIBERS, PAINT FLAKES OF STUCCO FRAGMENTS, FUELS, OILS, LUBRICANTS, AND HYDRAULIC FLUIDS, BATTERY FLUIDS, CONDENSATE, DETRIMENT OR OLEFANT WASTES, WASTES FROM ANY ENGINE/EQUIPMENT STEAM CLEANING OR CHEMICAL DEGREASING, AND SUPER CHLORINATED POTABLE WATER LINE FLUSHINGS.
 - DURING CONSTRUCTION, DISPOSAL OF SUCH MATERIALS SHOULD OCCUR IN A SPECIFIED AND CONTROLLED TEMPORARY AREA ON-SITE, PHYSICALLY SEPARATED FROM POTENTIAL STORMWATER RUNOFF, WITH ULTIMATE DISPOSAL IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL REQUIREMENTS.
 - DEWATERING OF CONTAMINATED GROUNDWATER, OR DISCHARGING CONTAMINATED SOILS VIA SURFACE DRAINAGE IS PROHIBITED. DEWATERING OF NON-CONTAMINATED GROUNDWATER REQUIRES A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FROM THE RESPECTIVE "STATE REGIONAL WATER QUALITY CONTROL BOARD."

QUESTIONS REGARDING THE CONSTRUCTION NOTES REQUIREMENTS SHOULD BE DIRECTED TO THE DEPARTMENT OF PUBLIC WORKS AT (714) 299-8752.

BENCHMARK:

TEMPORARY BENCHMARK IS THE NAIL AT THE CENTERLINE OF THE INTERSECTION OF KATELLA AVENUE AND SIBONEY STREET. ELEVATION = 100.00 FEET.

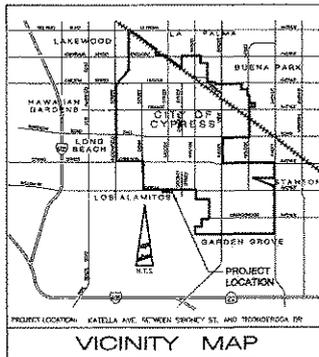
BASIS OF BEARING:

THE BASIS OF BEARING FOR THIS SURVEY IS THE CENTERLINE OF KATELLA AVENUE BEARING A NAIL AT THE INTERSECTION OF THE CENTERLINES OF SIBONEY STREET AND KATELLA AVENUE AND A HARDWARE SPIND APPROXIMATELY 865 FEET WEST OF SIBONEY STREET AND 58 FEET SOUTH OF NORTHERLY CURB FACE, SAID BEARING BEING N065°31'43"E.

GENERAL NOTES

- ALL WORK DONE SHALL CONFORM TO THE FOLLOWING STANDARDS AND SPECIFICATIONS, LATEST REVISIONS, IN CASE OF CONFLICT, THE DOCUMENT OF HIGHEST PRECEDENCE SHALL CONTROL. THE STANDARDS AND SPECIFICATIONS IN ORDER OF PRECEDENCE ARE:
 - CITY OF CYPRESS/CITY OF LOS ALAMITOS STANDARD PLANS.
 - ORANGE COUNTY SANITATION DISTRICT (OCSD) STANDARD SPECIFICATIONS AND STANDARD DRAWINGS.
 - STANDARD PLANS FOR PUBLIC WORKS CONSTRUCTION (APWA STANDARD PLANS), PREPARED BY THE SOUTHERN CALIFORNIA CHAPTERS OF THE APWA AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA, AS MODIFIED BY THE CITY STANDARD PLAN NO. 50.
 - THE FOLLOWING PORTIONS OF THE STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (CALTRANS) STANDARD SPECIFICATIONS: SECTION 12, CONSTRUCTION AREA TRAFFIC CONTROL DEVICES; SECTION 8A, TRAFFIC STRIPES AND PAVEMENT MARKINGS; SECTION 8E, PAVEMENT MARKERS; AND SECTION 90, SIGNALS, LIGHTING, AND ELECTRICAL SYSTEMS, TRAFFIC SIGNALS AND TRAFFIC STRIPING/PAVEMENT MARKER PORTIONS OF THE CALTRANS STANDARD PLANS.
 - STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, PREPARED BY THE SOUTHERN CALIFORNIA CHAPTERS OF THE APWA AND ASSOCIATED GENERAL CONTRACTORS OF AMERICA (GENERAL BOOKS).
- CITY OF CYPRESS STANDARD PLANS AND APWA STANDARD PLANS SHALL BE ON THE JOB SITE AT TIME OF CONSTRUCTION.
- THE EXISTENCE AND LOCATION OF UTILITY STRUCTURES AND FACILITIES ARE NOT SHOWN ON THE PLANS. THE CONTRACTOR IS REQUIRED TO ASCERTAIN THE LOCATION OF ALL UNDERGROUND UTILITY STRUCTURES AND FACILITIES PRIOR TO DOING WORK THAT MAY DAMAGE SUCH STRUCTURES AND FACILITIES, INCLUDING THOSE NOT SHOWN, OR INTERFERE WITH THEIR SERVICE, AND TO TAKE SUCH PRELIMINARY MEASURES IN THE COURSE OF SAND WORK TO PREVENT SUCH DAMAGE OR INTERFERENCE.
- ALL CONSTRUCTION IN DESIGNATED RIGHTS OF WAY SHALL BE COVERED BY A CITY OF CYPRESS/CITY OF LOS ALAMITOS PUBLIC WORKS PERMIT. PUBLIC WORKS INSPECTOR SHALL BE NOTIFIED FORTY-EIGHT (48) HOURS IN ADVANCE OF SUCH WORK.
- THE METHODS AND PROCEDURES FOR BARRICADING AND CHANNELIZATION DURING CONSTRUCTION SHALL CONFORM TO THE CALTRANS MANUAL OF TRAFFIC CONTROLS FOR CONSTRUCTION AND MAINTENANCE WORK ZONES, LATEST EDITION. ARROW BOARDS ARE REQUIRED FOR ALL LANE CLOSURES ON ARTERIAL STREETS. WORK ZONES ON ARTERIAL STREETS SHALL BE BETWEEN 6 AM AND 3:30 PM.
- LOCATE ALL SUBSTRUCTURES PRIOR TO CONSTRUCTION. HAND DIG FOUNDATIONS UNLESS CLEAR OF OBSTRUCTIONS. PHONE UNDERGROUND SERVICE ALERT AT 811 A MINIMUM OF 48 HOURS PRIOR TO CONSTRUCTION. THE USA TICKET NUMBER SHALL BE AVAILABLE AT THE CONSTRUCTION SITE AT ALL TIMES.
- ALL MONUMENTS SHALL BE SET AND CENTERLINE TIES SUBMITTED TO THE CITY ENGINEER PRIOR TO ACCEPTANCE OF IMPROVEMENTS. DISTURBED MONUMENTS SHALL BE RESET PER OGENA/PRO STANDARD PLANS 1405 OR 1406.
- NINETY-FIVE PERCENT (95%) RELATIVE COMPACTION IS REQUIRED IN ALL SUBGRADE AND BASE MATERIAL FOR ARTERIAL STREETS, AND NINETY PERCENT (90%) RELATIVE COMPACTION IS REQUIRED FOR OTHER STREETS AND PAVING AREAS.
- BACKFILL IN ROADWAY OVEREXCAVATED AREAS, IF REQUIRED DUE TO POOR SUB-GRADE, SHALL BE 3/4" MAX. CRUSHED AGGREGATE BASE (CAB) CONFORMING TO CALTRANS CLASS B SPECIFICATIONS FOR AGGREGATE, OR ONE SACK CEMENT/SAND PAVEMENT, NATIVE GRANULAR MATERIAL WITH A SAND EQUIVALENT NOT LESS THAN 30. MAY ALSO BE USED, IF CERTIFIED BY A SOILS ENGINEER AND APPROVED BY THE CITY ENGINEER IN ADVANCE. DEPTH OF OVER-EXCAVATION, IF ANY, TO BE ESTABLISHED BY SOILS ENGINEER IN THE FIELD.
- ALL EDGES OF REMOVALS OF PORTLAND CEMENT CONCRETE AND ASPHALT CONCRETE AT JOINTS SHALL BE MADE BY SAW CUTTING AND SHALL CONFORM TO THE PROVISIONS OF SECTION 300-1.3 OF THE STANDARD SPECIFICATIONS. SAW CUTTING SHALL BE MADE IN NEAT STRAIGHT LINES AND AT RIGHT ANGLES TO THE SURFACE. MATERIALS DAMAGED PRIOR TO PAVING, IT SHALL BE RE-SAWCUT TO A NEAT STRAIGHT LINE IN ACCORDANCE WITH THE ABOVE.
- AS-BUILT RECORD DRAWINGS SHALL BE SUBMITTED TO THE CITY ENGINEER PRIOR TO FINAL ACCEPTANCE OF THE WORK BY THE CITY.
- CONTRACTOR SHALL IMPLEMENT ALL NECESSARY BEST MANAGEMENT PRACTICES (BMP'S), AS REQUIRED BY THE CITY OF CYPRESS NPDES LOCAL IMPLEMENTATION PLAN (LIP), INCLUDING THOSE SHOWN IN STANDARD NOTES HEREON AND THOSE INCLUDED IN SPECIFICATIONS.

MEDIAN IMPROVEMENTS ON KATELLA AVENUE WEST OF SIBONEY STREET PROJECT NO. 2008-XX



LEGEND

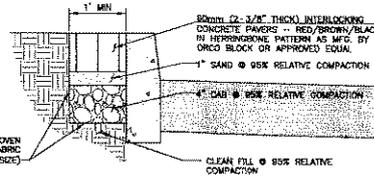
- SEWER MANHOLE
- STORM DRAIN MANHOLE
- IRRIGATION CONTROL VALVE
- TREE
- CENTERLINE
- PROPOSED AC PAVEMENT
- PROPOSED PCC IMPROVEMENTS
- PROPOSED CONCRETE PAVERS

ABBREVIATIONS

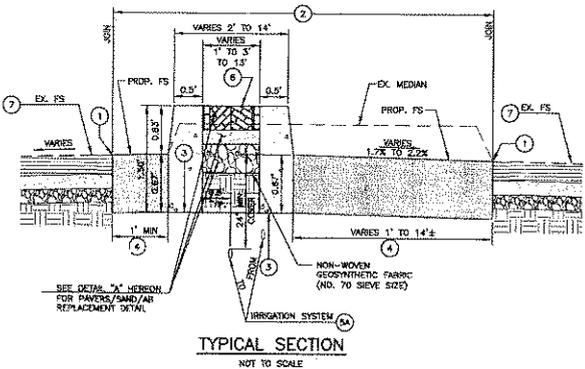
- AB AGGREGATE BASE
- AC ASPHALT CONCRETE
- BC BEGINNING OF CURVE
- BCR BEGINNING OF PARABOLIC FLARE
- DRY DRYWAY
- EC END OF CURVE
- ELR END OF CURB RETURN
- EL ELEVATION
- EPF END OF PARABOLIC FLARE
- EX EXISTING
- FS FINISHED SURFACE
- GB GRADE BREAK
- ICV IRRIGATION CONTROL VALVE
- LEN LENGTH
- MFG MANUFACTURED
- MIN MINIMUM
- PCC PORTLAND CEMENT CONCRETE
- PRC POINT OF REVERSE CURVATURE
- PROP PROPOSED
- PT POINT
- PVC POLYVINYL CHLORIDE
- R RADIUS
- SDMH STORM DRAIN MANHOLE
- SMN SEWER MANHOLE
- STA STATION
- STD STANDARD
- TC TOP OF CURB
- VAR VARIATION
- W WIDTH

INDEX TO SHEETS

SHEET NO.	DESCRIPTION
1	TITLE SHEET
2	PLAN AND PROFILE SHEET



DETAIL 'A'
NOT TO SCALE



TYPICAL SECTION
NOT TO SCALE

MASTER CONSTRUCTION NOTES

- SAW CUT.
- REMOVE EXISTING AC, PCC, BASE MATERIAL, LANDSCAPING (INCLUDING B TREES) AND IRRIGATION SYSTEM.
- CONSTRUCT 10" PCC CURB PER APWA STD. PLAN 120-1. TRANSITION WESTERLY JOIN FROM 10" CURB FACE TO MATCH EXISTING CURB FACE OVER 30' PER PROFILE.
- CONSTRUCT FILL DEPTH (8") THICK ASPHALT CONCRETE ON SIDE RELATIVE COMPACTED (90) EXISTING SUB-GRADE. JOIN FLUSH WITH ADJACENT AC SURFACE.
- MODIFY EXISTING IRRIGATION SYSTEM TO ACCOMMODATE REDUCED MEDIAN LANDSCAPE AREA (TO ENSURE 100% COVERAGE WITHOUT OVER SPRAY ONTO PAVED SURFACES).
- CONSTRUCT 1" PCC (SDN 40) IRRIGATION LINE (SIZE TO MATCH EXISTING) WITH A MINIMUM OF 24-INCHES COVER PER TYPICAL SECTION ON SHEET 1 TO SUPPLY EXISTING "EASTERN" MEDIAN BACKSLOPE TRENCH WITH MINIMUM 12" DEPTH OF 1" SACK CEMENT SLURRY.
- CONSTRUCT INTERLOCKING BRICK PAVERS PER DETAIL "A" AND TYPICAL SECTION ON SHEET 1, WIDTH PER PLAN.
- PROTECT IN PLACE.
- HAND WATER EXISTING MEDIAN LANDSCAPE DURING DOWN TIME OF EXISTING IRRIGATION SYSTEM.

STRIPING AND SIGNING NOTES

- INSTALL STRIPING DETAIL PER CALTRANS STD. PLAN A20. (# SHOWS DESIGNATES CALTRANS STRIPING DETAIL #).
- INSTALL PAVEMENT MARKING (ARROWS) PER CALTRANS STD. PLAN A24.
- INSTALL SIGN RS-2 (INTERNATIONAL NO LEFT TURN) AND SIGN RS-6-(R) (ONE WAY) ON NEW POST PER MUTCD, 2003 EDITION.
- INSTALL SIGN R4-6 (INTERNATIONAL KEEP LEFT) ON NEW POST PER MUTCD, 2003 EDITION.
- INSTALL TYPE (K)A MARKER ON NEW POST.

85% DESIGN SUBMITTAL
FEBRUARY 6, 2008
NOT FOR CONSTRUCTION

811 *Call before you dig.*



NOTICE TO CONTRACTOR

CONTRACTOR AGREES THAT HE OR SHE SHALL KNOW, SEE AND COMPLETE RESPONSIBILITY FOR THE SITE CONDITIONS PRIOR TO FINAL ACCEPTANCE OF THE WORK BY THE CITY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF ALL MEASUREMENTS AND PROFILES, AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF ALL MEASUREMENTS AND PROFILES, AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF ALL MEASUREMENTS AND PROFILES, AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ACCURACY OF ALL MEASUREMENTS AND PROFILES.

WQMP

PREPARED BY: N/A	DATE:
REVIEWED BY: N/A	DATE:
CONFORMED BY: N/A	DATE:

APPROVALS

DESIGNATION OR SECTION	BY	DATE
ENVIRONMENTAL		
SUBDIVISION		
TRAFFIC		
MAINTENANCE		

APPROVED BY:

DOUGLAS A. DANOS
DIRECTOR OF PUBLIC WORKS / CITY ENGINEER

PREPARED BY:

R.B. 95% 2/5/09
RANDALL G. BERRY
HARRIS & ASSOCIATES

HARRIS & ASSOCIATES
15000 E. 15th Ave., Suite 100
Denver, CO 80231
(303) 750-1000 or (303) 750-1001

NO.	DATE	REVISIONS	DESCRIPTION	DATE	APP'D	BY

REFERENCES

DESIGNED BY: B.A.L.	DATE: 01-2008
DRAWN BY: B.A.L.	DATE: 01-2008
CHECKED BY: R.E.K.	DATE: 01-2008

SCALE: AS NOTED

PLANS PREPARED UNDER THE DIRECTION OF RANDALL G. BERRY

APPROVED BY:

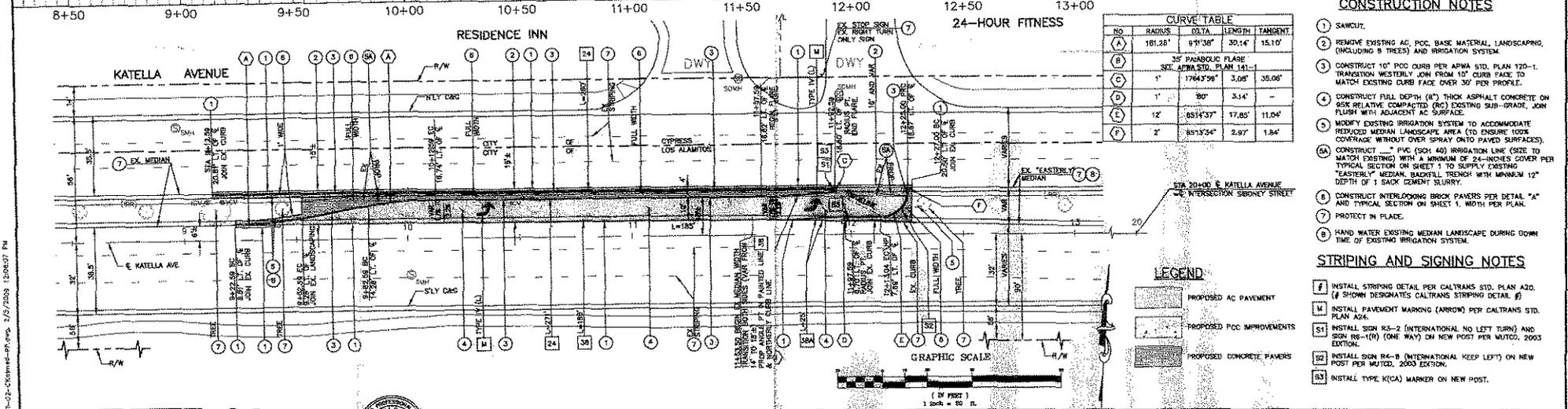
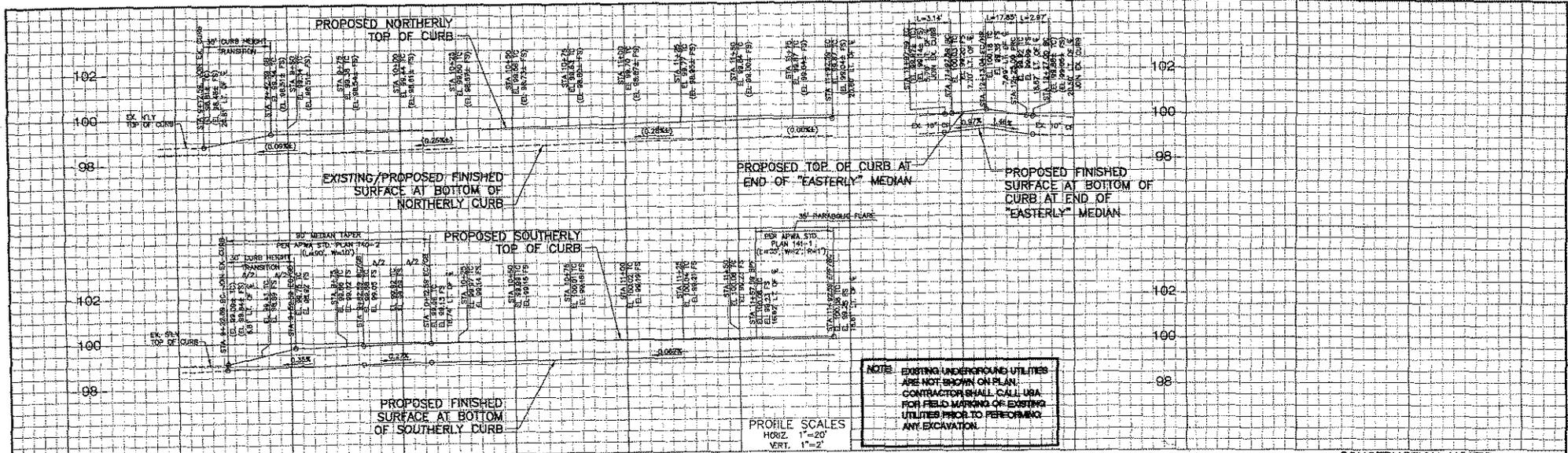
DOUGLAS A. DANOS
DIRECTOR OF PUBLIC WORKS / CITY ENGINEER

CITY OF CYPRESS

DEPARTMENT OF PUBLIC WORKS
MEDIAN IMPROVEMENTS
KATELLA AVENUE
TITLE SHEET
FROM STA 9+22.65 TO STA 12+27 (WEST OF SIBONEY STREET)

SHEET 1 OF 2

PROJECT NO.
DWG NO.



95% DESIGN SUBMITTAL
FEBRUARY 6, 2009
NOT FOR CONSTRUCTION

811
Know what's below.
Call before you dig.

NOTICE TO CONTRACTOR
CONTRACTOR AGREES THAT HE SHALL ASSUME FULL AND COMPLETE RESPONSIBILITY FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN AND FOR THE QUALITY OF THE WORK PERFORMED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR THE PROTECTION OF ALL UTILITIES AND STRUCTURES TO REMAIN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND STRUCTURES TO REMAIN. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND STRUCTURES TO REMAIN.

APPROVALS

DESIGNED BY: <i>N/A</i>	DATE: <i>N/A</i>	DESIGNED BY: <i>N/A</i>	DATE: <i>N/A</i>
REVIEWED BY: <i>N/A</i>	DATE: <i>N/A</i>	REVIEWED BY: <i>N/A</i>	DATE: <i>N/A</i>
CHECKED BY: <i>N/A</i>	DATE: <i>N/A</i>	CHECKED BY: <i>N/A</i>	DATE: <i>N/A</i>

APPROVED BY: *DOUGLAS A. DANCER*
DIRECTOR OF PUBLIC WORKS / CITY ENGINEER

PREPARED BY: *R.R. 75% 2/5/09*
RANDALL G. BERRY
RCE 44842 DATE

HARRIS & ASSOCIATES
5400 WEST BAY BLVD. SUITE 100
DALLAS, TX 75214
(214) 351-1999 • FAX (214) 351-1990

REVISIONS

No.	Date	By	Description

REFERENCES

No.	Date	By	Description

SCALE: AS NOTED

PLANS PREPARED BY THE OFFICE OF RANDI G. BEARY

DESIGNED BY: <i>D.W.</i>	DATE: <i>01-2009</i>
DRAWN BY: <i>B.S.</i>	DATE: <i>01-2009</i>
CHECKED BY: <i>K.L.</i>	DATE: <i>01-2009</i>

CITY OF CYPRESS
DEPARTMENT OF PUBLIC WORKS
MEDIAN IMPROVEMENTS
KATELLA AVENUE
PLAN AND PROFILE
FROM STA 9+22.58 TO STA 12+27 (WEST OF SIDNEY STREET)

SHEET 2 OF 2
PROJECT NO. _____
DWG NO. _____

H:\Cypress\Katella Median.dwg plot on View: 2/10/09 12:04:37 PM

CITY OF LOS ALAMITOS



Mayor:
Ken Stephens

Mayor Pro Tem:
Troy D. Edgar

Council Members:
Warren Kusumoto
Gerri L. Graham-Mejia
Marilynn M. Poe

City Manager:
Jeffrey L. Stewart

July xx, 2011

City of Cypress
Cottonwood Church
Arrowhead Products

Subject: Modifying the Third-Party Agreements between the City of Cypress, Cottonwood Church and Arrowhead Products

The City of Los Alamitos is requesting a modification to the Traffic Improvement Plan (TIP) that was part of the July 2004 Settlement and Mutual Release Agreement pertaining to the litigation. The Agreement, which restricted southbound Lexington Drive traffic from crossing Katella Avenue and entering into the Apartment Row and Carrier Row neighborhoods in the City of Los Alamitos, was entered into by Cottonwood Church, City of Cypress, and City of Los Alamitos. This request also affects the September 2004, and the October 2006, First Amendment to the Memorandum of Construction License Agreement that was entered into by Cottonwood Church, City of Cypress and Arrowhead Products. This agreement does not discuss the signal at Katella Avenue and Lexington Drive, but does include plans that show that through-southbound Lexington Drive traffic is not allowed to cross the intersection.

The City of Los Alamitos is requesting that the restriction at Lexington Drive at Katella Avenue be removed and allow southbound Lexington Drive traffic to travel through the intersection to improve traffic flow in their surrounding neighborhoods.

For the above requested modification the City of Los Alamitos is also prepared to accept the following modifications to the Agreement:

1. Section 10 of the Settlement and Mutual Release Agreement be modified from the requirement that an annual traffic study be changed to a follow-up study in 5 years, and if the traffic volumes don't exceed the numbers listed below then the traffic study component can be discontinued.
 - o Northbound Lexington Drive to Denni Street not exceed 175 vehicles for the weekday peak "am" hour, and not exceed 250 vehicles for the weekday peak "pm" hour.

3191 Katella Avenue
Los Alamitos, CA
90720-5600

Telephone:
(562) 431-3538

FAX (562) 493-1255

www.ci.Los-Alamitos.ca.us

- Northbound left-turn vehicles from Lexington Drive onto Cerritos Avenue not exceed 440 vehicles during weekday peak "am" hour, and not exceed 520 vehicles during weekday peak "am" hour.
2. Allow the eastbound Katella Avenue left-turn lane into the 24-Hour Fitness Center parking lot as show on plans titled "City of Cypress, Department of Public Works, Median Improvements on Katella Avenue West of Siboney Street, Project No. 2008-XX". A City of Los Alamitos Encroachment Permit would be provided to the City Of Cypress on this project prior to the Katella Avenue at Lexington Drive modifications being made.
 3. Allow Cottonwood Church, which owns the old railroad right-of-way north of Arrowhead Products and west of Lexington Drive, to build a parking lot on it per City Standards without the criteria that a Class 1 Bike Path be placed on the property.
 4. That the City Council would not oppose a future request by the Cottonwood Church to install a signal at the Church's expense at Katella Avenue and Enterprise Drive.

We would like to get together at your earliest convenience to discuss these matters with each of you. Please give me a call at (562) 431-3538.

Sincerely,

CITY OF LOS ALAMITOS

Jeff Stewart
City Manager

cc: