



REVISED AGENDA

Donald P. Wagner
Chairman

Melissa Fox
Vice Chairwoman

Jeffrey Lalloway
Director

Lynn Schott
Director

Christina Shea
Director

ORANGE COUNTY GREAT PARK BOARD REGULAR MEETING

April 25, 2017

2:00 PM

City Council Chamber
One Civic Center Plaza
Irvine, CA 92606

Speaker's Card/Request to Speak: If you would like to address the Board on a scheduled agenda item – including a Consent Calendar item, a Regular Business item, a Public Hearing item, or Public Comments – please complete the Request to Speak Form. The card is at the table at the entrance to the City Council Chamber. Please identify on the card your name and the item on which you would like to speak and return to the Clerk of the Board. The Request to Speak Form assists the Chair in ensuring that all persons wishing to address the Board are recognized. It also ensures the accurate identification of meeting participants in the Board minutes. Your name will be called at the time the matter is heard by the Board. Board policy is to limit public testimony to up to three minutes per speaker depending on relevant circumstances (unless the time limit is extended by the Chair), which includes the presentation of electronic or audio visual information. Speakers may not yield their time to other persons.

Please take notice that the order of scheduled agenda items below and/or the time they are actually heard, considered and decided may be modified by the Chair or the Board during the course of the meeting, so please stay alert.

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

DIRECTOR, OCGP, REPORT

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of the Great Park Board Agenda and staff
reports



BOARDMEMBER REPORTS

ADDITIONS AND DELETIONS

Additions to the agenda are limited by California Government Code Section 54954.2 of the Brown Act and for those items that arise after the posting of the Agenda and must be acted upon prior to the next Board meeting.

1. CONSENT CALENDAR

All matters listed under Consent Calendar are considered by the Assistant City Manager and the City Manager to be routine and enacted by one roll call vote. There will be no discussion of these items unless members of the Orange County Great Park Board request specific items to be removed from the Consent Calendar for separate discussion. Any member of the public may address the Board on items on the Consent Calendar. See information for Speaker's Card/Request to Speak on first page.

1.1 MINUTES

ACTION:

Approve the minutes of a regular meeting of the Orange County Great Park Board held on March 28, 2017.

2. BOARD BUSINESS

2.1 **LESSOR CONSENT TO LEASEHOLD DEED OF TRUST AND AGREEMENT RELATED TO COMMUNITY ICE FACILITY AT THE ORANGE COUNTY GREAT PARK**

ACTION:

Recommend that the City Council authorize the Mayor to execute Lessor Consent to Leasehold Deed of Trust and Agreement contingent upon approval by Farmers and Merchants Bank Board of Directors.

2.2 **SCOREBOARDS AND SPONSORSHIP AT THE GREAT PARK SPORTS COMPLEX**

ACTION:

- 1) Recommend the City Council authorize the City Manager to execute Second Amendment to August 4, 2016 Letter Agreement Between the City of Irvine and Heritage Fields El Toro, LLC Regarding Expenditure of Quimby Funds for Additional Sports Park Improvements.
- 2) Recommend the City Council approve a budget appropriation of \$517,175 from the unallocated Great Park Fund balance to the Capital Improvement Project Fund, Project No. 361616, Sports Park Subarea Improvements, for the recommended scoreboard design enhancements.

2.3 WATERPARK REQUEST FOR PROPOSALS RESPONSE AND NEXT STEPS

ACTION:

Direct staff to cancel and release a new Request for Proposals for the Design, Development, Lease, and Operation of a Waterpark at the Orange County Great Park.

2.4 AWARD OF CONTRACT AND BUDGET APPROPRIATION FOR WIRELESS AND TELECOMMUNICATIONS CONSULTING SERVICES AT THE ORANGE COUNTY GREAT PARK

ACTION:

- 1) Recommend the City Council authorize the Orange County Great Park Director to execute a contract for a not-to-exceed amount of \$97,500 with Connected Nation Exchange, for wireless and telecommunications consulting services at the Orange County Great Park.
- 2) Recommend the City Council approve a budget adjustment in the amount of \$97,500 from the Orange County Great Park Fund unallocated fund balance for wireless and telecommunications consulting services.

PUBLIC COMMENTS (Limited to 3 minutes per speaker.)

Any member of the public may address the Board on items within the Orange County Great Park Board's subject matter jurisdiction but which are not listed on this agenda during Public Comments; however, no action may be taken on matters that are not part of the posted agenda. See information for Speaker's Card/Request to Speak on the first page.

ADJOURNMENT

NOTICE TO THE PUBLIC

LIVE BROADCASTING AND REBROADCASTING

Regular Orange County Great Park Board meetings are broadcast live every 4th Tuesday of the month at 2 p.m. and are replayed on Tuesdays at 2 p.m. (in weeks in which there is not a live Great Park Board meeting), Wednesdays at 8 a.m., Thursdays at 7 p.m., and Saturdays at 7 p.m. (in weeks in which there is not a live Orange County Great Park meeting) until the next Orange County Great Park Board meeting. All broadcasts can be viewed on Cox Communications Local Access Channel 30 and U-Verse Channel 99. Orange County Great Park Board meetings are also available via live webcast and at any time for replaying through the City's ICTV webpage at cityofirvine.org/ictv. For more information, please contact the Clerk of the Board/City Clerk's Office at (949) 724-6205.

STAFF REPORTS

As a general rule, staff reports or other written documentation have been prepared or organized with respect to each item of business listed on the agenda. Copies of these materials are on file with the Clerk

of the Board and are available for public inspection and copying once the agenda is publicly posted (at least 72 hours prior to a regular Orange County Great Park Board meeting). Staff reports can also be downloaded from the City's website at cityofirvine.org and ocgp.org beginning the Friday prior to the scheduled regular Orange County Great Park Board meeting on the 4th Tuesday of each month.

In addition, meetings can be viewed live at the time posted on the agenda and related staff reports can be opened and viewed simultaneously along with the streaming of the meeting. To view the meeting, go to cityofirvine.org/ictv.

If you have any questions regarding any item of business on the agenda for this meeting, or any of the staff reports or other documentation relating to any agenda item, please contact Clerk of the Board/City Clerk staff at (949)724-6205.

SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the Orange County Great Park Board regarding any item on this agenda after the posting of the agenda will be available for public review in the Clerk of the Board/City Clerk's Office, One Civic Center Plaza, Irvine, California, during normal business hours. In addition, such writings or documents will be made available for public review at the respective public meeting.

If you have any questions regarding any item of business on the agenda for this meeting, or any of the staff reports or other documentation relating to any agenda item, please contact Clerk of the Board/City Clerk staff at (949)724-6205.

SUBMITTAL OF INFORMATION BY MEMBERS OF THE PUBLIC FOR DISSEMINATION OR PRESENTATION AT PUBLIC MEETINGS

Media Types and Guidelines

1. Written Materials/Handouts:

Any member of the public who desires to submit documentation in hard copy form may do so prior to the meeting or at the time he/she addresses the Orange County Great Park Board. Please provide 15 copies of the information to be submitted and file with the Clerk of the Board at the time of arrival to the meeting. This information will be disseminated to the Orange County Great Park Board at the time testimony is given.

2. Large Displays/Maps/Renderings:

Any member of the public who desires to display freestanding large displays or renderings in conjunction with their public testimony is asked to notify the Clerk of the Board/City Clerk's Office at (949)724-6205 no later than 10 a.m. on the day of the scheduled meeting so that an easel can be made available, if necessary.

3. Electronic Documents/Audio-Visuals:

Any member of the public who desires to display information electronically in conjunction with their public testimony is asked to submit the information to the Public Information Office (PIO) no later than 10 a.m. on the day of the scheduled meeting. To facilitate your request contact the PIO Office at (949)724-6253 or the City Clerk's Office at (949)724-6205.

Information must be provided on CD, DVD, or VHS; or, emailed by 12:00 noon on the day of the scheduled meeting to pio@ci.irvine.ca.us. Members of the public will be asked to provide their name, identify the meeting and the agenda item to be addressed, and a daytime phone number.

The PIO office will notify the person submitting the information as soon as possible prior to the meeting if the information cannot be accessed or if the version provided is incompatible with the City's system. Every effort will be made by City staff to facilitate the presentation.

CITY SERVICES TO FACILITATE ACCESS TO PUBLIC MEETINGS

It is the intention of the City of Irvine 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, the City of Irvine will attempt to accommodate you in every reasonable manner. Please contact the Clerk of the Board/City Clerk's Office at (949)724-6205.

Assisted listening devices are available at the meeting for individuals with hearing impairments. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35. 102-35. 104 ADA Title II)

CHALLENGING BOARD DECISIONS

If a person wishes to challenge the validity or reasonableness of any Board action or decision in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the Orange County Great Park Corporation, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

COMMUNICATION AND ELECTRONIC DEVICES

To minimize distractions, please be sure all personal communication and electronic devices are turned off or on silent mode.

MEETING SCHEDULE

Regular meetings of the Orange County Great Park Board are held on the fourth Tuesdays of each month at 2 p.m. Agendas are available at the following locations:

- Clerk of the Board/City Clerk's Office
- Police Department
- City's web page at cityofirvine.org
- Orange County Great Park's web page at ocgp.org

I hereby certify that the agenda for the Regular Orange County Great Park Board meeting was posted in accordance with law in the posting book located in the Public Safety Lobby of City Hall, One Civic Center Plaza, Irvine, California on April 21, 2017 by 8:00pm as well as on the City's web page.


Molly McLaughlin, CMC
Secretary / Clerk of the Board

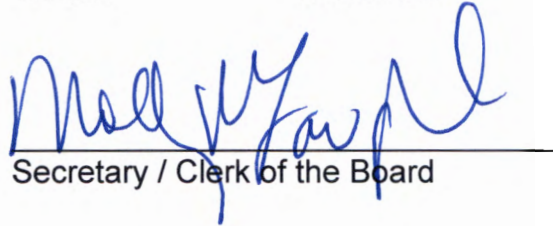
1.1



REQUEST FOR BOARD ACTION

MEETING DATE: APRIL 25, 2017

TITLE: MINUTES

A handwritten signature in blue ink, appearing to read "Molly Fay", is written over a horizontal line.

Secretary / Clerk of the Board

RECOMMENDED ACTION:

Approve the minutes of a regular meeting of the Orange County Great Park Board held on March 28, 2017.



MINUTES

ORANGE COUNTY GREAT PARK BOARD REGULAR MEETING

March 28, 2017

City Council Chamber
One Civic Center Plaza
Irvine, CA 92606

CALL TO ORDER

A regular meeting of the Orange County Great Park Board of Directors was called to order on March 28, 2017 at 2:05 p.m. in the City Council Chamber; Chairman Wagner presiding.

ROLL CALL

Present:	5	Director:	Jeffrey Lalloway
		Director:	Lynn Schott
		Director:	Christina Shea
		Vice Chairwomen:	Melissa Fox
		Chairman:	Donald P. Wagner

PLEDGE OF ALLEGIANCE

Chairman Wagner led the Pledge of Allegiance.

DIRECTOR, OCGP, REPORT

Pete Carmichael, Director, Orange County Great Park, provided a brief update on construction progress, forward planning, signage at the Great Park, and public outreach efforts.

Board discussion included: including signage for large events; questioned the reference to the “golf district” and whether that designation was based on part of the plan to date; and inquired about light emitting diode (LED) sign types.

BOARDMEMBER REPORTS

Director Schott expressed her appreciation to those who attended the recent public outreach event as part of the City's public outreach regarding the Orange County Great Park at the Honda Center in Anaheim; and invited Irvine and Orange County residents to the last of five community meetings on Sunday, April 2 at 10 a.m. at the South Coast Chinese Cultural Center in Irvine. The presentation will be provided in English and Mandarin. No RSVP is needed. For information, visit cityofirvine.org.

Vice Chairwoman Fox noted the number of e-mails received from members of the community with respect to public outreach efforts.

ADDITIONS AND DELETIONS

There were none.

1. CONSENT CALENDAR

ACTION: Moved by Director Lalloway, seconded by Director Shea, and unanimously carried to approve Consent Calendar Item Nos. 1.1 – 1.3.

1.1 MINUTES

ACTION:

Approved the minutes of a regular meeting of the Orange County Great Park Board held on February 28, 2017.

1.2 NAMING OF THE ARENA RINK AT THE GREAT PARK COMMUNITY ICE FACILITY

Courtney Santos, Irvine resident, spoke in support of naming rights at the Great Park Community Ice Facility.

ACTION:

Recommended that the City Council authorize the City Manager to execute a letter approving the Irvine Ice Foundation's request to name the Arena at the Great Park Community Ice Facility.

1.3 BUDGET ADJUSTMENT FOR CONSTRUCTION OF TEMPORARY PEDESTRIAN WALKWAY FOR PARKING LOT ACCESS IN THE WESTERN SECTOR

ACTION:

Recommended that the City Council approve a budget appropriation in the amount of \$16,080 from the Orange County Great Park Fund unallocated fund balance to construct a temporary pedestrian walkway between the Festival Lot and North Athletic Fields in the Western Sector of the Orange County Great Park.

2. BOARD BUSINESS

2.1 ORANGE COUNTY GREAT PARK FINANCIAL PROJECTIONS

Angelina Garcia, Manager of Budget and Business Planning; Pete Carmichael, Director, Orange County Great Park; and Kristin Griffith, Director of Financial Services, presented the staff report and responded to questions.

Board discussion included: questioning assumptions with respect to the decline of expenditures during Fiscal Year 2023-24; noted market factors that could result in construction delays, and considering a contingency in the event of a real estate downturn; whether similar costs would be realized if operations were outsourced and requested a comparison of costs between in-house and contracted services; requested frequent financial report to the Board; and noted financial benefits to leasing valuable land.

Received and filed the presentation on financial projections for the Orange County Great Park.

2.2 ORANGE COUNTY GREAT PARK STREET NAMING

Barry Curtis, Manager of Planning Services, presented the staff report and responded to questions.

Board discussion included: noting the practicality of street naming themes and a preference for squadron names; expressed concern that names of battles and wars could provide a negative connotation; questioned how to recognize marines as an alternative to street naming; and suggested expanding the list of distinguished service members for the inclusion of onsite memorials or venues at the Great Park.

ACTION: Moved by Director Lalloway, seconded by Director Schott, and unanimously carried to:

ACTION:

Approve the Squadron theme for street names within the Orange County Great Park.

PUBLIC COMMENTS

The following individuals spoke in support of the inclusion of botanical gardens at the Orange County Great Park:

Jon Schara
Ed Andrade
Teena Spindler
Dr. Ken Schwarz
Sharon Stolen
Katrina Kirkeby

Tim Lane spoke in support of a bike facility at the Orange County Great Park.

Patricia Martz spoke in support of an Orange County Museum of Cultural and Natural History at the Orange County Great Park.

ADJOURNMENT

Moved by Director Schott, seconded by Director Shea, and unanimously carried to adjourn the meeting at 3:08 p.m.

CHAIRMAN

SECRETARY/CLERK OF THE BOARD

April 25, 2017
DATE

2.1




REQUEST FOR BOARD ACTION

MEETING DATE: APRIL 25, 2017

TITLE: LESSOR CONSENT TO LEASEHOLD DEED OF TRUST AND AGREEMENT RELATED TO COMMUNITY ICE FACILITY AT THE ORANGE COUNTY GREAT PARK



Director, Orange County Great Park



City Manager

RECOMMENDED ACTION

Recommend that the City Council authorize the Mayor to execute Lessor Consent to Leasehold Deed of Trust and Agreement contingent upon approval by Farmers and Merchants Bank Board of Directors.

EXECUTIVE SUMMARY

On February 23, 2016, the City Council approved a Ground Lease Agreement (Lease) between the City of Irvine and Irvine Ice Foundation (Irvine Ice) (Attachment 1) enabling the construction and operation of a community ice rink facility on City-owned property at the Orange County Great Park. Irvine Ice is a California non-profit public benefit corporation established by the ownership entity of the Anaheim Ducks to promote ice hockey and other ice-based youth sports in Orange County. Per the terms of the Lease, Irvine Ice is responsible for the cost of construction and all ongoing costs for maintenance and operations through the term of the Lease.

The total cost of construction is expected to be over \$100 million. Construction is anticipated to be financed, in part, through a \$75 million loan provided by Farmers and Merchants Bank (Bank). As is customary with commercial real estate financing, the Bank has drafted a consent document which outlines its rights and responsibilities. The Lessor Consent to Leasehold Deed of Trust and Agreement (Lessor Consent) (Attachment 2) is scheduled for consideration before the Bank's Board of Directors on April 27. Staff recommends approval of the Lessor Consent contingent upon the corresponding approval of the Bank. A summary of the salient provisions is provided below.

- Parties represent that the Lease is in full force and effect.

- City (as “Lessor”) and Bank (as “Lender”) both agree to send the other party a copy of any Notice of Default at the same time it is given to Irvine Ice (as “Lessee”).
- If Lender takes possession of leased property:
 - Lender may assign its interest as tenant to another operator, with City approval.
 - Lender may request, and the City will review, an alternative community sport or similar use of the property if use as a community ice rink facility is commercially infeasible.
 - Lender may close the facility for up to 18 months without payment of rent while an alternative use is established.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Not applicable.

ANALYSIS

The Lease for a community ice facility on City-owned property covers an approximately 13.5-acre site adjacent to Ridge Valley within the Western Sector of the Great Park. The facility, to be built and operated by Irvine Ice, a non-profit public benefit corporation, would provide for a variety of ice sports related activities including youth and adult hockey programs, hockey tournaments, figure skating, public open skating, and will also serve as a practice facility for the Anaheim Ducks.

The Lease makes City-owned land available for a defined price and term, on which the private developer-operator would construct and operate the facility with private funds. The City is responsible for providing utilities to the site, ensuring construction of surrounding public streets, and for the provision of limited off-site “over flow” parking for no more than 10 events per year. Ongoing operations and maintenance of the facility would be paid for and managed by Irvine Ice with no additional costs to the City.

The total cost for construction is expected to be over \$100 million. \$75 million is anticipated to be financed through a loan from the Bank. It is standard practice in a large commercial real estate transaction for a bank to request that a consent document, outlining the bank's rights and responsibilities, be executed by the relevant parties. In this case, the parties are the City (Lessor), Irvine Ice Foundation (Lessee), and the Bank (Lender). The Lessor Consent recites that the Bank's loan is secured by Irvine Ice's leasehold interest in the property. Further, the Lessor Consent outlines a series of representations regarding the Lease and the Bank's rights and responsibilities as lender, primarily in the event of foreclosure. A summary of the key provisions in the Lessor Consent is provided below.

- The loan will be secured by a Construction Leasehold Deed of Trust encumbering Irvine Ice Foundation's leasehold interest in the property. The City's underlying ownership of the property will not be subject to the Bank's secured interest, and a foreclosure by the Bank will result in the Bank (or an affiliate of the Bank) becoming the "Lessee" under the Lease.
- The City, Irvine Ice, and Bank represent that the lease is in full force and effect; no payments are overdue; commencement, expiration and renewal are per the terms of the lease document.
- City will send to Bank a copy of any Notice of Default at the same time it is given to Irvine Ice.
 - Bank has the right (but not the obligation) to cure any Irvine Ice default within the greater of 30 days after the actual cure period provided to Irvine Ice under the Lease or 90 days after Bank's receipt of a default notice.
- Bank will send to City a copy of any Notice of Default at the same time it is given to Irvine Ice.
 - City has the right (but not the obligation) to cure any Irvine Ice default within the greater of 30 days after the actual cure period provided to Irvine Ice under Bank's loan documents or 90 days after City's receipt of a default notice.
- If Bank takes possession of leased property (in the event of foreclosure):
 - Bank may assign its rights as tenant to another operator, with City approval.
 - Should Bank provide a feasibility analysis, authored by an approved financial consultant, showing that the ice rink use is commercially infeasible, Bank may request, and the City will review, an alternative community sport or similar use of the property.
 - Bank may close the facility for up to 18 months without payment of rent (with up to three potential 6-month extension periods) while City and Bank determine an alternative use and identify a new tenant.
 - The first of the three six-month extension periods would be granted so long as Bank is working in good faith to identify an alternative use and new tenant, consistent with the requirements of the Lessor Consent. The second two extensions would be granted only upon approval of the City Council.
 - Following City approval of an alternative use and identification of a new tenant, City and Bank will negotiate a new lease agreement that obligates Bank to complete all necessary improvements to the property and open as the approved use by no later than 18 months after City approval of alternative use and identification of tenant. During this time period (after City approval of an alternative use and prior to finalization of a new lease) Bank would be obligated to pay rent to the City at a rate of \$250,000 per year.

The Lessor Consent has been reviewed by the City Attorney's office. The terms of the Lessor Consent have been agreed to by the Bank and its consultant. The full loan package, including the Lessor Consent, is scheduled for consideration before the Bank's Board of Directors on April 27. Staff recommends that the Great Park Board recommend the City Council approve the Lessor Consent contingent upon the corresponding approval by the Bank. If approved by the Great Park Board and City Council, the Lessor Consent would be routed for City signatures upon Bank approval.

ALTERNATIVES CONSIDERED

The Great Park Board could choose not to recommend that the City Council approve the Lessor Consent. Although the loan provides significant capital for the construction of a facility offering public benefit, the Lessor Consent does impose some limitations on the City's control and flexibility as property owner. Should the City Council decide not to approve, the Bank would then need to decide whether or not to move forward with its investment without the City's approval of its rights and responsibilities as lender.

FINANCIAL IMPACT

While there is no direct financial impact to the City associated with approval of the Lessor Consent, construction of a community ice facility at the Great Park is anticipated to have a positive financial impact to the City. This impact could manifest in rent payments to the City by Irvine Ice, increased visitation to other nearby amenities and programs at the Great Park, and collateral impacts associated with visitor expenditures in local restaurants, retail stores, and hotels.

REPORT PREPARED BY Pete Carmichael, Director, Orange County Great Park

ATTACHMENTS

1. Ground Lease Agreement between City of Irvine and Irvine Ice Foundation
2. Lessor Consent to Leasehold Deed of Trust and Agreement

LEASES SCAN SHEET

Cabinet: Leases

Revenue/Expense: REVENUE

Lease Type: LAND

Lessee: IRVINE ICE FOUNDATION

Lessor: CITY OF IRVINE

Department: CITY MANAGER

Contract Number: 9086

Description: GROUND LEASE FOR ICE
RINK FACILITY

APN:

Address: GREAT PARK

Effective Date: 03/15/2016

Expiration Date:

Amount:

Terms & Conditions: 25 YEARS FOLLOWING THE
CONSTRUCTION
COMPLETION DATE

CPI Adjustment Date:

ORIGINAL

GROUND LEASE

by and between

**CITY OF IRVINE,
a California municipal corporation**

and

**IRVINE ICE FOUNDATION,
a California non-profit public benefit corporation**

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LIST OF EXHIBITS

EXHIBIT “A” Area Map of Great Park
 EXHIBIT “B” Legal Description of Premises
 EXHIBIT “C” Site Map of Premises
 EXHIBIT “D” Description of City Improvements
 EXHIBIT “E” Project Description
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GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT ("**Lease**") is entered into as of March 15, 2016, by and between the CITY OF IRVINE, a California municipal corporation ("**City**"), and IRVINE ICE FOUNDATION, a California non-profit public benefit corporation ("**Lessee**").

R E C I T A L S

A. City is the owner in fee of that certain real property that has been designated for development of a metropolitan park known as the "Orange County Great Park," located in the City of Irvine, County of Orange, State of California, in the general location depicted on Exhibit "A" attached hereto ("**Great Park**").

B. Lessee is a California non-profit public benefit corporation established to promote ice hockey and other ice-based youth sports and activities in Orange County.

C. Lessee desires to develop a four (4) sheet community ice facility on that portion of the Great Park comprised of approximately thirteen and one half (13.5) acres, more particularly described in the legal description attached hereto as Exhibit "B" and depicted on the Site Map ("**Premises**").

D. City and Lessee desire to enter into this Lease to provide for City to lease to Lessee and Lessee to lease from City the Premises and for Lessee to design, develop and operate the ice facility as well as related programs on the Premises, on the terms and conditions set forth herein.

E. City has exercised its discretion in selecting the party with whom to enter into this Lease, approving the proposal and use of the Premises, and selecting the Lessee as the proposed lessee of the Premises. Such selections and approvals were made to protect and improve the public health safety and welfare in the City of Irvine.

C O V E N A N T S

Based upon the foregoing Recitals, which are incorporated into this Lease by reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, City and Lessee hereby agree as follows:

1. BASIC LEASE INFORMATION.

The following is a summary of basic lease information ("**Basic Lease Information**"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

City: City of Irvine, a California municipal corporation

Lessee: Irvine Ice Foundation, a California non-profit public benefit corporation

Premises:	The property comprised of approximately thirteen and one-half (13.5) acres and more particularly described in the legal description attached hereto as <u>Exhibit "B"</u> and depicted on the Site Map.
Term (Section 4.1):	<p>Commencement Date: Upon the satisfaction of the Lease Conditions in Section 4.2.</p> <p>Construction Completion Date: Upon the earlier of (a) the date City issues a certificate of occupancy for the Premises, or (b) the date that is eighteen (18) months after the Commencement Date.</p> <p>Expiration Date: Twenty-five (25) Lease Years following the Construction Completion Date. A Lease Year is each consecutive period of twelve (12) full calendar months, following the Construction Completion Date.</p> <p>Lessee shall have five (5) options to extend the Term, in each instance for an additional five (5) year period, as set forth in Section 4.3.</p>
Construction Schedule (Section 6.4):	<p>Construction of the City Improvements shall be completed within the same time period that Lessee is required to complete the Project.</p> <p>Construction of the Project by Lessee shall commence by beginning the rough grading of the Premises, no later than fifteen (15) days after the Commencement Date and shall be completed within eighteen (18) months after the Commencement Date.</p>
Rent (Section 5):	\$1.00 for the period commencing on the Commencement Date and ending on the Construction Completion Date; thereafter, the lesser of (i) twenty-five percent (25%) of Project Cash Flow, or (ii) Two Hundred Fifty Thousand Dollars (\$250,000) per Lease Year.
Use (Section 8):	For the purpose of operating a community ice rink facility, as more particularly described in Section 8.

Notice Address of City
(Section 22.1):

City of Irvine
City Hall
One Civic Center Plaza
Irvine, CA 92623-9575
Attn: City Manager
Facsimile: (949) 259-9350
Email: sjoyce@ci.irvine.ca.us

with a copy to:

Orange County Great Park Corporation
P.O. Box 19575
Irvine, CA 92623
Attn: Chief Executive Officer
Facsimile: (949) 724-6045
Email: etolles@ci.irvine.ca.us

and to:

Rutan & Tucker, LLP
611 Anton Blvd. Suite 1400
Costa Mesa, CA 92626
Attn: Jeffrey T. Melching, City Attorney
Facsimile: (714) 546-9035
Email: jmelching@rutan.com

Key Contact for City:

Eric Tolles

Telephone No.:

(949) 724-7340

Address for Lessee (Section
22.1):

Irvine Ice Foundation
3150 Barranca Parkway
Irvine, CA 92606-5202
Attn: Michael Schulman
Facsimile: (949) 759-5707
Email: mschulman@hsventures.org

Key Contact for Lessee:

Michael Schulman

Telephone No.:

(949) 760-4300

2. DEFINED TERMS.

The following terms as used in this Lease shall have the meanings given below unless expressly provided to the contrary:

“Adjacent City Property” shall have the meaning ascribed in Section 8.21 of this Lease.

“Affiliate” means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Lessee or Manager, as

applicable, which, if Lessee or Manager is a partnership or limited liability company, shall include each of the constituent members or partners, respectively thereof. The term “control” as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

“**AIG**” shall have the meaning ascribed in Section 14.7 of this Lease.

“**Applicable Laws**” means all valid and enforceable federal, state, regional, and local laws, statutes, ordinances, regulations, and official policies applicable to the Premises and the referenced activity, as the same may be amended from time to time.

“**Approved Institution**” means a savings bank, a savings or building and loan association, a commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, an educational institution or an institutional pension or retirement fund or system, a real estate investment trust or any other person or entity with assets (capital and surplus) in excess of Fifty Million Dollars (\$50,000,000), whose businesses include interim, construction or permanent lending secured by real estate (any of the foregoing, a “**Lender**”); provided, however, that an Affiliate of the Manager shall also be deemed to be an Approved Institution so long as the terms of any financing provided by said Affiliate are no less favorable to Lessee as would have been available from a Lender.

“**Approved Loan**” means a Project Construction Loan that comprises all or a part of Lessee’s Evidence of Financial Capability, as approved by City, and any refinancing of such loan, provided (i) such refinancing loan is obtained from an Approved Institution, (ii) such refinancing loan is made on reasonable commercial terms, as reviewed and verified by City in City’s reasonable discretion, and (iii) the principal amount of such refinancing loan does not exceed the outstanding principal balance of the loan it is replacing; provided, however, a refinancing loan that does not satisfy the requirements of clause (iii) shall constitute an Approved Loan if (a) Lessee proposes to use the excess amount of such loan to make capital repairs to the Improvements on the Premises, and (b) City has approved Lessee’s proposed capital repairs in its reasonable discretion.

“**City**” shall mean the City of Irvine, a California municipal corporation. The term “City” as used in this Lease includes the City of Irvine and any assignee of or successor to its rights, powers, and responsibilities.

“**City Improvements**” shall mean, collectively, those improvements to be constructed and installed by City, that are described on Exhibit “D” attached to this Lease.

“**City Lease Conditions**” shall mean the conditions in Section 4.2.1 that must be satisfied or waived by City prior to City leasing the Premises to Lessee.

“**City Manager**” shall mean the individual duly appointed to the position of City Manager of City or his or her authorized designee. The City Manager shall have the authority to administer and implement the terms of this Lease in accordance with Section 22.13 of this Lease.

“City Off-Site Parking” shall have the meaning ascribed in Section 8.20 of this Lease.

“Commencement Date” shall mean the date on which the Term commences, which shall occur upon the satisfaction of the Lease Conditions in Section 4.2.

“Construction Completion Date” shall mean the earlier of (a) the date City issues a certificate of occupancy for the Premises, or (b) the date that is eighteen (18) months after the Commencement Date.

“Covered Parties” shall mean City and OCGPC and their respective elected and appointed boards, members, officials, officers, agents, contractors, representatives, employees and volunteers.

“Default Interest Rate” means an annual rate of interest equal to the lesser of (a) the rate of interest which is announced and/or published in the Money Rates section of *The Wall Street Journal* from time to time as the prime rate (or if a range of rates is announced and/or published, the Prime Rate shall mean the highest of such rates), or (b) the highest rate permitted by Applicable Law, if any.

“Effective Date” shall mean the date on which this Lease is approved by City at a public meeting, which date shall be inserted into the preamble to this Lease.

“Environmental Policy” shall have the meaning ascribed in Section 14.7 of this Lease.

“Force Majeure” shall mean any event (the existence of which was not known as of the date this Lease was signed, or the date on which construction upon the Premises commenced, as applicable) beyond such party’s control and not caused by the acts or omissions of the delayed party which results in delays in a party’s performance of its obligations hereunder, including, without limitation, acts of nature or of the public enemy, fires, floods, earthquakes, strikes, freight embargoes, and unusually severe weather; delays of contractors or subcontractors due to any of these causes; strikes and substantial interruption of work because of labor disputes, delay in the granting of permits and other governmental approvals; inability to obtain materials or reasonably acceptable substitute materials (provided that the delayed party has ordered such materials on a timely basis and the delayed party is not otherwise at fault for such inability to obtain materials); and encountering Toxic Materials associated with Pre-Existing Environmental Conditions. Force Majeure does not include failure to obtain financing or have adequate funds, or any event that could have been avoided by exercising that standard of foresight and due diligence that any ordinary, prudent and competent person would exercise under the circumstances.

“Great Park” shall mean the Orange County Great Park referred to in Recital A of this Lease.

“Gross Revenue” shall mean all revenues and receipts of any kind or nature, whether cash, credit, or barter, received by Lessee in connection with or derived from the Premises or the Improvements thereon for the Lease Year in question, including, without limitation: (i) all amounts paid to or on behalf of Lessee by any party for the use or occupancy of any portion of the Premises, including, without limitation, payments for the use of the Premises and payments made by third parties for costs related to the operation of any portion of the Premises such as maintenance

charges, taxes, utilities, insurance costs, and service fees; (ii) all gross receipts of every kind and nature, from any business, use, or occupation, or any combination thereof, transacted, arranged, or performed, in whole or in part, on, from, or for services or sales from the Premises; (iii) proceeds of business interruption and similar insurance payable as a result of loss of revenues; and (iv) the fair market value of any non-monetary tangible or intangible item or service of value provided to or on behalf of Lessee by any person for the use or occupancy of any portion of the Premises or the use of the name of the Ice Rink thereon for advertising or promotional purposes. In the computation of Gross Revenues, there shall be excluded therefrom the following amounts: (i) proceeds of casualty insurance or condemnation awards; (ii) rebates, refunds, and discounts (exclusive of credit card discounts or commissions paid to a credit card system) to customers given in the ordinary course of obtaining such revenues; and (iii) excise, sales, and use taxes collected directly from patrons or guests or as a part of the sales price of any goods or services, such as gross receipts, admission, or similar taxes, which are accounted for by Lessee and remitted or paid to any governmental agency. Sales upon credit shall be considered cash sales and shall be included in the gross receipts for the period during which the goods or services are delivered or performed. Without limiting the foregoing, Gross Revenues shall include, without limitation, revenues from general admissions ticket sales, season passes, skate and other equipment rentals, public programs, private rentals and classes, merchandise, concessions, sponsorships, leagues and tournaments.

“Ice Facility Operations” shall have the meaning ascribed in Section 8.1 of this Lease.

“Ice Rink” shall have the meaning ascribed in Section 8.2 of this Lease.

“Imposition” or **“Impositions”** shall mean Taxes and all assessments, franchises, excises, license and permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time during the Term may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on (a) the Premises and Improvements or any part thereof or any appurtenance thereto; (b) the income received by Lessee from guests, or others for the use or occupation of the Premises and the Improvements thereon; or (c) this Lease.

“Improvements” shall mean any improvements to the Premises, whether previously existing or constructed on the Premises by Lessee or City pursuant to this Lease, and including any and all amendments, modifications, additions, substitutions, and replacements thereof.

“Large Event” shall mean an event to be held at the Premises, for which the parking spaces located on the Premises are anticipated to be insufficient, and for which Lessee desires to use some or all of the City Off-Site Parking.

“Large Ice Event” shall mean an ice-related event to be held at the Premises, for which the parking spaces located on the Premises are anticipated to be insufficient, and for which Lessee desires to use some or all of the City Off-Site Parking.

“Lease” shall mean this Lease and all exhibits attached hereto.

“Lease Conditions” shall mean, collectively, the City Lease Conditions and the Lessee Lease Conditions.

“Lease Year” shall mean each consecutive period of twelve (12) full calendar months, following the Construction Completion Date. If the Construction Completion Date is a date other than the first day of a calendar month, the first Lease Year shall include that fractional portion of the calendar month in which the Construction Completion Date occurs and the first full twelve (12) months thereafter, and the last Lease Year shall end on the expiration or earlier termination of this Lease.

“Leasehold Mortgage” shall mean any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance secured by an interest in the leasehold estate or any improvements, fixtures or equipment on the Premises, as more fully explained in Section 18.

“Leasehold Mortgagee” shall mean the holder of a Leasehold Mortgage. The terms of this Lease require that the holder be an Approved Institution.

“Lessee” shall mean Irvine Ice Foundation, a California non-profit public benefit corporation. The term “Lessee” includes any legally permissible assignee or successor to the rights, powers, and responsibilities of Lessee hereunder, in accordance with Section 13 of this Lease.

“Lessee Lease Conditions” shall mean the conditions in Section 4.2.2 that must be satisfied or waived by Lessee prior to Lessee leasing the Premises from City.

“Lessee Parties” shall mean Lessee Personnel and any guests or invitees of Lessee.

“Lessee Personnel” shall mean any employee, volunteer, contractor, subcontractor, consultant, representative or agent of Lessee, any person under Lessee’s supervision, control or direction, or any person retained or engaged by Lessee to conduct the Ice Facility Operations or any provision of this Lease, including, without limitation, the Manager.

“Lessee’s Evidence of Financial Capability” shall have the meaning ascribed in Section 4.2.1(c) of this Lease.

“Management Agreement” shall mean the management agreement entered into between the Manager and Lessee that sets forth the requirements for the Manager to perform the Ice Facility Operations.

“Manager” shall have the meaning ascribed in Section 8.4 of this Lease.

“OCGPC” shall mean the Orange County Great Park Corporation, a California non-profit mutual public benefit corporation.

“Operating Expenses” shall mean, on a cash basis and subject to the other limitations set forth below, all expenses paid by Lessee in connection with the operation of the Premises, including, without limitation, the following: (I) all insurance premiums for the Premises; (II) all Impositions; (III) all costs and expenses of operation, management, maintenance and repair of the Project, including, without limitation, the following costs by way of illustration: (i) utility expenses; (ii) labor costs, costs of materials, and contractors’ fees incurred in the management,

maintenance, repair and/or operation of the Project; (iii) maintenance, repair and component replacement of mechanical, plumbing, heating and air conditioning systems and elevators (whether considered an operating or capitalized expense) that are not funded out of the Replacement Reserve pursuant to Section 8.15 of this Lease; (iv) janitorial; (v) security; (vi) supplies; (vii) costs to advertise the Ice Facility Operations; (viii) waste disposal; (ix) management fees paid to the Manager in an amount not to exceed three percent (3%) of Gross Revenue; and (x) deposits into the Replacement Reserve pursuant to Section 8.15 of this Lease; (IV) debt service on any Approved Loan; (V) payments into operating and replacement reserves otherwise required by a permitted Leasehold Mortgagee; (VI) the Rent payable under this Lease; and (VII) reimbursement of any equity funds provided by Lessee or Manager for the construction of the Project in accordance with Lessee's Evidence of Financial Capability and for subsequent permitted alterations and improvements permitted hereunder. Notwithstanding anything to the contrary in the foregoing, Operating Expenses shall not exceed the reasonable cost thereof as measured by fees paid to third parties rendering similar services and shall not include any items paid from any of the reserves described in clause (V) herein, expenses reimbursed by insurance, federal and state taxes on net income, or costs incurred as a result of a default of Lessee under this Lease.

"Option" shall have the meaning ascribed in Section 4.3 of this Lease.

"Outside Commencement Date" shall mean the later of (i) fifteen (15) months after the Effective Date, or (ii) sixty (60) days after City accepts into City's Street System the segment of Ridge Valley located between Trabuco Road and 8th Street, in the City of Irvine, or such later date as may be mutually approved in writing by both parties.

"Permits" shall mean any and all governmental licenses, approvals, and permits required for Lessee's development of the Project, as the same may be amended or modified from time to time, which approvals include, without limitation, City's approval of an access study.

"Pre-Existing Environmental Conditions" shall have the meaning ascribed in Section 10.8 of this Lease.

"Premises" shall mean that certain real property consisting of approximately thirteen and one-half (13.5) acres of land area described in the legal description attached hereto as Exhibit "B" and depicted in the Site Map. The interests granted by City to Lessee hereunder are subject to any and all existing title exceptions of record, together with any exceptions that Lessee either knew of or reasonably should have known as a result of its due diligence prior to entering into this Lease. The lease of the Premises does not include any mineral, oil, gas, water, or other rights relative to the land.

"Project" shall mean the development described in Exhibit "E" to this Lease, and landscaping, lighting, signage, and other amenities, and all other on-site and off-site improvements required for development of the Premises, with all such improvements to be consistent with the Permits, all Applicable Laws, and development and building plans and permits approved by City. As used herein, the term "Project" shall not include the City Improvements. If there is any inconsistency between the description of the Project in this Lease and the approved plans and Permits for those improvements, the approved plans and Permits shall govern.

“Project Budget” shall mean a line-item budget to be submitted by Lessee to the City Manager and CEO of the OCGPC pursuant to Section 4.2.1(c) of this Lease that sets forth the costs to plan, design, engineer, finance, and construct the Project. The Project Budget shall be an amount not less than Thirty-Five Million Dollars (\$35,000,000).

“Project Cash Flow” shall mean, with respect to any Lease Year, the amount of Gross Revenue for such Lease Year less the Operating Expenses for such Lease Year, determined in accordance with generally accepted accounting principles.

“Project Construction Loan” shall mean a loan made by a Leasehold Mortgagee to Lessee for the development of the Project thereon in an aggregate amount equal to (i) the Project Budget less (ii) the amount of Lessee’s equity funds available and committed to the development of the Project, all as more particularly described in Section 4.2.1(c) of this Lease.

“Remedial Plan” shall mean that certain City of Irvine Remedial Plan dated August 2012, a copy of which has been made available to Lessee for its review.

“Replacement Reserve” shall have the meaning ascribed in Section 8.15 of this Lease.

“Rent” shall mean the annual rent payable by Lessee to City commencing on the Commencement Date, as such amount is adjusted and increased after the Construction Completion Date, all as set forth in Section 5.1 of this Lease.

“Schedule of Performance” shall mean that certain Schedule of Performance attached hereto as Exhibit “H” and incorporated herein by reference, setting out the dates and/or time periods by which certain obligations and conditions set forth in this Lease must be accomplished or satisfied.

“Site Map” shall mean that certain site map attached hereto and incorporated herein as Exhibit “C”.

“Term” shall have the meaning ascribed in Section 4.1 of this Lease.

“Taxes” shall mean all real and personal property taxes, possessory interest taxes, fees, assessments and charges, water and sewer rates and charges, and other similar governmental charges and impositions, whether general or special, ordinary or extraordinary, which may be levied, assessed, charged or imposed, or may become a lien or charge upon the Premises or any part or parts thereof, or upon Lessee’s leasehold interest in the Premises, Lessee’s ownership rights in the improvements and fixtures on the Premises, and Lessee’s rights pursuant to this Lease, or upon City’s ownership of the Premises, including, without limitation, all existing and future assessments and fees for public improvements, services, and facilities and impacts thereon, including arising out of any Community Facilities Districts, “Mello Roos” districts and similar assessment districts.

“Toxic Materials” shall mean any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government, including, without limitation, any material or substance which is (i) defined as a “hazardous waste”, “extremely hazardous waste” or “restricted hazardous waste” under Sections

25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substances Account Act), (iii) defined as a “hazardous material” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) formaldehyde, (ix) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251 et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903) (“RCRA”), or (xii) defined as “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601).

3. PREMISES.

3.1 Lease of Premises. Effective upon the Commencement Date, City hereby leases to Lessee, and Lessee hereby leases from City, the Premises, for the Term and upon the terms and conditions set forth in this Lease.

3.2 City Reservation. City hereby reserves to itself and its contractors, licensees, successors and assigns, the right to use of an area within the Premises consisting of ten (10) feet within and along the entire boundary of the Premises as depicted in Exhibit “C” attached hereto (“**Reservation Area**”) for underground utility purposes, along with the right to ingress and egress to such Reservation Area, for the purposes of installing, constructing, operating, repairing, maintaining and removing underground utility lines and improvements within the Reservation Area, including, without limitation, electric lines, telephone and data communication lines, irrigation lines, drainage lines, storm water detention and/or retention, sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, wires, siphons, valves, gates, pipelines, cable television service, electronic security systems and all machinery and apparatus appurtenant to all of the foregoing.

4. TERM.

4.1 Term. This Lease shall be effective between the parties as of the date set forth in the preamble; provided, however, that Lessee shall have no right to possession of the Premises prior to the Commencement Date. Subject to the possibility of earlier termination as provided for herein, the term of the Lease (“**Term**”) for the Premises shall commence on the Commencement Date and shall continue thereafter until the expiration of the twenty-fifth (25th) Lease Year following the Construction Completion Date, subject to extension pursuant to Section 4.3. The Commencement Date shall occur on the date that all of the Lease Conditions in Sections 4.2.1 and 4.2.2 have been satisfied or waived in writing by the benefitted party or parties, as provided therein;

provided, however, that if the Commencement Date does not occur by the Outside Commencement Date, the provisions of Section 4.2.4 shall apply. The parties agree to cooperate in causing a short form Memorandum of Lease to be recorded against the Premises on or after the Construction Completion Date that memorializes the existence of this Lease, recites that the Lease is available for public review and inspection as a public record in the office of the City Clerk of City, and identifies the Construction Completion Date and the expiration date of the Term.

4.2 Conditions Precedent to Commencement of Term.

4.2.1 City Lease Conditions. Notwithstanding any other provision set forth in this Lease to the contrary, City's obligation to lease the Premises to Lessee shall be contingent and conditional upon the fulfillment or City's express written waiver of each of the following conditions precedent (collectively, the "**City Lease Conditions**") within the time periods specified below:

(a) *Permits and Approvals for Project.* By the Outside Commencement Date, Lessee shall have obtained final approval from City and each other governmental agency with jurisdiction over any of the Permits for the Project, and any statutory time period for filing an action appealing or challenging the permits and approvals shall have expired with no such action having been timely filed or, if any such action is timely filed, such action has been concluded in a manner that upholds the validity and enforceability of the challenged approvals and permits.

(b) *Permits and Approvals for City Improvements.* By the Outside Commencement Date, City shall have obtained final approval from all regulatory and governmental agencies with jurisdiction of all of the necessary permits and approvals required for City's construction of the City Improvements, and any statutory time period for filing an action appealing or challenging the permits and approvals shall have expired with no such action having been timely filed or, if any such action is timely filed, such action has been concluded in a manner that upholds the validity and enforceability of the challenged approvals and permits.

(c) *Lessee's Evidence of Financial Capability.* By the Outside Commencement Date, Lessee shall have submitted to City and City shall have approved all of the following (collectively, "**Lessee's Evidence of Financial Capability**"): (i) the Project Budget; (ii) if a Project Construction Loan is to be obtained, Lessee's Project Construction Loan documents (which shall be ready to record on the Commencement Date), (iii) evidence of the amount of Lessee's or Manager's equity funds available and committed to development of the Project on the Premises (if the Project Construction Loan does not equal or exceed the Project Budget); and (iv) evidence that the sum of Lessee's Project Construction Loan and available and committed equity funds collectively equal or exceed the Project Budget. Lessee shall certify that each of the items contained within Lessee's Evidence of Financial Capability is true and correct at the time of submittal. Lessee shall submit Lessee's Evidence of Financial Capability by August 31, 2016, and City shall review and approve or disapprove the same no later than thirty (30) days after receipt of a complete submittal. City shall not unreasonably withhold its approval.

(d) *Grading and Building Permits for Project.* By the Outside Commencement Date, Lessee shall have obtained final City approval of all grading plans and final building plans for the Project and City shall be ready to issue grading permits and building permits upon Lessee's payment of the requisite fees, posting of required security, and compliance with similar routine and ministerial requirements of City.

(e) *Insurance.* By the Outside Commencement Date, Lessee shall have provided to City the evidence of insurance required under Section 14 of this Lease.

(f) *Management Agreement.* By the Outside Commencement Date, Lessee shall have submitted to City and City shall have approved the form of Management Agreement proposed by Lessee. Lessee shall submit Lessee's proposed form of Management Agreement to City by August 31, 2016, and City shall review and disapprove the same no later than thirty (30) days after receipt. City shall not unreasonably withhold its approval.

(g) *Additional Insured Endorsement.* AIG shall have issued an endorsement to the Environmental Policy, to be effective as of the Commencement Date, listing Lessee as an additional insured with respect to the Pre-Existing Environmental Condition of the Premises, and City shall have approved any conditions imposed by AIG in connection with said endorsement.

4.2.2 Lessee Lease Conditions. Notwithstanding any provision set forth in this Lease to the contrary, Lessee's obligation to lease the Premises from City shall be contingent and conditional upon the fulfillment or Lessee's express written waiver of each of the following conditions precedent (collectively, the "**Lessee Lease Conditions**") within the time periods specified below:

(a) *Permits and Approvals for Project.* By the Outside Commencement Date, Lessee shall have obtained final approval from City and each other governmental agency with jurisdiction of all of the Permits for the Project, and any statutory time period for filing an action appealing or challenging the permits and approvals shall have expired with no such action having been timely filed or, if any such action is timely filed, such action has been concluded in a manner that upholds the validity and enforceability of the challenged approvals and permits.

(b) *Permits and Approvals for City Improvements.* By the Outside Commencement Date, City shall have obtained final approval from all regulatory and governmental agencies with jurisdiction of all of the necessary permits and approvals required for City's construction of the City Improvements, and any statutory time period for filing an action appealing or challenging the permits and approvals shall have expired with no such action having been timely filed or, if any such action is timely filed, such action has been concluded in a manner that upholds the validity and enforceability of the challenged approvals and permits.

(c) *Grading and Building Permits for Project.* By the Outside Commencement Date, Lessee shall have obtained final City approval of all grading plans

and final building plans for the Project and City shall be ready to issue grading permits and building permits upon Lessee's payment of the requisite fees, posting of required security, and compliance with similar routine and ministerial requirements of City.

(d) *Management Agreement.* By the Outside Commencement Date, Lessee shall have obtained final approval from City of the form of Management Agreement proposed by Lessee.

(e) *Additional Insured Endorsement.* AIG shall have issued an endorsement to the Environmental Policy, to be effective as of the Commencement Date, listing Lessee as an additional insured with respect to the Pre-Existing Environmental Condition of the Premises, and City shall have approved any conditions imposed by AIG in connection with said endorsement.

4.2.3 Satisfaction of Conditions. Subject to any reserved rights and City's exercise of its legislative discretion, where satisfaction of any of the Lease Conditions requires action by City, the applicable party shall use its diligent efforts, in good faith, and at its own cost, to expeditiously satisfy such condition(s). If one party is not in a position to know whether or not a particular condition has been satisfied or the status thereof, then upon such party's request the other party that is aware of the status of the satisfaction of the condition shall provide such information to the inquiring party with respect to such condition as shall be within the knowledge of the responding party.

4.2.4 Termination if Lease Conditions Not Satisfied. In the event each of the City Lease Conditions set forth in Section 4.2.1 is not fulfilled by the applicable deadline, any unsatisfied City Lease Conditions are not waived in writing by City, and City is not then in default of its obligations hereunder, City at its option may terminate this Lease by delivery of written notice of termination to Lessee. In the event each of the Lessee Lease Conditions set forth in Section 4.2.2 is not fulfilled by the applicable deadline, any unsatisfied Lessee Lease Conditions are not waived in writing by Lessee, and Lessee is not then in default of its obligations hereunder, Lessee at its option may terminate this Lease by delivery of written notice of termination to City. In the event of a termination pursuant to this Section 4.2.4 in a situation in which neither party is then in default of its obligations set forth in this Lease, neither party shall have any further rights or obligations hereunder. No termination under this Lease shall release either party then in default from liability for such default.

4.3 Option to Extend Term. Lessee shall have five (5) options to extend the Term for, in each instance, a period of five (5) additional Lease Years, upon the terms and conditions set forth herein (each, an "**Option**"). In the event Lessee elects to exercise an Option to extend the Term, Lessee shall deliver to City written notice of its intent to exercise the Option in the manner set forth in Section 22.1 which requires a copy of the notice be sent to the OCGPC and the City Attorney (an "**Option Exercise Notice**"), at least one hundred eighty (180) days prior to the expiration of the Term. If any default of Lessee under this Lease is outstanding either at the time of Lessee's delivery of an Option Exercise Notice or at any time prior to the first day of an extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Lessee to reject Lessee's exercise of its option to extend, whereupon the extension shall be null and void unless

Lessee subsequently cures the default within the time period permitted under this Lease for cure of the default at issue. If Lessee elects to exercise an Option, the term "Term" as used herein shall include the extended Term and all terms and conditions of this Lease shall continue to apply.

4.4 Lessee's Right of Entry Prior to Commencement Date. Subject to the terms and conditions set forth herein, Lessee and its agents, contractors, consultants, and employees shall have reasonable access to the Premises, during normal business hours, as may be reasonably necessary for the purpose of preparing the plans and specifications for the Project. As a condition to any such entry, inspection or testing, Lessee shall (a) apply for and obtain an entry permit from City (the "**Entry Permit**"); (b) notify City in advance of the date and purpose of the intended entry and provide to City the names and affiliations of the persons entering the Premises; (c) conduct all activities in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Great Park; (d) comply with all Applicable Laws, governmental regulations, and the Entry Permit; (e) keep the Great Park free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry by or on behalf of Lessee; (f) promptly repair any and all damage to the Great Park caused by Lessee, its agents, employees, contractors, or consultants; (g) maintain in effect the insurance described in Section 14 of this Lease; (h) not interfere in any way with the activities conducted by Second Harvest, including, without limitation, any crops planted by Second Harvest, pursuant to the Second Harvest Agreement; (i) not enter upon any portion of the Premises subject to the OC Produce Agreement; and (j) not interfere in any way with any construction work or other activities of City or any other party. In connection with clause (j) of the preceding sentence, Lessee acknowledges that there may be times when access to the Premises will not be available to Lessee due to City's construction and other activities thereon and that City may from time to time need to schedule Lessee's access to a more convenient time. Lessee shall indemnify, defend and hold harmless the Covered Parties from and against any and all loss, cost, liability or expense (including reasonable attorneys' fees) arising from the entries of Lessee, its agents, contractors, consultants, and employees upon the Great Park or from Lessee's failure to comply with the conditions to Lessee's entry onto the Premises provided for herein. Notwithstanding anything to the contrary set forth in this Lease, such indemnity shall survive the termination of this Lease for any reason.

5. RENT.

5.1 Rent. For the period commencing upon the Commencement Date and continuing until the Construction Completion Date, Lessee shall pay to City as rent the sum of One Dollar (\$1.00). For each Lease Year, Lessee shall pay to City as rent the lesser of (a) twenty-five percent (25%) of the Project Cash Flow for such Lease Year, or (b) the sum of Two Hundred Fifty Thousand Dollars (\$250,000). Rent for a particular Lease Year shall be due and payable on or prior to April 30 of the subsequent Lease Year (or, in the case of the final rent payment, on or prior to April 30 following the final Lease Year.

5.2 Place for Payment of Rent. All Rent to be paid by Lessee and any other amounts to be paid to City as provided in this Lease shall be payable in lawful money of the United States of America without prior notice or demand and without abatement, offset, or deduction of any kind, to City at its address set forth in Section 22.1 or at such other place or places as may be designated from time to time in writing by City.

5.3 Net Lease. This is an absolute net lease and, except as otherwise expressly set forth in this Lease, all costs, expenses, and obligations of every kind relating to the Premises and to the use, operation, management, and occupancy thereof, whether now existing or hereafter arising, and whether or not now customary or within the contemplation of the parties hereto, which may arise or become due during the Term, shall be paid by Lessee. Lessee shall make all payments required by this Lease, including, without limitation, the payment of Rent, without any claim on the part of Lessee for diminution, set-off, or abatement, and nothing shall suspend, abate, or reduce any Rent to be paid hereunder, except as may be otherwise specifically provided in this Lease.

6. CONSTRUCTION OF PROJECT AND CITY IMPROVEMENTS.

6.1 Lessee Obligation to Develop Project. Provided the Commencement Date occurs, Lessee shall develop the Project on the Premises in strict accordance with this Lease, the approved Permits, the plans and drawings to be submitted by Lessee and approved by City as set forth herein, and all Applicable Laws; provided, however, that nothing herein shall constitute a representation, warranty, or guarantee by City that City or any other governmental agency with jurisdiction will approve any of such plans, drawings, or other documents or submittals. If Lessee desires to make any change in any development or building plans after the same have been approved, the proposed change shall be submitted to City for approval.

6.2 City Obligation to Develop City Improvements. Provided the Commencement Date occurs, City shall develop the City Improvements in accordance with any approved permits and all Applicable Laws; provided, however, that nothing herein shall constitute a representation, warranty, or guarantee by City that City or any other governmental agency with jurisdiction will approve any of the plans, drawings, or other documents or submittals relating to any of the City Improvements. If City desires to change any plans, drawings, or other documents or submittals pertaining to the City Improvements, the proposed change shall be submitted to Lessee for review. City shall reasonably consider any comments and/or suggestions received from Lessee with respect to City's proposed changes, provided that such comments and/or suggestions are provided to City within thirty (30) days after City's submittal of proposed changes to Lessee. Other than the City Improvements, City shall have no obligation to make any additions, alterations, improvements or repairs in, on or about the Premises.

6.3 Development Approvals.

6.3.1 Design Review. Lessee acknowledges that the Ice Rink, the related Improvements and overall Project shall be a world class facility, with such Project to be first class in architectural design and quality. In addition to all other design approvals required by Applicable Law, Lessee shall also submit to the "Design Review Process" pursuant to the terms and conditions set forth in Exhibit "G" attached hereto. City and Lessee agree to cooperate in the Design Review Process and Lessee shall submit all such plans, drawings, and materials pertaining to the Project as required by Exhibit "G" for approval by the City or City's designee within the time periods set forth therein. On or before the date Lessee submits its "Conceptual Review" designs pursuant to the Design Review Process, Lessee shall pay City the sum of Ten Thousand Dollars (\$10,000) as reimbursement, in part, for costs and expenses incurred by City in connection with the "Design Review Process."

6.3.2 Plans, Approvals, and Permits. By August 31, 2016, Lessee shall submit to City and any other governmental agency with jurisdiction applications and preliminary plans, drawings, and materials for all permits and approvals and land use and other entitlements which may be required for the Project by City or any other governmental agency with jurisdiction over the Project, including, without limitation, an access study. Lessee shall diligently respond to all comments received from City staff, including making any revisions to said plans, drawings, and materials as necessary to address City's comments. Lessee's final construction drawings, plans, and specifications for the Project ("Final Plans") shall be in conformity with all requirements set forth in this Lease, City's Municipal Code, and all Applicable Laws. The Final Plans shall contain all information required to obtain all necessary grading, building, and related construction permits required for the Project. Lessee shall pay all normal and customary City fees and post or provide all normal security instruments relating to its final plans, the issuance of such construction permits, and inspection of the work to be performed in constructing the Project.

6.4 Construction Schedule. Within fifteen (15) days after the Commencement Date, Lessee shall begin construction of the Project by commencing the rough grading of the Premises. Once construction is commenced by Lessee, it shall be continuously and diligently pursued to completion and shall be completed no later than the date that is eighteen (18) months after the Commencement Date, and shall not be abandoned for more than five (5) consecutive days, subject to extension based upon the occurrence of any Force Majeure delay. During the course of construction, Lessee shall keep City informed of the progress of construction on a monthly basis, which progress reports shall be in writing upon City's request. City shall complete the City Improvements no later than the date that Lessee is required to complete the Project as set forth in this Section, and shall use its reasonable commercial efforts to schedule and complete components of the City Improvements within any earlier timeframes as reasonably necessary to accommodate Lessee's construction schedule.

6.5 Project Costs. Lessee shall be responsible for all costs of constructing the Project, including, without limitation, pre-development costs incurred for items such as planning, design, and engineering, all development, building, and inspection fees, costs for insurance and bonds, and all construction costs.

6.6 LEED Certification. Lessee shall construct the Project in accordance with U.S. Green Building Council guidelines, and shall obtain a Leadership in Energy & Environmental Design (LEED) Silver certification for the Project.

7. GENERAL PROVISIONS FOR ALL CONSTRUCTION.

7.1 Permits. Lessee shall secure all permits and approvals which may be required for any work on the Premises.

7.2 Contractors. All contractors and subcontractors shall be licensed contractors in accordance with all Applicable Laws, possessing good labor relations, capable of performing quality workmanship. All work shall be coordinated with any other construction or other work in the Great Park in order not to adversely affect construction work being performed by or for City or its lessees.

7.3 Materials. Lessee shall use only new, first-class materials, except where explicitly shown in the plans approved by City. All work shall be done in a good and workmanlike manner. Lessee shall obtain contractors' warranties of at least one (1) year duration from the completion of the work against defects in materials and workmanship.

7.4 Schedule. Once any work of repair, alteration or improvement has been commenced by or under Lessee, Lessee shall cause such work to be diligently prosecuted to completion, at no cost or expense to City, in a good and workmanlike manner according to and in conformity with plans and specifications approved in writing by City and all Applicable Laws and the applicable requirements of this Lease and City.

7.5 Liens. Lessee shall keep the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or for Lessee. In the event that, within ten (10) days following the imposition of any such lien, Lessee fails to cause the same to be released of record by payment or posting of a proper lien release bond, City shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of or defense against the claim giving rise to such lien. All sums paid by City and all expenses incurred by it in connection therewith shall create automatically an obligation of Lessee to pay to City an equivalent amount within five (5) days after Lessee's receipt of City's demand therefor with interest at the Default Interest Rate to be charged from date of payment by City until paid by Lessee. Nothing herein shall imply any consent by City or subject City's estate to liability under any mechanics' or other lien law. Lessee shall indemnify, defend and hold City harmless from and against any lien or claim of lien filed against the Premises which result from Lessee's use of the Premises or the Ice Facility Operations.

7.6 Notice of Non-Responsibility. City shall, at any and all times during the Term, have the right to post and maintain on the Premises and to record any notice or notices of non-responsibility.

7.7 Rights of Access. Representatives of City shall have the reasonable right of access to the Premises without charges or fees, at normal construction hours during the period of any construction for the purposes of this Lease, including, without limitation, inspection of any work being performed. City shall provide reasonable prior notice to Lessee of such entry, and shall seek to minimize interference with Lessee's use of the Premises and Improvements as much as is reasonably feasible. Such entry shall be in compliance with all applicable safety rules and regulations.

7.8 Compliance with Laws. Lessee shall carry out the design and construction of any Improvements, including the Project, in conformity with all Applicable Laws, including the City zoning and development standards, building, plumbing, mechanical, fire, and electrical codes, and all other provisions of City's Municipal Code, all applicable disabled and handicapped access requirements, and all environmental mitigation measures imposed as conditions of approval of the development. In addition, Lessee shall carry out the construction of the Project and the development of the Premises in conformity with all applicable federal and state labor laws, including, without limitation, the requirement under California law to pay prevailing wages and hire apprentices, if applicable. Lessee acknowledges and agrees that it shall be independently

responsible for reviewing the Applicable Laws with respect to development on the Premises and complying therewith. Notwithstanding the foregoing, in addition to any other Lessee indemnifications of City set forth in this Lease, Lessee shall indemnify, defend, and hold the Covered Parties harmless from and against any liability, loss, damage, cost or expenses (including, without limitation, reasonable attorneys' fees, expert witness fees, court costs, and costs incurred related to any inquiries or proceedings) which, in connection with the development or construction by or under the direction of Lessee, arises from or is related to (a) the noncompliance by Lessee of any Applicable Law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and hire apprentices); (b) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Lessee to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the Lessee's development and construction on the Premises, Lessee shall bear all risks of payment or non-payment of prevailing wages under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 7.8, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. Lessee shall be solely responsible for determining and effectuating compliance with such laws. Lessee hereby expressly acknowledges and agrees that City has not previously affirmatively represented to Lessee or its contractor(s) for the construction or development of the Project or any other improvement, in writing or otherwise, in a call for bids or otherwise, that the work to be covered by this Lease is not a "public work," as defined in Section 1720 of the Labor Code.

7.9 Non-Discrimination During Construction. Lessee for itself and its successors and assigns agrees that in the construction of any Improvements on the Premises, Lessee will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, creed, religion, national origin, or ancestry or any other basis prohibited by law.

7.10 Faithful Performance and Labor and Material (Payment) Bonds. Lessee shall procure, or cause the procurement of, contractor's bonds covering labor, materials, and faithful performance for construction on the Premises and the Improvements in accordance with the following requirements:

(a) As to the Project, such bonds shall be in an amount equal to one hundred percent (100%) of the construction price in the contract entered into by Lessee and its general contractor.

(b) As to subsequent work involving repair or alteration of the Improvements in an aggregate amount exceeding Two Hundred Fifty Thousand Dollars (\$250,000), such bonds shall be in the amount equal to one hundred percent (100%) of the construction price in the contract entered into by Lessee and its general contractor. Subsequent work in an aggregate amount of Two Hundred Fifty Thousand Dollars (\$250,000) or less shall not be subject to bonding requirements.

Said bonds and the construction contract must first be approved in writing as to content and form by City. Lessee shall, prior to commencement of construction, deliver to City a certificate or

certificates from the bonding company or companies issuing the aforesaid bonds. The provisions of paragraphs (a) and (b) of this Section shall be applicable to construction, repairs, or alterations to the Premises and the Improvements at all times during the Term.

7.11 Consent for Alterations. Following the completion of the Project, Lessee shall not make or permit to be made any alteration of, addition to, or change in the Improvements, other than (a) routine maintenance, repairs, interior decoration, and minor interior alterations and (b) alterations, additions, or changes not open to public view which cost in the aggregate less than an amount equal to One Hundred Thousand Dollars (\$100,000), nor demolish all or any part of the Improvements, without the prior written consent of City. In requesting such consent, Lessee shall submit to City detailed plans and specifications of the proposed work and an explanation of the need and reasons thereof. Notwithstanding the prohibition in this Section 7.11, Lessee may make such changes, repairs, alterations, improvements, renewals, or replacements to the Improvements as are required by reason of any Applicable Laws. Nothing herein shall be construed to eliminate any requirement of Lessee to obtain consents and approvals from City as required by City in its capacity as a regulatory agency rather than a landlord.

7.12 Ownership of Improvements. All Improvements on the Premises constructed or installed by Lessee as permitted or required by this Lease shall, during the Term, be and remain the property of Lessee. All Improvements located on the Premises, whether existing thereon at the commencement of the Term, or constructed or installed thereon by Lessee as permitted or required by this Lease, shall, at the expiration or sooner termination of the Term, be and remain the property of City. Subject to Lessee's rights and obligations set forth in this Lease relating to alterations and additions, Lessee shall have no right at any time to waste, destroy, demolish or remove any of the Improvements. Lessee's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease.

8. USE OF PREMISES.

8.1 Permitted Use of Premises; Required Ice Facility Operations. Lessee shall use the Premises for the purpose of operating a community ice rink on the terms and conditions set forth herein ("**Ice Facility Operations**").

8.2 Continuous Operation; Hours of Operation. Within thirty (30) days after the completion of the Project and continuing for the Term, Lessee shall cause the four (4) sheet ice rink developed on the Premises (collectively, the "**Ice Rink**") to be open and operating at a minimum from 7:00 a.m. until 10:00 p.m., six (6) days per week, except for national holidays.

8.3 Programs. During the Term of the Lease, Lessee shall provide and/or permit the programs set forth on Exhibit "I" attached hereto pursuant to the terms and conditions set forth therein.

8.4 Management; General Duties. Prior to Lessee's completion of the Project, Lessee shall enter into the Management Agreement with Ice Management, LLC, a California limited liability company (the "Manager"), in a form reasonably approved by City. Pursuant to the Management Agreement, Lessee shall cause the Ice Facility Operations to be operated in a proper and efficient business manner. Lessee shall or shall cause the Manager to be responsible for the

day-to-day management and operation of the Ice Facility Operations, including hiring and discharging of employees of the Ice Facility Operations and determining the terms of their employment, maintaining adequate inventories of supplies and merchandise, complying with all Applicable Laws, maintaining quality control, maintaining the operating hours of the Ice Rink, and marketing and advertising. Lessee agrees at all times to act and to cause the Manager to act in the best interest of City and to implement or cause to be implemented the generally applicable policies, rules, and regulations established by City from time to time with respect to the Great Park. The Management Agreement shall provide that City is an express third party beneficiary to the terms thereof, and that the Management Agreement may not be modified without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed provided the proposed modifications would not have a deleterious effect on City or on the operation and management of the Ice Facility Operations.

8.5 Project Cash Flow. The Management Agreement shall require the Manager to timely repay any Leasehold Mortgage obtained by Lessee from the Gross Revenue derived by Lessee from operating the Project. To the extent that there is Project Cash Flow after Lessee's timely payment of all costs constituting Operating Expenses and payment of Rent to City, any such Project Cash Flow may be utilized to support Lessee's mission of promoting ice hockey and other ice-based youth sports in Orange County, provided Lessee timely complies with the following procedure:

8.5.1 Submittal of Project Cash Flow Statement. Within ninety (90) days after the close of each Lease Year, Lessee shall submit to City for its review and approval a statement containing an itemization and a reasonable explanation of the composition of Project Cash Flow for the applicable Lease Year, certified by Lessee (and individually by an officer, partner, member or trustee of Lessee, if Lessee is a corporation, partnership, limited liability company or trust) as an accurate accounting of Lessee's Project Cash Flow. Such statement shall be accompanied by a certificate of an independent certified public accountant with a national accounting firm or otherwise reasonably acceptable to City ("**Accountant**"). The Accountant's certificate shall be addressed to City, and shall state that the Accountant is familiar with the definition of Project Cash Flow in this Lease and is attesting to the accuracy of Project Cash Flow. Lessee shall provide to City such other additional reports and information on Project Cash Flow as reasonably required by City, and Lessee agrees that each such additional report and information shall be and is hereby certified to be true and correct.

8.5.2 Books and Records; Rights of Inspection and Audit. Lessee shall keep and cause any third parties to keep Books and Records in an accurate manner according to generally accepted accounting principles consistently applied. As used herein, the term "**Books and Records**" shall mean all of the books, records, receipts, invoices, and accounting reports or statements relating to Project Cash Flow, and any other information or records relevant to the determination of Project Cash Flow. Such Books and Records shall be kept for a minimum period of ten (10) years after the end of the Lease Year to which such items pertain and shall be kept and maintained and/or made available to City in Orange County. City shall be entitled to inspect, examine, and to copy at City's expense the Books and Records for the purpose of this Lease. Lessee shall cooperate fully with City in making the inspection. City shall also be entitled to an independent audit of Lessee's Books and Records by a certified public accountant to be designated by City.

8.6 Standard of Performance. As a material inducement to City entering into this Lease, Lessee represents and warrants that the Manager is a qualified provider of first-class services and is experienced in performing the services contemplated herein and, in light of such status and experience, Lessee covenants that Lessee shall cause the Manager to follow the highest professional standards in performing the Ice Facility Operations required hereunder.

8.7 Lessee Personnel. Lessee shall or shall cause the Manager to keep the Premises adequately staffed with sufficient personnel to service the demands and requirements of its customers and guests. Lessee shall or shall cause the Manager to ensure that all Lessee Personnel engaged in the Ice Facility Operations are fully qualified, competent and experienced, and authorized and permitted under Applicable Law to conduct the Ice Facility Operations. Lessee shall or shall cause the Manager to be responsible for hiring, training, discharging, and supervising all employees and labor necessary to properly maintain and operate the Ice Facility Operations. Such personnel shall be employees of Lessee or the Manager for all purposes and all costs incidental thereto shall be a cost to Lessee or to Manager (as applicable). In connection therewith, Lessee shall or shall cause the Manager to pay the costs of the salary and wages, payroll taxes, employee's health insurance, worker's compensation, training and development costs, and termination benefits payable pursuant to Applicable Law and other benefits of employees who are required to manage, operate and maintain the Ice Facility Operations.

8.8 Safety. Lessee shall be solely responsible at all times for monitoring the conduct and ensuring the safety of the Lessee Parties on the Premises, including, without limitation, employing and ensuring that adequate security personnel are present at the Premises at all times, installing security cameras within the Premises (both inside the Ice Rink and within the parking areas on the Premises), and installing adequate lighting within the parking areas on the Premises. Lessee shall or shall cause the Manager to correct all safety deficiencies and violations of safety practices immediately and shall cooperate fully with City in the investigation of accidents occurring on the Premises.

8.9 Licenses, Approvals and Permits. Lessee shall or shall cause the Manager to secure, at its sole cost and expense, any and all licenses, permits and approvals that may be required by Applicable Law for the Ice Facility Operations and its use of the Premises. Subject to the provisions of Section 22.7 below, City acknowledges that Lessee or the Manager plans to obtain a liquor license in connection with the operation of the Premises.

8.10 Advertising. Lessee shall or shall cause the Manager to market, advertise and promote the Ice Facility Operations. Each of Lessee and the Manager is subject to and shall comply with all terms of the Event Marketing Guidelines attached hereto as Exhibit "F". In addition, at City's option, Lessee shall or shall cause the Manager to either maintain membership in an association ("**Association**") or participate in a promotional service ("**Promotional Service**") established by City or one of its designees, such as the OCGPC. Lessee agrees to pay or to cause the Manager to pay to City, as Lessee's share of the Association or Promotional Service, as the case may be, an annual charge ("**Promotional Fee**"), to be determined by the City, in its reasonable discretion, based upon the total square footage of the Premises. Such Promotional Fee shall be assessed annually and used for Great Park promotional activities at City's discretion.

8.11 Naming of Ice Rink. City shall have reasonable approval rights over the naming of the Ice Rink.

8.12 General Prohibitions. Lessee shall not do or permit anything to be done by a Lessee Party in or about the Premises or the Great Park which will in any way obstruct or interfere with the rights of others involved in the operations, maintenance, construction or use of the Great Park or injure or annoy them or use or allow the Premises or the Great Park to be used for any improper, immoral, unlawful, or objectionable purpose, nor shall Lessee cause, maintain or permit any nuisance or waste in, on, or about the Premises or other portions of the Great Park by any Lessee Party.

8.13 Drug Free Covenant. Lessee shall and shall cause the Manager to maintain a drug free environment on the Premises. Lessee covenants to City that Lessee and all Lessee Parties shall not unlawfully manufacture, distribute, dispense, possess or use controlled substances, including such substances defined in 21 United States Code Section 812 and California Health and Safety Code Section 11007 (or successor statutes), including marijuana, heroin, cocaine, and amphetamines on the Premises. If Lessee or any Lessee Personnel is convicted or pleads guilty or nolo contendere to a charge of unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances on the Great Park, then City shall have the right to terminate this Lease.

8.14 Lessee Responsible for Costs of Ice Facility Operations. Lessee shall or shall cause the Manager to be responsible for all costs related in any way to the Ice Facility Operations, and shall provide at its sole cost and expense all signage, facilities, equipment, supplies, materials, staffing, training, and instruction necessary for the Ice Facility Operations.

8.15 Replacement Reserve. Commencing on the earlier of the date Ice Facility Operations commence, or the Construction Completion Date, Lessee shall, or shall cause the Manager to, annually set aside a minimum of Fifty Thousand Dollars (\$50,000) per year, increasing annually by three percent (3%), or such increased amount required by a Leasehold Mortgagee, into a separate interest-bearing trust account (the "Replacement Reserve"). Funds in the Replacement Reserve shall be used only for capital repairs, improvements, and replacements to the Ice Rink and equipment which are normally capitalized under generally accepted accounting principles. The non-availability of funds in the Replacement Reserve does not in any manner relieve or lessen Lessee's obligation to undertake any and all necessary capital repairs, improvements, or replacements and to continue to maintain the Ice Rink as a world-class facility in the manner prescribed herein. Not less than once per year, Lessee, at its expense, shall submit to City an accounting for the Replacement Reserve. Capital repairs to and replacement of the Ice Rink shall include only those items with a useful life of ten (10) years or more, including, without limitation, the following: air conditioning and heating replacement; roofing repair and replacement; Zamboni replacement; irrigation pipe and controls replacement; sewer line replacement; water line replacement; gas line pipe replacement; and elevator replacement and upgrade work.

Funds in the Replacement Reserve account may be withdrawn by Lessee or the Manager only upon the prior written approval of the City Manager, which approval may be given or withheld in City Manager's reasonable discretion.

8.16 Lessee's Signage. Subject to satisfaction of all Applicable Laws and City's reasonable consent, Lessee shall have the right, at its sole cost and expense, to install exterior signs on the Premises; provided that such signage only relates to Lessee's or the Manager's use of the Premises. In the event City creates a comprehensive monument sign program for the Great Park, Lessee shall have a right to signage on a portion of one such monument sign subject to satisfaction of all Applicable Laws and City's reasonable monument sign criteria. Lessee shall or shall cause the Manager to pay to City its proportionate share of the cost to construct, maintain, repair and operate such monument signage.

8.17 Closures and Detours. Lessee acknowledges that the Great Park is expected to undergo continuous development and construction during the Term, and that certain access roads and paths leading to the Premises will be shared by Lessee with other Great Park tenants, users and visitors, and are subject to temporary closure and detour for development and construction during the Term. City shall exercise reasonable efforts to minimize disruption to Lessee's use and enjoyment of such access due to development and construction. In addition, the Premises and the Ice Facility Operations may be impacted by other Great Park programs and activities and development that may cause all or portions of the Great Park, including the Premises, to be restricted or closed to the general public for certain periods of time. City shall have no liability to Lessee for any losses, costs or expenses of any kind incurred by Lessee as a result of or in connection with such activities or closures and Lessee shall not be entitled to any Rent setoff or abatement for any losses to Lessee resulting therefrom.

8.18 Waiver of Relocation Benefits. Lessee, for itself and for its agents, successors, assigns, and all entities related to any of the foregoing, and on behalf of all persons claiming any interest in the Premises or this Lease fully releases, acquits and discharges the Covered Parties, from all rights, claims, demands, actions or causes of action for relocation benefits or assistance under federal and state relocation assistance laws (including, without limitation, California Government Code Section 7260 et seq.) arising from Lessee's use of the Premises or this Lease or its termination.

8.19 Entry and Inspection. City and its employees and agents shall have the right to enter the Premises for the purpose of inspecting the same, to post notices of non-responsibility, to exercise any rights under this Lease, and to make any repairs or improvements which City may deem necessary or proper for the preservation of the Premises if Lessee defaults in its obligation to do so hereunder; provided that nothing contained herein shall be construed as obligating City to make any such repairs or improvements.

8.20 City Off-Site Parking. A component of the City Improvements consists of City's provision of approximately three hundred fifty (350) parking spaces, as further described on Exhibit "D" and depicted on Exhibit "K" (the "**City Off-Site Parking**"). The City Off-Site Parking is currently anticipated to be located on a portion of the Adjacent City Property; provided, however, that City shall have the right, in its sole discretion, to temporarily or permanently relocate the City Off-Site Parking to another location within the Great Park, provided that such relocated City Off-Site Parking is within walking distance from the Premises, as reasonably determined by Lessee. Lessee shall be permitted to use the City Off-Site Parking only for events which have been coordinated with and approved by the City Manager pursuant to the process set forth in Exhibit "I". Prior to the first use of the City Off-Site Parking for a Large Event, Lessee shall

prepare and submit to the City Manager for his or her review and approval a traffic management plan (the "Traffic Management Plan"), making revisions as necessary to obtain the City Manager's written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. The Traffic Management Plan shall require, at Lessee's sole cost and expense, the use and installation of temporary lighting within and around the City Off-Site Parking during all hours of darkness immediately before, during, and immediately after any Large Event. Once approved by the City Manager, the Traffic Management Plan may not be modified without the prior written consent of the City Manager; provided, however, that the City Manager shall have the authority to require modifications to the approved Traffic Management Plan that the City Manager reasonably believes are necessary. Lessee shall comply with the approved Traffic Management Plan when using the City Off-Site Parking for a Large Event.

Other than solid waste and recycling items appropriately deposited in solid waste and recycling containers, Lessee shall be solely responsible for clearing off and removing any trash, debris, or other items (including recyclable materials) discarded on the City Off-Site Parking immediately before, during, and immediately after a Large Event, and to repair any damage caused by use of the City Off-Site Parking for a Large Event. Lessee shall indemnify, protect, defend and hold harmless, individually and collectively each and all of the Covered Parties from and against any Claims arising out of or relating to the use of the City Off-Site Parking for a Large Event. Subject to Lessee's obligations in the immediately preceding sentences in this Section 9.4, (i) Lessee shall have no responsibility to maintain or repair the City Off-Site Parking, and (ii) City shall be solely responsible to maintain and repair the City Off-Site Parking.

8.21 Use of Adjacent City Property. Lessee acknowledges that City is a party to that certain Site Lease Agreement entered into on October 27, 2009, with Cirque du Soleil America, Inc. ("**Cirque**" or the "**Cirque Lease**," as applicable), and that pursuant to the Cirque Lease, Cirque has annual options to use the property located to the east of the Premises, as depicted on the Site Map (the "**Adjacent City Property**") for approximately twelve (12) week intervals, for Cirque du Soleil shows. The final option expires on or about June 30, 2018, and, if exercised by Cirque, entitles Cirque to use the Adjacent City Property until approximately March 22, 2019. Lessee agrees to reasonably cooperate with City to accommodate Cirque's use of and access to the Adjacent City Property pursuant to the Cirque Lease. Lessee acknowledges that upon expiration or earlier termination of the Cirque Lease, City may enter into a lease or other use agreement for all or portions of the Adjacent City Property.

8.22 Existing Agricultural Use Agreements. Lessee acknowledges that portions of the Premises are currently subject to (i) that certain Agreement for Contract Services ("**Second Harvest Agreement**"), entered into on or about December 18, 2013, by and between City and Second Harvest Food Bank of Orange County, Inc., a California nonprofit corporation ("**Second Harvest**"), and (ii) that certain Revenue Lease Agreement ("**OC Produce Agreement**"), entered into on or about July 26, 2010, by and between City and Orange County Produce, LLC, a California limited liability company ("**OC Produce**"), as amended by that certain Amendment No. 1 to Revenue Lease Agreement dated on or about January 10, 2012, by that certain Amendment No. 2 to Revenue and Lease Agreement dated on or about June 10, 2014, and by that certain Amendment No. 3 to Revenue and Lease Agreement dated on or about January 30, 2015. Pursuant to the Second Harvest Agreement and OC Produce Agreement, each of Second Harvest and OC Produce are utilizing portions of the Premises for agricultural purposes, including growing crops. City

agrees, subject to the immediately following sentence, that by August 31, 2016 (the “**Agricultural Use Termination Date**”), (a) the aforementioned agricultural uses within the Premises shall cease, and (b) the Premises will no longer be subject to the Second Harvest Agreement or the OC Produce Agreement. Notwithstanding the foregoing sentence, City shall have the right to extend the Agricultural Use Termination Date for up to sixty (60) days, by providing written notice to Lessee not less than thirty (30) days prior to the original Agricultural Use Termination Date, if such additional time is reasonably necessary to enable Second Harvest and/or OC Produce to complete the harvest of any existing crops and/or relocate any personal property.

8.23 Other Existing Uses of Premises. Lessee acknowledges that in addition to the uses described in Section 8.22 above, City uses the Premises for various other City functions and events, including, without limitation, for a farmers market. City agrees that no such other City functions and events shall occur or be held on the Premises after August 31, 2016.

9. MAINTENANCE AND REPAIRS.

9.1 General Obligations. Lessee shall or shall cause the Manager, at its sole cost and expense, to keep, maintain and repair the Premises and all structures, Improvements, fixtures, displays, windows, doors, fixtures, equipment, and personal property located thereon, in first class condition, quality, and repair and in accordance with all Applicable Laws, and City shall have no liability for costs of such maintenance or repair. As used herein, the term “repair” shall include replacements, repair of damage, and restorations, when necessary, and all such repairs shall be at least equal in quality and class to the original work. Lessee shall be responsible for any damage caused by any Lessee Party to the Premises or any other portion of the Great Park, normal wear and tear excepted. Lessee shall keep the Premises in a clean, sanitary neat and orderly condition at all times. No refuse matter, or any substance constituting an unnecessary, unreasonable or unlawful fire hazard, or detriment to the public health, shall be permitted or remain thereon, and Lessee shall take all reasonable precautions to prevent any such matter or material from being or accumulating upon the Premises. Lessee shall remove from the Premises all trash and rubbish generated from the Premises using covered, leak-proof receptacles and shall deposit such trash and rubbish within a receptacle or receptacles designated by City for such purpose in a trash area designated by City. Lessee hereby waives all rights to make repairs at the expense of City, and Lessee hereby waives all rights provided for by the Civil Code of the State of California to make said repairs.

9.2 Specific Obligations. Notwithstanding the foregoing provisions of this Article 9, Lessee shall or shall cause the Manager to maintain the ice surface of the Ice Rink in accordance with standards of the National Hockey League.

9.3 Annual Inspection. City shall inspect the Premises, from time to time, and on an annual basis, to confirm Lessee’s compliance with its maintenance obligations under this Article 9. If City determines, in its reasonable discretion, that Lessee is failing to meet such maintenance obligations, City may, at its option, provide Lessee with written notice of such deficiencies, and Lessee shall immediately cure such deficiencies at Lessee’s sole cost and expense.

10. COMPLIANCE WITH LAWS AND OTHER RESTRICTIONS.

10.1 Compliance with Laws. Lessee shall, at its sole cost and expense, comply with all Applicable Laws relating to the Premises and Lessee's use, operation and occupancy of the Premises, and all conditions, easements or restrictions now or hereafter encumbering the Premises, and shall cause the Ice Facility Operations to be operated in compliance with such requirements and restrictions. Lessee shall not conduct or permit to be conducted on the Premises any public or private nuisance or commit or permit to be committed any waste upon the Premises or any other act or thing which might or would disturb the quiet enjoyment of any other lessee of City or any occupant of nearby property or which might or would injure the reputation of the Premises or City. Subject to City's obligation to install the City Improvements in accordance with Applicable Laws, Lessee shall make any alteration or improvement to the Premises as is necessary or required to comply with any Applicable Law and to cause the Premises to comply with any Applicable Law with respect to Lessee's use, operation and occupancy of the Premises, including any requirements under the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*) and regulations and guidelines promulgated thereunder, and all other federal, state, and local codes, statutes, and orders relating to disabled access as they are applicable on the date of this Lease, and as they may be subsequently amended from time to time (collectively referred to herein as the "ADA"). Lessee shall cause the Lessee Parties to comply with this Lease and all City rules and regulations applicable to the use of the Great Park. If any amendment to this Lease is necessary to comply with any Applicable Laws, the parties shall enter into such amendment(s). Notwithstanding anything to the contrary in this Lease, commencing as of the Commencement Date, City shall not establish or adopt any new fees, regulations, or ordinances, or take any other actions, that would have the effect of substantially increasing the cost of constructing the Project or conducting the Ice Facility Operations (any of the foregoing, a "City Cost Action"), unless the City Cost Action is (i) required by any federal, state, or regional law, statute, ordinance, or regulation, or (ii) applicable City-wide, and not targeted at construction of the Project or the conduct of the Ice Facility Operations.

10.2 Covenant Against Discrimination. Lessee covenants for itself, its successors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, color, creed, religion, sex, marital status, national origin, or ancestry or any other protected class, in the operation of the Ice Facility Operations and the performance of this Lease. Lessee further covenants and agrees to comply with the terms of the ADA.

10.3 Occupational Safety and Health Act; Proposition 65. Lessee shall or shall cause the Manager, at its sole cost and expense, to comply with the requirements of the Occupational Safety and Health Act of 1970, 29 U.S.C., Section 651 *et seq.* and any analogous legislation in California, as well as Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §§25249.5 *et seq.* (collectively, the "Act"), to the extent that the Act applies to the Premises and any activities thereon. Without limiting the generality of the foregoing, Lessee covenants to maintain all working areas, all machinery, structures, electrical facilities and the like upon the Premises in a condition that fully complies with the requirements of the Act including such requirements as would be applicable with respect to agents, employees or contractors of City who may from time to time be present upon the Premises, and Lessee shall post on the Premises the notices required under Proposition 65 to the extent required in connection with Lessee's use of the Premises.

10.4 No Toxic Materials. Except as expressly authorized below in this Section 10.4, Lessee shall not permit or suffer placement, storage, disposal or discharge of any Toxic Materials on, under, or at the Premises and Lessee shall not erect, emplace or maintain any tank, vessel or container designed or suitable for holding Toxic Materials on or about the Premises without the prior written consent of City which consent may be withheld or denied or made subject to conditions in the sole discretion of City. City shall not be liable to Lessee or any third party as a result of giving or withholding such consent. Lessee shall, and shall cause the Manager to, at its sole cost and expense, and whether or not City's consent has been obtained, also comply with all Applicable Laws relating to Lessee's storage, discharge, application, use and disposal of Toxic Materials on, under, in or about the Premises. Notwithstanding anything to the contrary in this Lease, Lessee shall be permitted to place, store, and use Toxic Materials on the Premises that are customarily used (i) during and for construction of ice rink facilities similar to the Ice Rink, and (ii) for operating and maintaining ice rink facilities similar to the Ice Rink, provided (a) such Toxic Materials are used in quantities customary for the uses described in clauses (i) and (ii) above in this Section 10.4, and (b) such placement, storage, and use is permitted by, and is conducted in compliance with, all Applicable Laws. Subject to Lessee's notification obligations, including the notification obligations in Section 10.5 of this Lease, and Lessee's obligation to comply with all Applicable Laws, Lessee shall not be in default under this Section 10.4 for any Toxic Materials on, under, or at the Premises that are present as part of the Pre-Existing Environmental Condition, except to the extent that Lessee's activities exacerbate such Pre-Existing Environmental Condition.

10.5 Lessee to Give City Notice of Environmental Issues. Lessee shall promptly notify City, in writing, and provide to City a copy, of the following environmental entitlements or inquiries related to the Premises: third party claims, notices of violation, notices to comply, citations, inquiries reports filed pursuant to self-reporting requirements, and reports filed pursuant to any governmental law or regulation relating to underground tanks or Toxic Materials. In the event of any discharge or release of any Toxic Materials to the environment involving the Premises (excluding only the passive migration of Toxic Materials resulting from a Pre-Existing Environmental Condition), Lessee will furnish to City a copy of any and all reports and correspondence with governmental agencies relating to such discharge or release. Upon request of City, Lessee will furnish to City a copy of any and all environmental entitlements or inquiries relating to the Premises, including, without limitation, all permit applications, permits and reports, including those which may be characterized as confidential. Lessee shall not take any remedial action related to Toxic Materials or underground tanks located in or about the Premises, and shall not enter into any settlement, consent decree or compromise in response to any claim related to Toxic Materials or underground tanks which shall be in any way connected with the Premises, without first notifying City of Lessee's proposed action and affording City a reasonable opportunity to appear, intervene, or otherwise participate in any discussion or proceeding for the purpose of protecting City's interests in the Premises. Lessee shall immediately notify City in writing if Lessee discovers any Toxic Materials on the Premises or the release of any Toxic Materials.

10.6 Lessee's Indemnity for Toxic Materials. Lessee hereby waives all claims and demands relating to, and agrees to defend, indemnify, reimburse, and hold the Covered Parties harmless from and against, any and all losses, liabilities, general, special, consequential and/or incidental damages, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, court costs, reasonable attorneys' fees, damages to any person

(including the Covered Parties), the Premises, or other property or loss of rents due under this Lease) that concerns or in any way relates to Toxic Materials (collectively, the “**Toxic Materials Claims**”) which at any time or from time to time, may be paid, incurred or suffered by, or asserted against one or more of the Covered Parties for, with respect to, or as a direct or indirect result of (i) a breach by Lessee of the covenants set forth in this Section 10.6 or any other provision of this Lease, or (ii) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, or release from, onto or into the Premises, the land, the atmosphere, or any water course, body of water, sewer, or ground water of any Toxic Material to the extent occurring during the Term of this Lease. Notwithstanding the preceding sentence, however, or any other provision of this Lease to the contrary, no Covered Party shall be entitled to indemnification from, or release or waiver of, any Toxic Materials Claim hereunder to the extent such Toxic Materials Claim is ultimately established by a court of competent jurisdiction to have been caused by the active negligence or willful misconduct of one or more of the Covered Parties; nor shall Lessee be obligated hereunder to indemnify any Covered Party for any Toxic Materials Claim arising from a Pre-Existing Environmental Condition except to the extent Lessee’s activities on the Premises exacerbate such Pre-Existing Environmental Condition. For any Toxic Materials Claim for which Lessee is obligated under this Section 10.6 to indemnify one or more Covered Parties, City retains the right to (x) refuse Lessee’s proffered defense of any action or proceeding brought against City or the Covered Parties regarding which Lessee is obligated to indemnify as provided above, and (y) to select and direct independent legal counsel, and Lessee shall nevertheless pay all of City’s reasonable attorneys’ fees and costs of litigation incurred in connection therewith. The provisions and undertakings and indemnifications in this Section 10 shall survive termination of this Lease. Payment shall not be a condition precedent to recovery under any indemnification in this Lease, and a finding of liability or an obligation to indemnify shall not be a condition precedent to the duty to defend.

10.7 City’s Right to Require Environmental Audit. At any time during or after the Term, City may require Lessee to conduct an environmental audit of its operations and/or an environmental assessment of the condition of the Premises (including a Phase I and/or Phase II Environmental Site Assessment) at Lessee’s sole cost and expense to determine Lessee’s compliance with Applicable Laws regarding the environment and/or the environmental condition of the Premises as a result of Lessee’s tenancy. Subject to Lessee’s limited rights pursuant to Section 10.4 of this Lease to use Toxic Materials during and for the construction, operation, and maintenance of the Ice Rink, City may, in its sole discretion, require Lessee to remove, remediate, mitigate, abate, neutralize or clean up any Toxic Materials discovered or identified by such audit to have been (i) applied to or released upon the Premises by Lessee or any Lessee Party, or (ii) present as part of the Pre-Existing Environmental Condition, but exacerbated by Lessee’s activities on the Premises. Any such removal, remediation, mitigation, abatement, neutralization or clean-up activities shall be conducted in accordance with (a) all Applicable Laws, including, without limitation, the requirements of any federal, state, or regional governmental agency, (b) the Environmental Policy, (c) the Remedial Plan, and (d) any protocol plan required by City as a condition of City’s issuance of a grading permit for the Project. In addition to the foregoing, during the first Lease Year of the Term, and annually thereafter, City may obtain an inspection of the Premises by an environmental consultant, or an otherwise qualified consultant, mutually acceptable to Lessee, to verify Lessee’s compliance with all Applicable Laws relating to Lessee’s storage, discharge, application, use and disposal of Toxic Materials on, under, in or about the Premises. Such inspection shall be at reasonable costs and fees and shall be paid for by Lessee. A

copy of the written report from such inspection will be provided to City and to Lessee. Lessee shall correct any deficiencies identified in said report. In the event Lessee fails to perform its obligations required hereunder, the City, in addition to all other available remedies, may enter upon the Premises and perform such obligations, using any equipment or materials on the Premises suitable for such purposes. Lessee shall promptly reimburse the City for its reasonable incurred costs.

10.8 **Pre-Existing Environmental Conditions.** Lessee acknowledges that commencing in the 1940's, the Great Park was operated for over fifty (50) years as a military base, including as a "Master Jet Station." Throughout its operational years, the mission of the Great Park involved the operation and maintenance of military aircraft and ground-support equipment. A by-product of these activities was the generation of Toxic Materials at various locations. Since the late 1980's, the Department of the Navy ("**DON**"), which oversees both the United States Navy and Marine Corps, has undertaken environmental investigations, analysis, testing, and remediation activities in the Great Park to address past releases of Toxic Materials. The environmental condition of the Premises as of the Commencement Date is referred to in this Lease as the "**Pre-Existing Environmental Condition**". Lessee acknowledges and agrees that Lessee has reviewed and is familiar with the following documents and the documents referenced therein and all other environmental documents pertaining to the Premises that are a matter of record, referenced herein, and/or otherwise available to Lessee, including, without limitation, those available only upon request to the appropriate regulatory agencies, including the Department of Toxic Substances Control, the California Regional Water Quality Control Board, and the DON, and shall be bound by the terms, reservations, easements, covenants, conditions, restrictions and agreements set forth in such documents as they relate to the Premises, and this Lease shall be subject to and subordinate to such documents and restrictions, and any amendments thereto as may be made from time to time, and/or other remedial or related requirements as may be imposed on the Premises (collectively, the "**Restrictions**"):

- Environmental Baseline Survey for Lease ("**EBS**") and the Finding of Suitability to Transfer. The EBS sets forth certain existing environmental conditions of the Premises as represented by the baseline survey, which has been previously conducted by the United States of American, acting by and through the Department of Navy ("**Government**").
- Federal Facility Agreement entered into by the United States Environmental Protection Agency ("**EPA**"), the State of California, and the Government.
- Quitclaim Deeds:
 - Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 from the Government to Heritage Fields El Toro, LLC, a Delaware limited liability company ("**HF**"); recorded on July 12, 2005, as Instrument No. 2005000536288 in the Official Records of Orange County, California ("**Official Records**").
 - Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 from the Government to HF, recorded on April 17, 2009, as Instrument No. 2009000191013 in the Official Records.

- Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 from the Government to HF, recorded on July 12, 2005, as Instrument No. 2005000536292 in the Official Records.
- Quitclaim Deed and Environmental Restriction Pursuant to Civil Code Section 1471 For Parcels CO I-D, CO II-B, CO II-K, CO II-N, CO II-O, CO III-B-1 and CO III-B-2, from the Government to HF, recorded on June 3, 2011 as Instrument No. 2011000276334 in the Official Records, and re-recorded on June 16, 2011 as Instrument No. 2011000293986 in the Official Records.

Pursuant to the foregoing Quitclaim Deeds, the Government has a perpetual and assignable easements on the Premises that include the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the Government to meet its responsibilities under Applicable Laws.

- Grant Deeds:
 - Grant Deed dated October 17, 2011, from HF to City, recorded on November 15, 2011, as Instrument No. 2011000580798 in the Official Records.
 - Grant Deed dated July 12, 2005, from HF to City, recorded on July 12, 2005, as Instrument No. 2005000538142 in the Official Records.
 - Grant Deed dated June 3, 2011, from HF to City, recorded on June 6, 2011 as Instrument No. 2011000277219 in the Official Records, as corrected by the Corrective Grant Deed from HF to City dated recorded on November 28, 2011, 2011 as Instrument No. 2011000600091 in the Official Records.
- Covenant to Restrict Use of Property - Environmental Restriction between the United States and the California Environmental Protection Agency, Department of Toxic Substances Control, recorded on May 27, 2011 as Instrument No. 2011000265425 in the Official Records of Orange County, California (the "CRUP"), including compliance with the following as they relate to the Property: (a) the Final ROD, Operable Unit 1, Site 18-Regional Volatile Organic Compound Groundwater Plume, Operable Unit 2A, Site 24-VOC Source Area issued by the United States in June 2002, as amended in February 2006 by the Final Explanation of Significant Differences (ESD), Site 18 – Regional Volatile Organic Compound Plume (Operable Unit 1), Site 24 – VOC Source Area (Operable Unit 2A); (b) the Final 100 Percent Design Submittal, Shallow Groundwater Unit Remedial Action, IRP Site 24, Volatile Organic Compounds Source Area, dated March 2005; and (c) the Final Performance Monitoring and Sampling and Analysis Plan, OU1 and OU2A Groundwater Remedy, dated August 2007 issued as part of a comprehensive Operation and Maintenance Plan for the Site 18 (OU-1) and Site 24 (OU-2A)

remedy. A copy of the CRUP is attached hereto and incorporated herein as Exhibit "J". Lessee acknowledges that pursuant to the CRUP, City is required to conduct annual site inspections and compliance reporting to address the monitoring and maintenance necessary to ensure compliance with the requirements of the CRUP. Lessee agrees to cooperate with City, at no cost to Lessee, in City's conduct of such inspections and compliance reporting activities.

(a) Lessee acknowledges that it has reviewed and is aware of the notifications and restrictions contained in the Restrictions, and shall conduct its activities on and about the Premises in accordance therewith. Lessee agrees that should any conflict arise between the terms of such documents as they presently exist or may be amended and the provisions of this Lease, the terms of the other documents will take precedence. Lessee further agrees that City assumes no liability to Lessee should implementation of or compliance with the Restrictions interfere with Lessee's use of the Premises. Lessee shall have no claim against City or any Covered Party on account of any such interference.

(b) Lessee acknowledges that the Great Park project is an installation identified as a National Priorities List ("**NPL**") Site under CERCLA.

(c) Lessee acknowledges that the Government, EPA and the State, and their officers, agents, employees, contractors and subcontractors, have the right to enter upon the Premises for the purposes enumerated in this Lease and for such other purposes consistent with any provisions of the environmental cleanup program (including, without limitation, the BRAC Cleanup Plan, FFA, and the Installation Restoration Program ("**IRP**"). In addition, Lessee acknowledges that access by Government and other governmental agencies may be required:

1. to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the cleanup program;
2. to inspect field activities of Government and its contractors and subcontractors in implementing the cleanup program;
3. to conduct any test or survey required by EPA or applicable state equivalent relating to the implementation of the cleanup program; and
4. to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the cleanup program, including, without limitation, monitoring wells, pumping wells and treatment facilities.

(d) Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of any of the above described response or remedial actions. Lessee shall have no claim on account of such entries against the City or any of City's officers, agents, employees, contractors or subcontractors. In addition, Lessee shall comply with all applicable Federal, state and local occupational safety and health regulations.

(e) Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent. Lessee must provide at its own expense such hazardous waste management facilities complying with all laws and regulations. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

(f) Lessee shall cooperate with City in complying with any reporting requirements and documentation of any governmental agency with respect to the Premises.

(g) Lessee shall not interfere with or damage any of the remediation equipment that may be located on or near the Premises from time to time.

11. CONDITION OF PREMISES; RELEASE.

11.1 Condition of Premises. Lessee hereby acknowledges that (a) any structures located on the Great Park may contain asbestos, polychlorinated biphenyls, formaldehyde or other Toxic Materials or may otherwise be structurally unsound or uninhabitable, (b) in connection with prior use of the Great Park as a military base, pesticide chemicals (including DDT), agricultural fertilizers, fuels and other economic poisons (as defined in California Food and Agricultural Code Section 12753) may have been used in, on or about the Premises and use of such substances may not be permissible under laws in effect as of the date of this Lease, (c) Toxic Materials, including, without limitation, trichloroethylene or other substances may be present in the subsurface soil or ground water on, under, in or about the vicinity of the Premises as a result of discharge from military installations in the vicinity of the Premises, (d) access roads and other roadways and intersections between such access roads and public roads may not be maintained by City and may not have been constructed to current public road standards, and Lessee shall be solely responsible for insuring that all persons using same in connection with Lessee's use of the Premises shall do so in a safe manner, (e) windrows on or adjacent to the Premises or roadways used for access to or from the Premises are not maintained by City, and limbs may break and fall from such trees without notice, (f) use of adjacent property or roadways may cause or result in dust and/or water (both agricultural and storm runoff) to be deposited on the Premises, and (g) the Great Park is the subject of ongoing environmental remediation.

Subject to City's completion of the City Improvements, Lessee acknowledges that it has had sufficient opportunity to inspect and investigate the Premises and all aspects thereof and documents pertaining thereto, including, without limitation, the documents described in Section 10.8 of this Lease, and the files and databases of the California Department of Toxic Substances Control and other regulatory agencies, and it is familiar with the Premises and the condition thereof. Lessee covenants and agrees that it is relying upon its own inspections, examinations, studies and inquiries with respect to the Premises and has not relied upon any representation, warranty or statement of City, or its agents or employees. Subject to City's agreement to construct and/or install the City Improvements in compliance with Applicable Laws, Lessee shall, upon the execution of this Lease, be deemed to have disclaimed and waived any and all objections to the physical and environmental characteristics and conditions of the Premises, including, without limitation, any Toxic Materials located thereon and the condition of title thereto, whether or not such conditions would be disclosed by a reasonable and diligent inspection. Lessee acknowledges that neither City nor any of its officers, directors, employees, agents, or representatives has made

any representations, warranties, or agreements to Lessee as to any matters concerning the Premises, the present use thereof, or the existence of Toxic Materials thereon. The foregoing disclaimers and waivers include, without limitation, topography, climate, air, water rights, utilities, present and future zoning, governmental restrictions, entitlement rights and obligations, and governmental conditions or development, soil, subsoil, subsurface water, environmental contamination, the purpose for which the Premises is suited, drainage, access to public roads, proposed routes or roads or extensions thereof or the availability of governmental permits or approvals of any kind, and the environmental problems associated in any way with prior or future remediation work. Lessee agrees that City shall have no responsibility for any patent or latent defect or physical or environmental condition of the Premises, whether or not known or discovered, and Lessee accepts all such responsibility. The Premises shall be being leased to Lessee "AS-IS," "WHERE-IS," "WITH ALL FAULTS" without representation or warranty expressed or implied by City, by operation of law, or otherwise. This Lease is made subject to and without liability to City or any other Covered Party because of or resulting from any of the foregoing conditions or any or any other condition of the Premises or adjacent property. Lessee expressly disclaims, which Lessee acknowledges and accepts, any implied warranty or condition and Lessee, for itself, and its officers, employees, agents, representatives, affiliates, successors and assigns, including successors in interest to the Premises, hereby releases and forever discharges on, habitability, merchantability, or fitness for a particular purpose or use.

11.2 Release of Covered Parties. In addition to anything contained in Section 11.1 above, Lessee, for itself, and its officers, employees, agents, representatives, affiliates, successors and assigns, hereby releases and forever discharges and expressly waives, releases and relinquishes any and all claims, causes of action, rights and remedies Lessee may now or hereafter have against the Covered Parties, whether known or unknown, with respect to the physical, environmental, economic or legal condition of the Premises, including, without limitation, any past, present or future presence or existence or release or threatened release of any Toxic Materials on, under or about the Premises (including, without limitation, in the groundwater underlying the Premises) or with respect to any past, present or future violations of any and all federal, state and local statutes, ordinances, rules, regulations, laws, guidance documents, judgments, governmental authorizations, or any other requirement of governmental authorities, as may presently exist or as may be amended or supplemented, or hereafter enacted or promulgated, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Toxic Materials, or the protection of the environment or human, plant or animal health, including, without limitation, any and all rights Lessee may now or hereafter have against any Covered Party or respecting the Premises under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C.A. §9601, et seq.), as the same may be further amended or replaced by any similar law, rule or regulation. For the foregoing purposes, Lessee specifically waives the provisions of Section 1542 of the California Civil Code, and any similar law of any other state, territory or jurisdiction. California Civil Code Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM**

**OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.**

Lessee hereby specifically acknowledges that Lessee has carefully reviewed this section and discussed its import with legal counsel, and that the provisions of this section are a material part of this Lease.

Lessee Initials: SS Lessee Initials: 18

12. UTILITIES, TAXES, ASSESSMENTS, AND OTHER CHARGES.

12.1 Utility Charges. Commencing upon the Commencement Date, Lessee shall contract for and pay or cause to be paid, as and when they become due and payable, all charges for utility and communication services rendered or used on or in the Premises, including, without limitation, the costs to install, connect and maintain water (potable and reclaimed), gas, light, heat, telephone, electricity, cable and other communication services. If any utility is not separately metered, Lessee agrees to reimburse City for the cost of said service as City shall reasonably determine to be Lessee's share thereof. City shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises, and no such failure or interruption shall entitle Lessee to terminate this Lease or withhold any Rent or any other sums due under the terms of this Lease. City agrees that should City develop a clean energy facility that could potentially provide service to the Premises, City, at no cost to City, shall use its reasonable commercial efforts to assist Lessee to obtain such service for the Premises.

12.2 Taxes and Other Impositions.

12.2.1 Payment Generally. Lessee agrees to pay or cause to be paid, as and when they become due and payable, and before any fine, penalty, interest, or cost may be added thereto, or become due, or be imposed by operation of law for the nonpayment thereof, all Impositions. Pursuant to Revenue and Taxation Code Section 107.6, City hereby notifies Lessee that this Lease likely will create a possessory interest subject to property taxation.

12.2.2 City Right to Cure. If Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any Imposition, City may (but shall not be obligated to) pay or discharge it, and the amount paid by City and the amount of all costs, expenses, interest and penalties connected therewith, including attorney fees, together with interest at the Default Interest Rate, shall be deemed to be and shall be payable by Lessee as Additional Rent and shall be reimbursed to City by Lessee on demand.

12.2.3 Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Lessee and City on a daily basis.

12.2.4 Proof of Compliance. Within a reasonable time (but in any event, not more than fifteen (15) days) following City's written request which City may give at any time and give from time to time, Lessee shall deliver to City copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of Impositions.

12.2.5 Contests. Lessee shall have the right to contest, oppose, or object to the amount or validity of any Imposition; provided, however, that any such permitted proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Lessee shall give City prompt notice in writing of any such contest at least ten (10) days before any delinquency occurs. Lessee may only exercise its right to contest an Imposition hereunder if the subject legal proceedings shall operate to prevent the collection of the Imposition so contested, or the sale of the Premises and Improvements, or any part thereof, to satisfy the same, and only if Lessee shall, prior to the date such Imposition is due and payable, have given such reasonable security as may be required by City from time to time in order to insure the payment of such Imposition to prevent any sale, foreclosure, or forfeiture of the Premises and Improvements or any part thereof, by reason of such nonpayment. In the event of any such contest and the final determination thereof adversely to Lessee, Lessee shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs, and expenses that may have accrued thereon or that may result from any such contest by Lessee and, after such payment and discharge by Lessee, City will promptly return to Lessee such security as City shall have received in connection with such contest. City shall cooperate reasonably in any such contest permitted by this Section 12.2.5, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Lessee shall be prosecuted by Lessee at Lessee's sole cost and expense; and Lessee shall indemnify and save harmless City against any and all loss, cost, or expense of any kind, including, without limitation, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by City in connection therewith.

13. ASSIGNMENT AND SUBLETTING.

13.1 Prohibition. The qualifications and identity of Lessee and its principals as developers, owners, and operators of world-class community ice facilities are of particular concern to the community and City. Lessee further recognizes that it is because of such qualifications and identity that City is entering into this Lease with Lessee. Accordingly, except as expressly set forth herein, Lessee shall not, whether voluntarily, involuntarily or by operation of law, undergo any change in ownership or assign, sublet, transfer, alienate, encumber or otherwise convey any interest in this Lease, the Premises or any portion thereof, or any right or privilege appurtenant thereto, without the express prior written consent of City which consent may be withheld in City's sole and absolute discretion. City acknowledges and agrees that Lessee and the Manager may enter into license and concession agreements for the use of space within the Premises and advertising agreements relative to the Premises in connection with Lessee's and the Manager's operations in the ordinary course of business, and such agreements shall not be deemed an assignment or sublease and shall be permitted without City's review or approval. However, all such license, concession or advertising agreements shall be subject and subordinate to the terms and provisions of this Lease, and shall include a waiver and release of any and all claims against City relative to the Premises in such form as reasonably approved by City.

13.2 Affiliate Transfers. Notwithstanding the foregoing provisions of this Article 13, City's consent shall not be required for an assignment of this Lease in its entirety to an entity controlled by Lessee or an Affiliate of Lessee.

14. INSURANCE.

14.1 Evidence of Insurance. No later than ten (10) days after the Effective Date and prior to any entry on the Great Park, Lessee shall provide City with certificates evidencing the insurance required by this Lease.

14.2 Liability Insurance. Lessee shall at its own expense, at all times during the Term maintain in force for the joint benefit of City and Lessee, with deductibles or self-insured retentions reasonably acceptable to City, (i) commercial general liability insurance written on an "occurrence" policy form covering bodily injury, property damage, personal injury, and advertising injury arising out of (directly or indirectly) all operations of Lessee or Lessee's use or occupancy of the Premises and City Off-Site Parking, with a combined single limit for bodily injury and property damage per occurrence of Fifteen Million Dollars (\$15,000,000) or an amount equal to the limit from time to time carried by Lessee, whichever is greater; provided, however, that if a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit, and (ii) owned, leased and non-owned automobile liability insurance covering use of all automobiles, trucks and other motor vehicles utilized by Lessee with a combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) evidenced through a combination of primary layer and excess layer of limits. The general liability policy shall include the following endorsements: (A) an ISO form CG 2010 (11/85) additional insured endorsement or its equivalent naming City, OCGPC and their respective members, officers, employees, directors, shareholders, agents, representatives and professional consultants, and all of their respective successors and assigns" as additional insured with respect to liability or claims arising out of or resulting from the acts or omissions of Lessee or others performing acts on behalf of Lessee, and (B) a primary/non-contributing endorsement stating that insurance maintained by Lessee is primary and any insurance or self-insurance maintained by the additional insured is excess and non-contributing with Lessee's insurance with respect to liability or claims arising out of or resulting from the acts or omissions of Lessee or others performing acts on behalf of Lessee. The general liability policy must also include the coverage typically provided by the Broad Form Comprehensive General Liability Endorsement, the broadest available form of coverage for contractual liability (including coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity and hold harmless obligations under this Lease), and coverage for Fire Damage and Personal and Advertising Injury, and must contain Severability of Interest and Cross Liability clauses.

14.3 Worker's Compensation Insurance. Lessee shall at its own expense, at all times during the Term, maintain in force for the joint benefit of City and Lessee, Worker's Compensation Insurance, including Employers Liability (at a minimum limit of One Million Dollars (\$1,000,000) for all persons whom it employs. Such insurance shall be in strict compliance with the requirements of the most current and applicable worker's compensation insurance laws in effect from time to time. The workers' compensation insurance policy must be endorsed with a waiver of subrogation endorsement with respect to and for the benefit of City, OCGPC and its divisions, subsidiaries, partners and affiliated companies, and all of their respective officers, employees, directors, shareholders, agents, representatives and professional consultants, and all of their respective successors and assigns.

14.4 Property Insurance. Lessee shall at its own expense, at all times during the Term, maintain in force insurance against fire, vandalism, malicious mischief and such other additional perils as maybe included in a standard "all risk" form, insuring all leased buildings, improvements and fixtures on the Premises, Lessee's leasehold improvements, trade fixtures, furnishings, equipment and other items of personal property of Lessee located at the Premises, in an amount equal to not less than their replacement cost and with deductibles or self-insured retentions, to the extent they exceed Fifty Thousand Dollars (\$50,000), must be reasonably acceptable to City; provided, however, Lessee shall not be required to maintain earthquake insurance. City shall be named as a loss payee as to improvements owned by City.

14.5 Insurance Policies/Evidence of Insurance. Except as specifically approved in writing by City, each policy of insurance required to be maintained by Lessee under this Lease must be issued by carriers licensed and approved to do business in California, having a general policyholders rating of not less than "A" and a financial rating of not less than "X" in the most current Best's Key Rating Guide. Prior to conducting any operations under this Lease, and at all times during the Term, Lessee shall provide to City an original certificate(s) of insurance and original endorsements evidencing all insurance required hereunder. Each certificate or policy of insurance shall indicate that coverage is primary and not contributing with any other insurance maintained by City, includes a Severability-of-Interest or Cross-Liability clause such as "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is brought, except with respect to the limits of the company's liability," and shall not be cancelled, modified or non-renewed except upon not less than thirty (30) days written notice to City, except for ten (10) days for non-payment of premium. Each policy, certificate and endorsement required hereunder shall be subject to the reasonable approval of City. Within ten (10) days following insurance renewal, Lessee shall file with City a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended.

14.6 Reevaluation of Insurance Requirements. City shall have the right at any time to review the coverage, form, and limits of insurance required under this Lease. If, in the reasonable discretion of City, the insurance provisions in this Lease do not provide adequate protection for City, City shall have the right to require Lessee to obtain insurance sufficient in coverage, form and limits to provide adequate protection. City's requirements shall not be unreasonable, but shall be adequate to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter. City shall reasonably take into account any increase for increased insurance requirements and the Lessee's financial ability to incur such expenses in imposing increased requirements, and shall provide Lessee with a reasonable period of time to comply with the increased insurance requirements.

14.7 Environmental Liability Policy. City and OCGPC are named insureds on that certain environmental liability insurance policy issued July 12, 2005 by American International Specialty Lines ("AIG") Policy No. EPP 1956943 with respect to the Great Park ("**Environmental Policy**"), a copy of which has been made available to Lessee for its review. Lessee represents and warrants that it shall not conduct any activities on the Premises or otherwise act in any manner that would have the effect of voiding any insurance coverage provided to City and/or OCGPC pursuant to the Environmental Policy. On or before the Commencement Date, Lessee will be included as an additional insured on the Environmental Policy with respect to the Premises.

14.8 Waiver of Subrogation. Lessee hereby waives any rights it may have against City and the other Covered Parties on account of any loss or damage occasioned to Lessee and arising from any liability, loss, damage or injury caused by fire and other perils and risks to the extent covered by Lessee's insurance carried or required to be carried pursuant to this Lease. Lessee's waiver under this paragraph is cumulative with other waivers by Lessee under this Lease.

14.9 Additional Insurance. In addition to the insurance required above, Lessee shall secure, pay for and maintain or cause Lessee's contractors to secure, pay for and maintain during the continuance of any construction work on the Premises, the following insurance:

(a) "All-risk" builder's risk insurance for the full insurable value of the work (including all stored material and equipment), as approved by City. This insurance shall include the interests of City and Lessee (and their respective contractors and subcontractors of any tier to the extent of any insurable interest therein) in the work and shall insure against physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If any materials or equipment will be stored offsite or will be in transit to the job site and are not covered under said "all-risk" builder's risk insurance, then Lessee shall effect and maintain similar property insurance on such materials and equipment. Any loss insured under said "all-risk" builder's risk insurance shall be adjusted with City and Lessee and made payable to City, as trustee for the insured, as their interests may appear.

(b) General Liability Insurance, on an "occurrence" basis with a limit of not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate.

(c) Commercial Automobile Liability Insurance, on an "occurrence" bases with a limit of not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate.

(d) Workers' Compensation Insurance, including Employers Liability (at a minimum limit of One Million Dollars (\$1,000,000)) for all persons whom it employs. Such insurance shall be in strict compliance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time.

(e) Pollution Liability and Environmental Impairment Insurance with limits of not less than Two Million Dollars (\$2,000,000) per claim and Four Million Dollars (\$4,000,000) in the aggregate.

The liability policies required in paragraph (a) above shall be endorsed to include all additional insured required or permitted herein with coverage equivalent to that provided by ISO form CG 20 10 11 85. Such additional insured endorsements shall be separate from the certificates of insurance required herein.

All other policies in this paragraph (except the worker's compensation policy) shall be endorsed to include the Covered Parties as additional insured. All insurance policies shall provide that all additional insured shall be given thirty (30) days' prior written notice of any reduction, cancellation or non-renewal of coverage (except that ten (10) days' notice shall be sufficient in the case of cancellation for non-payment of premium) and shall provide that the insurance coverage

afforded to the additional insured shall be primary to any insurance carried independently by said additional insured.

Lessee shall be solely responsible for ensuring the compliance of all contractors with the requirements contained in this Agreement, including naming the City as an additional insured to the contractor's policies. Lessee shall require Lessee's contractors to provide an endorsement evidencing that each required policy herein contains a waiver of subrogation in favor of the additional insured required or permitted herein. Insurance companies shall have a rating of A VI, or higher, in the most currently available "Best Insurance Guide".

15. INDEMNITY.

As a material part of the consideration to City, Lessee shall indemnify, protect, defend and hold harmless, individually and collectively each and all of the Covered Parties from and against all lawsuits, causes of action, claims, demands, damages, injuries, fines, losses, judgments, liens, encumbrances, charges, obligations, liabilities, costs and expenses (including, without limitation, injury or loss of life to persons or damage to or loss of property, reasonable attorneys' fees, expert witness fees and other costs of defense or of enforcing this indemnity, regardless of whether legal proceedings are actually commenced) (collectively "**Claims**") arising out of or relating to any of the following, except to the extent such matter is caused by the active negligence or willful misconduct of any Covered Party acting in an official capacity: (a) design, permitting or construction of any work of improvement on the Premises, except for the design and construction by City of the City Improvements; (b) any act or omission by any person or entity occurring on the Premises (or on the City Off-Site Parking during a Large Ice Event), or with respect to any improvement work on the Premises except for the construction by City of the City Improvements; (c) any mechanics', material persons', vendors' or suppliers' lien claimed by any person, furnishing construction, labor, materials, supplies or services to or for the Project, or with respect to any work on the Premises except with respect to work by City constituting all or a portion of the City Improvements; (d) ownership, use, possession or development of the Premises or the Project, any unsafe or dangerous condition on the Premises, and any accident, injury or damage whatsoever to any person or entity occurring on the Premises, or with respect to any work on the Premises; (e) the breach of any obligation of Lessee contained in this Lease; (f) any willful misconduct or negligent act or omission by Lessee or any Lessee Party; (g) any litigation, administrative or adjudicative challenge by third parties to the validity, applicability, interpretation or implementation of this Lease, the entitlements, or the certification or approval of the environmental document(s) with respect to the Project and this Lease; (h) any relocation assistance or benefits payable to any occupant of the Premises; and (i) any assertion, claim or cause of action that a Covered Party is liable or responsible for the payment or performance of any indebtedness or obligation of Lessee or for any act or omission committed or made by Lessee or any other person or entity (excluding City or any Covered Party acting in an official capacity) in connection with the ownership, operation or development of the Project, whether on account of any theory of relationship, derivative liability, comparative negligence or otherwise. Notwithstanding the foregoing, City retains the right to refuse Lessee's proffered defense of any action or proceeding brought against City and to select and direct independent legal counsel, and Lessee shall nevertheless pay all of City's reasonable attorneys' fees and costs of litigation incurred in connection therewith. Payment shall not be a condition precedent to recovery under any indemnification in this Lease, and a finding of liability or an obligation to indemnify shall not be

a condition precedent to the duty to defend. The provisions of this Section 15 and any other indemnity provision herein shall survive the termination or expiration of this Lease. The insurance requirements and other provisions of this Lease shall not limit Lessee's indemnification obligations under this Lease. In the event of any conflict between this Section 15 and Section 10.6 of this Lease, Section 10.6 of this Lease shall control.

16. DAMAGE OR DESTRUCTION

16.1 General; Notice; Waiver.

16.1.1 General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, without limitation, any Major Damage and Destruction, the rights and obligations of the parties shall be as set forth in this Section 16. As used herein, the term "**Major Damage or Destruction**" means damage to or destruction of all or any portion of the Improvements on the Premises (a) to the extent that the hard costs of Restoration will exceed ten percent (10%) of the total costs set forth in the Project Budget (b) which cannot reasonably be repaired within a period of two hundred forty (240) days. The term "**Restoration**" means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all then Applicable Laws to substantially the same condition they were in immediately before an event of damage or destruction. The parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, City and Lessee each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, and of any other statute or law now or hereafter in effect contrary to such obligations of the Lessee as set forth in this Lease, or which relieves Lessee from any obligations hereunder.

16.1.2 Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, which could materially impair use or operation of the Improvements for their intended purposes for a period of thirty (30) days or longer, Lessee shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

16.2 Rent after Damage or Destruction. If there is any damage to or destruction of the Premises, this Lease shall not terminate except as otherwise specifically provided in Section 16.3 or Section 16.4. In the event of any damage or destruction to the Premises, Lessee shall continue to pay all Rent, subject to the abatement provisions in this Section 16, until Lessee or City terminates this Lease pursuant to Section 16.3 or Section 16.4 below.

16.3 Restoration Obligations. If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Lessee elects to terminate this Lease under Section 16.4, then Lessee shall, subject to Section 16.4 hereof, within a reasonable period of time, commence and diligently, Restore the Premises to substantially the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then Applicable Laws. During such restoration, Lessee shall be entitled to a proportionate reduction of Base Rent during the period of such repairs (but not to exceed one hundred eighty (180) days) based upon the extent to which

such damage and the making of such repairs materially interferes with Lessee's use or occupancy of the Premises. Except as set forth below, all insurance proceeds received by Lessee for the repair or rebuilding of the Premises shall be used by Lessee for the repair or rebuilding of the Premises. All restoration performed by Lessee shall be in accordance with the provisions of this Lease, including Section 7, and shall be at Lessee's sole expense. As used herein, the term "**Uninsured Casualty**" means any of the following: (a) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured under the policies of insurance that Lessee is required to carry under this Lease, or (b) an event of damage or destruction occurring at any time during the Term, which is covered under Lessee's policies of insurance that Lessee is required to carry under this Lease, but where the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any insurance payable (or which would have been payable but for Lessee's default in its obligation to maintain insurance required to be maintained hereunder) plus the amount of any applicable policy deductible.

16.4 Major Damage and Destruction or Uninsured Casualty.

16.4.1 Lessee's Election to Restore or Terminate. If an event of Major Damage or Destruction or Uninsured Casualty occurs at any time during the Term, then Lessee shall provide City with a written notice ("**Casualty Notice**") either (a) electing to commence and complete Restoration of the Premises to substantially the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then Applicable Laws; or (b) electing to terminate this Lease subject to Section 16.4.2. Lessee shall provide City with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Lessee elects to Restore the Improvements, all of the provisions of Section 7 shall apply to such Restoration of the Improvements to substantially the condition they were in prior to such Major Damage or Destruction. During such Restoration, Lessee shall be entitled to a proportionate reduction of Base Rent during the period of such repairs (but not to exceed two hundred forty (240) days) based upon the extent to which such damage and the making of such repairs materially interferes with Lessee's use or occupancy of the Premises.

16.4.2 Condition to Termination; Payment of Insurance Proceeds. As a condition precedent to Lessee's right to terminate the Lease upon the occurrence of either of the events set forth in Section 16.4.1 above, Lessee, in its election to terminate described in Section 16.4.1, shall state the estimated cost of Restoration of the Premises, and the amount by which the estimated cost of Restoration exceeds insurance proceeds payable. Upon receipt by Lessee of any insurance proceeds paid on account of such casualty for the repair or rebuilding of the Premises, Lessee shall promptly pay or cause to be paid to City such insurance proceeds recoverable by Lessee. Upon such event, Lessee shall provide to City a statement of such costs and the remaining debt, certified as true and correct, together with appropriate backup documentation.

16.5 Effect of Termination. If Lessee elects to terminate the Lease under Section 16.4.1, then this Lease shall terminate on the date that Lessee shall have fully complied with all provisions of the first sentence of Section 16.4.2. Upon such termination, the parties shall be released thereby without further obligations to the other party as of the effective date of such termination subject to payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided,

however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination. City's right to receive insurance proceeds under this Lease shall survive the termination or expiration of the Lease.

16.6 Distribution Upon Lease Termination. If Lessee is obligated to restore the Premises as provided herein and this Lease is terminated as a result of a default of Lessee, then at the time of termination Lessee shall transfer to City all remaining insurance proceeds for the repair or rebuilding of the Premises, or the right to such proceeds if not yet received.

17. CONDEMNATION.

17.1 Total Taking. In the event proceedings are taken pursuant to an exercise of the power of eminent domain by any lawful authority to condemn or otherwise acquire the whole Premises or so much of the Premises or Improvements as, when taken, leaves the un-taken portion unsuitable for the continued feasible and economic operation of the Premises by Lessee for the same purposes as immediately before the taking, this Lease shall terminate effective as of the date of possession by the condemning authority. In the event of such termination, Rent shall be prorated to the date of termination. Lessee shall not grant a right of entry to any condemnor without the written consent of City.

17.2 Partial Taking. In the event of a taking that leaves the un-taken portion suitable for the continued feasible and economic operation of the Premises by Lessee for the same purposes as immediately before the Taking, this Lease shall terminate as to the portion of the Premises taken upon the date which possession of said portion is taken, but this Lease shall continue in force and effect as to the remainder of the Premises and Lessee, with proceeds from such condemnation, shall promptly restore the remaining portions of the Improvements to an architectural unit as nearly comparable as practicable to the unit existing just prior to such taking. Lessee shall be entitled to a reduction in the Base Rent payable under this Lease thereafter required to be paid, based on the ratio between square footage taken and the square footage of the Premises.

17.3 Condemnation Proceeds. In the event that an award is made for an entire or partial taking or for damage to the Premises or any interest therein in any action in direct or inverse condemnation or in the event of a taking under the power of eminent domain, the parties hereto agree that their respective rights to the award or compensation paid shall be as follows:

(a) City shall be entitled to that portion of the award received for the taking of the real property within the Premises, exclusive of all the Improvements placed on the Premises by or under Lessee.

(b) Lessee shall be entitled to that portion of the award received for the taking of the Improvements placed on the Premises by or under Lessee and to any award that may be made for the taking of or injury to Lessee's business and profits or on account of any cost or loss Lessee may sustain in the removal of its merchandise, fixtures, equipment and furnishings from the Premises.

(c) Any severance damages and interest payable on the total award shall be divided between City and Lessee in the same ratio as are the awards granted to them pursuant to the other provisions of this Section.

(d) Lessee shall not be entitled to any portion of the award on the basis that Lessee's interest in this Lease has a bonus value (i.e. that the fair rental value of the Premises for all or any portion of the remainder of the term hereof exceeds the rental reserved under this Lease for such period).

18. LEASEHOLD MORTGAGES

18.1 Lessee's Right to Mortgage Leasehold. Except as expressly permitted in this Section 18, Lessee shall not encumber Lessee's leasehold interest in the Premises or the Improvements or the Lease. Any encumbrance, including any Leasehold Mortgage, that is not permitted hereunder shall be deemed to be a violation of this Lease on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced. Pursuant to the terms and to the extent permitted by this Section 18, Lessee shall have the right to encumber Lessee's leasehold estate created by this Lease by way of a permitted Leasehold Mortgage on the terms permitted under this Lease; provided that, notwithstanding any foreclosure thereof, Lessee shall remain liable for the payment of Rent and for the performance of all other obligations under this Lease. Lessee shall promptly notify City of any lien or encumbrance of which Lessee has knowledge and which has been recorded against or attached to the Improvements or Lessee's leasehold estate hereunder whether by act of Lessee or otherwise.

18.2 Leasehold Mortgage Subject to this Lease. With the exception of the rights expressly granted to Leasehold Mortgagees in this Lease, the execution and delivery of a Leasehold Mortgage shall not give or be deemed to give a Leasehold Mortgagee any greater rights than those granted to Lessee hereunder. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Leasehold Mortgagees shall not apply to more than one Leasehold Mortgagee at any one time. If at any time there is more than one Leasehold Mortgage constituting a lien on any portion of the Premises, the lien of the Leasehold Mortgage prior in time to all others shall be vested with the rights under this Section 18 to the exclusion of the holder of any junior Leasehold Mortgage.

18.3 No Invalidation of Mortgage by Lessee Default. No failure by Lessee or any other party to comply with the terms of any Leasehold Mortgage, including, without limitation, the use of any proceeds of any debt, the repayment of which is secured by the Leasehold Mortgage, shall be deemed to invalidate, defeat or subordinate the lien of the Leasehold Mortgage. Notwithstanding anything to the contrary in this Lease, neither the occurrence of any default under a Leasehold Mortgage, nor any foreclosure action or conveyance in-lieu-of foreclosure, nor any action taken by a Leasehold Mortgagee as permitted under the terms of the Leasehold Mortgage or to cure any default of Lessee under this Lease, shall, by itself, constitute a default under this Lease.

18.4 Purpose of Leasehold Mortgage; Protections Limited to Permitted Leasehold Mortgagees. A Leasehold Mortgage may be given only to an Approved Institution. A Leasehold Mortgage shall be made only to finance the Project and any subsequent improvement of the Premises, or for the purpose of refinancing a permitted Leasehold Mortgage, and shall not be cross-collateralized or cross defaulted with any other debt of Lessee or any other party. Lessee shall not be permitted to refinance a permitted Leasehold Mortgage in order to take out cash for application to property other than the Premises or for application to the obligations of Lessee other than those

created under this Lease. The Leasehold Mortgage shall state on its face that it does not encumber in any way City's fee interest in the Premises or City's interest under this Lease.

18.5 Rights Subject to Lease; Restoration Obligations. All rights acquired by the Leasehold Mortgagee under a Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of the City hereunder. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the giving of the Leasehold Mortgage, except as expressly provided in this Lease or otherwise specifically waived by City in writing. Except as set forth below, no Leasehold Mortgagee shall be obligated to restore any damage to the Premises; provided, however, (a) that nothing in this Section shall be deemed or construed to permit or authorize any such holder to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements permitted under this Lease, and (b) in the event that the Leasehold Mortgagee obtains title to the leasehold and chooses not to complete or restore the improvements where Lessee otherwise has the obligation to so restore, it shall so notify City in writing of its election within forty-five (45) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser that shall be obligated to restore the improvements as required under this Lease, but in any event the Leasehold Mortgagee shall cause such sale to occur within six (6) months following the Leasehold Mortgagee's written notice to City of its election not to restore. If Leasehold Mortgagee fails to sell its tenancy interest using good faith efforts within such six (6) month period, it shall not constitute a default hereunder, but the Leasehold Mortgagee shall be obligated by the provisions of this Lease to restore the improvements to the extent Lessee is required under this Lease to so restore.

18.6 Required Notice Provision in Leasehold Mortgage. Lessee agrees to cause any Leasehold Mortgage to provide: (a) that the Leasehold Mortgagee shall by registered or certified mail give written notice to City of the occurrence of any event of default under the Leasehold Mortgage; (b) that City shall be given notice at the time any Leasehold Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

18.7 Notices. City shall give a copy of each default notice City gives to Lessee from time to time of the occurrence of a default, to a Leasehold Mortgagee that has given to City written notice requesting such notice. Copies of such notices shall be given to the Leasehold Mortgagee at the same time as notices are given to Lessee by City, addressed to the Leasehold Mortgagee at the address last furnished to City. City's delay or failure to give such notice to the Leasehold Mortgagee shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Leasehold Mortgagee to cure any default by Lessee. Any such notices to Leasehold Mortgagee shall be given in the same manner as provided in Section 22.1 below.

18.8 Leasehold Mortgagee's Right to Cure. If Lessee shall enter into a Leasehold Mortgage in compliance with the provisions of this Lease, then, so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) *Cure Periods.* In the case of any notice of default given by City to Lessee, the Leasehold Mortgagee shall have the same concurrent cure periods as are given Lessee

under this Lease for remedying a default or causing it to be remedied plus an additional fifteen (15) days thereafter for a monetary default or an additional thirty (30) days thereafter for a nonmonetary default, and City shall accept such performance by or at the instance of the Leasehold Mortgagee as if the same had been made by Lessee within the applicable cure periods under the Lease.

(b) *Foreclosure.* Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of a default of Lessee, other than a default in the payment of money or other default reasonably susceptible of being cured prior to the Leasehold Mortgagee obtaining possession, City shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such default is given to Leasehold Mortgagee, a Leasehold Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified City of its intention to institute foreclosure proceedings or otherwise acquire Lessee's interest under the Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch and completes such proceedings no later than six (6) months thereafter. A Leasehold Mortgagee, upon acquiring Lessee's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Leasehold Mortgagee. The foregoing provisions of this Section are subject to the following: (i) no Leasehold Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after the defaults hereunder referred to shall have been cured; (ii) nothing herein contained shall preclude City, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other default by Lessee during the pendency of such foreclosure proceedings; and (iii) the Leasehold Mortgagee shall agree with City in writing to comply during the period City forebears from terminating this Lease with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by the Leasehold Mortgagee. Notwithstanding anything to the contrary, the Leasehold Mortgagee shall have the right at any time to notify City that it has relinquished possession of the Premises to Lessee, or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Leasehold Mortgagee shall have no further liability from and after the date it delivers such notice to City, and, thereupon, City shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. If Leasehold Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Lessee from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Leasehold Mortgagee shall (i) have fully cured any default due to a default in the payment of money, (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Lessee under this Lease to the extent that they are reasonably susceptible of being performed by the Leasehold Mortgagee. Notwithstanding anything herein to the contrary, to the extent the Leasehold Mortgagee is not reasonable capable of performing an obligation under this Lease, such obligations shall apply to and remain effective on a prospective basis to any assignee or transferee of the Leasehold Mortgagee notwithstanding

Leasehold Mortgagee's inability to perform. Notwithstanding anything to the contrary above, if the Premises are not used by Lessee or Leasehold Mortgagee or a designee of Leasehold Mortgagee as required in Section 8 above and such non-use continues for a period of twelve (12) months, then City shall have the right to terminate this Lease by providing thirty (30) days' notice of termination, subject to Lessee's and/or Leasehold Mortgagee's right to cure by commencing Ice Facility Operations during the thirty (30) day period and continuing thereafter in accordance with Section 8.

(c) *Construction.* Subject to subsection (b) above, if a default occurs following any damage but prior to restoration of the improvements, the Leasehold Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the improvements beyond the extent necessary to preserve or protect the improvements or construction already made, unless the Leasehold Mortgagee expressly assumes Lessee's obligations to City by written agreement reasonably satisfactory to City, to restore, in the manner provided in this Lease, the improvements. Upon assuming Lessee's obligations to restore, the Leasehold Mortgagee or any transferee of Leasehold Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such restoration or otherwise agreed to shall be extended for the period of delay from the date that Lessee stopped work on the restoration to the date of such assumption.

(d) *New Lease.* In the event of the termination of this Lease before the expiration of the Term, except as a result of damage or destruction to the Premises pursuant to Section 16 or a taking pursuant to Section 17, City shall serve upon the Leasehold Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. The Leasehold Mortgagee shall thereupon have the option to obtain a new lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Leasehold Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, City shall enter into a New Lease of the Premises with the Leasehold Mortgagee within such period or its designee, subject to the provisions set forth in this Section and provided that the Leasehold Mortgagee assumes all of Lessee's obligations under any contracts affecting the Premises then in effect; and

(ii) such New Lease shall be entered into at the sole cost of the Leasehold Mortgagee, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease. Such New Lease shall require the Leasehold Mortgagee to perform any unfulfilled obligation of Lessee under this Lease. Upon the execution of such New Lease, the Leasehold Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, incurred by City in connection

with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease.

(e) *Limited to Permitted Leasehold Mortgagees.* Notwithstanding anything herein to the contrary, the provisions of this Section 18 shall inure only to the benefit of the holder of a Leasehold Mortgage which is permitted hereunder.

(f) *Consent of Leasehold Mortgagee.* No material modification, termination or cancellation of this Lease (herein, a “**change**”) shall be effective as against a permitted Leasehold Mortgagee unless a copy of the proposed change shall have been delivered to the Leasehold Mortgagee and such Leasehold Mortgagee shall have either (i) approved the change in writing or (ii) failed to either approve or disapprove the change in writing within thirty (30) days after delivery of a copy thereof to the Leasehold Mortgagee, together with a request for the Leasehold Mortgagee’s approval of same.

(g) *Limitation on Liability of Leasehold Mortgagee.* No Leasehold Mortgagee shall be liable to perform Lessee’s obligations under this Lease unless and until the Leasehold Mortgagee acquires Lessee’s rights under this Lease.

18.9 Assignment by Leasehold Mortgagee. The foreclosure of any Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Leasehold Mortgage, or any conveyance of the leasehold estate hereunder from Lessee to any Leasehold Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the Leasehold Mortgagee or other transferee in connection therewith as the tenant under this Lease. Such Leasehold Mortgagee’s or transferee’s right thereafter to transfer, assign or sublet this Lease or a New Lease shall be subject to the restrictions of Section 13.

18.10 Transfer of Leasehold Mortgage. City hereby consents to the transfer of a Leasehold Mortgage, provided such transfer is to an Approved Institution and otherwise satisfies the requirements of this Lease, and in the event of any such transfer, the new holder of the Leasehold Mortgage shall have all the rights of its predecessor Leasehold Mortgagee hereunder until such time as the Leasehold Mortgage is further transferred or released from the leasehold estate.

18.11 No Merger. There shall be no merger of this Lease, or of the leasehold estate created thereby, with the fee estate in and to the Premises and Improvements by reason of the fact that this Lease, or the leasehold estate created thereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any person who shall own the fee estate in and to the Premises and Improvements, or any portion thereof, and no such merger shall occur unless and until all persons at the time having any interest in this Lease or the leasehold estate, including the Leasehold Mortgagee and the holder of any mortgage upon the fee estate in and to the Premises and Improvements shall join in a written instrument effecting such merger.

18.12 No Subordination of City’s Interests. City’s interest in the Premises under this Lease is a vested City’s reversionary interest and not just a contractual obligation of Lessee.

Notwithstanding anything which is or appears to be to the contrary in this Lease, Lessee shall not encumber City's interest under this Lease or City's fee interest in the Premises by any mortgage, deed of trust, lien, security instrument, or financing conveyance of any kind whatsoever.

19. ATTORNMEN

In the event any proceedings are brought for the foreclosure of, or in the event of the conveyance by deed in lieu of foreclosure, or in the event of exercise of the power of sale under, any mortgage and/or deed of trust made by City covering the Premises, or in the event City sells, conveys, or otherwise transfers its interest in the Premises, Lessee hereby agrees to attorn to the new owner and covenants and agrees to execute an instrument in writing reasonably satisfactory to the new owner whereby Lessee attorns to City's successor in interest and recognizes the successor as City under this Lease.

20. DEFAULTS AND REMEDIES.

20.1 Lessee's Default.

20.1.1 Default. The occurrence of any of the following events shall constitute a default hereunder by Lessee:

(a) the failure of Lessee to pay any Rents, which failure continues for seven (7) days after written notice thereof by City to Lessee;

(b) the failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than as described in any of the other subsections of this Section 20.1, where such failure shall continue for a period of thirty (30) days (unless a different time period is expressly provided for herein) after written notice thereof from City to Lessee, provided that if the nature of such default is such that the same cannot be reasonably cured within a thirty (30) day period, Lessee shall not be deemed in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default but in no event shall the cure period exceed sixty (60) days;

(c) the failure of Lessee, on more than three (3) occasions in any twelve (12) consecutive calendar months, to perform the covenants or obligations described in subsection (a) above, even if all such failures are cured within the period specified in said subsection;

(d) the making by Lessee of any general assignment for the benefit of creditors;

(e) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease;

(f) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease; or

(g) the filing by Lessee of a voluntary or involuntary petition in bankruptcy.

Notification of any default under this Lease shall be in lieu of and not in addition to, any notice required under Section 1161 *et seq.*, of the California Code of Civil Procedure.

20.1.2 City's Remedies. In the event of a default by Lessee, City, in addition to any other rights or remedies it may have at law, in equity or otherwise, shall have the following rights:

(a) continue this Lease in effect by not terminating Lessee's right to possession of the Premises, in which event City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover the Rent specified in this Lease as it becomes due;

(b) terminate this Lease and bring an action to recover from the Lessee the amounts set forth in below; or

(c) terminate this Lease and bring an action in addition or in lieu of the action described in the preceding subparagraph (b) to reenter and retain possession of the Premises in the manner provided by the laws of unlawful detainer in the State of California then in effect.

Should City elect to terminate this Lease under the provisions of Sections 20.1.2(b) or (c) above, City may recover from Lessee as damages: (a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) 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 Lessee proves could have been reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus (d) any other amount necessary to compensate City 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; plus (e) at City's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California. As used in the foregoing provisions, the "worth at the time of award" is computed by allowing interest at the Default Interest Rate.

Any termination of this Lease as herein provided shall not relieve Lessee, or its successors and assigns, if any, from the payment of any sum or sums that shall then be or that shall thereafter become due and payable to City hereunder, and any such termination shall not prevent City from enforcing the payment of any such sum or sums by any remedy provided by law.

20.1.3 Right to Cure Lessee's Default. City, at any time after Lessee fails to perform an obligation or covenant required to be performed by it under this Lease and to cure such failure within any applicable cure period, may, at its sole option, cure such failure. If, in effecting such cure, City incurs any cost or expense or pays any sum, or does any act that requires the payment of any sum, all sums, expenses and costs so paid or incurred by City shall be due from

Lessee to City immediately upon demand therefor by City, and shall bear interest at the Default Interest Rate from the date of any payment by City to the date of repayment by Lessee.

20.2 City's Default; Lessee Remedies. City shall be in default of this Lease if it has failed to perform any obligation or covenant to be performed by it hereunder within thirty (30) days after written notice by Lessee to City specifying the nature of City's failure; provided, however, that if the nature of the obligation is such that more than thirty (30) days are required for its performance, then City shall not be deemed to be in default if it shall commence such performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Lessee shall be entitled, upon any failure, breach or default hereunder by City to any and all rights and remedies available to it at law and in equity. Notwithstanding anything in this Lease to the contrary, it is expressly understood and agreed that any judgment against City resulting from any default or other claim under this Lease shall be satisfied only out of the net rents, issues, profits and other income actually received from or in connection with City's interest in the Premises.

20.3 Remedies Not Exclusive. Except with respect to rights and remedies expressly declared to be exclusive in this Lease, the several rights and remedies herein granted to each party shall be cumulative and in addition to any others to which a party may be entitled at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of any other rights or remedies a party may have, and shall not preclude the exercise by a party, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

21. END OF TERM.

21.1 Surrender of Premises. At the expiration of the Term or earlier termination of this Lease, Lessee shall surrender the Premises and Improvements to City in good order, condition and repair, broom clean, ordinary wear and tear excepted. All of the Improvements shall be and remain the property of Lessee during the Term and shall become the property of City upon expiration of the Term free from any claims or liens. City may, at City's election, demand the removal from the Premises of any Improvements made to or placed on the Premises in violation of this Lease by Lessee or any other person at the direction of Lessee or with Lessee's consent. All trade fixtures and furnishings installed by or under Lessee shall remain the property of Lessee and shall be removed by Lessee at its sole cost and expense prior to the expiration or earlier termination of this Lease and Lessee shall repair any damage or injury to the Improvements occasioned by the removal thereof.

21.2 Ownership of FF&E. All fixtures, furniture, equipment and signs brought onto the Premises by Lessee or the Manager and paid for from Gross Revenue or from the proceeds of an Approved Loan ("FF&E") shall remain on the Premises at the expiration or sooner termination of the Term, including, without limitation, Zamboni machines, ice-making apparatus, kitchen equipment, sound systems, lockers and rental skates. Lessee shall, at its sole cost and expense, maintain all FF&E in good operating order and condition, including, without limitation, making all needed repairs and replacements to the FF&E and shall not remove any of the FF&E from the Premises (except for the removal of any item temporarily for maintenance and repair or, if removed permanently, such item is worn out or obsolete and is replaced, at Lessee's expense, by an item of

equal or better suitability and value). At the expiration or sooner termination of the Lease Lessee shall convey all of Lessee's interest in the FF&E to City for the sum of Ten Dollars (\$10.00), and shall execute a Bill of Sale evidencing such conveyance to City. Such Bill of Sale shall include Lessee's covenants to City that Lessee is the lawful owner of such FF&E, free and clear of all liens, encumbrances, security agreements and financing statements, that such FF&E is owned and not leased by Lessee and that Lessee for itself, its successors and assigns, shall warrant and forever defend the right and title to such FF&E.

21.3 Holding Over. This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Lessee after the expiration of the Term shall not constitute a renewal or extension of this Lease, or give Lessee any rights under this Lease, except when in writing signed by both parties. If Lessee holds over for any period after the expiration (or earlier termination) of the Term without the prior written consent of City, such possession shall constitute a tenancy at sufferance only; such holding over with the prior written consent of City shall constitute a month-to-month tenancy commencing on the first (1st) day following the termination of this Lease. In either of such events, possession shall be subject to all of the terms of this Lease, except that the Base Rent shall be one hundred fifty percent (150%) of the Base Rent for the calendar month immediately preceding the date of termination. If Lessee fails to surrender the Premises upon the expiration of the Term despite demand to do so by City, Lessee shall indemnify, defend, and hold City harmless from and against all loss or liability, including, without limitation, any claims made by any succeeding tenant relating to such failure to surrender. Acceptance by City of Rent after the termination of the Lease shall not constitute a consent to a holdover or result in a renewal of this Lease. The foregoing provisions of this Section are in addition to and do not affect City's right of reentry or any other rights of City under this Lease or at law.

22. MISCELLANEOUS.

22.1 Notices, Demands, and Communications Between the parties. Formal notices, demands, and communications between City and Lessee shall be given either by (a) personal service, (b) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, (c) mailing in the United States mail, certified or first class mail, postage prepaid, or (d) delivery by facsimile with transmittal confirmation and confirmation of delivery, addressed to:

To City:	City of Irvine
	City Hall
	One Civic Center Plaza
	Irvine, CA 92623-9575
	Attn: City Manager
	Facsimile: (949) 259-9350
	Email: sjoyce@ci.irvine.ca.us

With a copy to: Orange County Great Park Corporation
P.O. Box 19575
Irvine, CA 92623
Attn: Chief Executive Officer
Facsimile: (949) 724-6045
Email: etolles@ci.irvine.ca.us

And to: Rutan & Tucker, LLP
611 Anton Blvd. Suite 1400
Costa Mesa, CA 92626
Attn: Jeffrey T. Melching, City Attorney
Facsimile: (714) 546-9035
Email: jmelching@rutan.com

To Lessee: Irvine Ice Foundation
3150 Barranca Parkway
Irvine, CA 92606-5202
Attn: Michael Schulman
Facsimile: (949) 759-5707
Email: mschulman@hsventures.org

With a copy to: Ice Management, LLC
2101 East Coast Highway, Third Floor
Corona del Mar, CA 92625
Attn: Michael Sculman
Facsimile: (949) 759-5707
Email: mschulman@hsventures.org

And to: Bernard E. Schneider
2101 E. Coast Highway, Suite 230
Corona Del Mar, CA 92625
Facsimile: (949) 760-5719
Email: bschneider@hondacenter.com

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices delivered by facsimile shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either party may from time to time designate in writing.

22.2 Non-liability of City Officials and Employees. No member, official, employee, or contractor of City shall be personally liable to Lessee in the event of any default or breach by City or for any amount which may become due to Lessee or on any obligations under this Lease.

22.3 Binding on Heirs. This Lease shall be binding upon the parties hereto and their respective representatives, transferees, successors, and assigns; provided, however, that nothing in this Section is intended to modify or restrict the scope of the provisions set forth in Section 19.

22.4 Third Party Beneficiaries. Except as expressly provided herein as to Covered Parties, each of which is an intended third party beneficiary with the right, but not the obligation, to enforce the terms hereof, this Lease shall not confer any rights or benefits on any third party.

22.5 Sale of Premises by City. In the event of any sale, exchange or other conveyance of City's interest in the Premises by City and an assignment by City of this Lease, City shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale, exchange or other conveyance and assignment.

22.6 Litigation Expenses. Should any litigation be commenced between the parties to this Lease concerning the Premises, this Lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for that party's attorneys' fees in that litigation that shall be determined by the court in that litigation or in a separate action brought for that purpose.

22.7 Relationship of Parties. Nothing in this Lease shall be construed to form a joint venture, partnership, or similar relationship between City and Lessee.

22.8 Lessee Delegation of Duties. Lessee may, pursuant to the Management Agreement, delegate to the Manager such of Lessee's duties as it determines appropriate, provided, however, that the Manager's failure to perform such duties shall be deemed a failure of Lessee to perform such duties.

22.9 City Acting as Owner of Real Property. Lessee understands and agrees that City is entering into this Lease in its proprietary capacity, as the holder of fee title to the Premises, and not in its capacity as a regulatory agency of City. Lessee understands that City's entering into this Lease shall not be deemed to imply that Lessee will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including City itself in its regulatory capacity. By entering into this Lease, City is in no way modifying Lessee's obligations to cause the Premises to be used and occupied in accordance with all Applicable Laws, as provided herein.

22.10 Monitoring. Lessee shall cooperate with City and shall make available to City all information, documents, and records reasonably requested by City for the purpose of assuring Lessee's compliance with this Lease.

22.11 Entire Agreement, Waivers, and Amendments. This Lease incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof. All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of the party to be charged. A waiver of the breach of the covenants, conditions or

obligations under this Lease by either party shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or obligations of this Lease. Any amendment or modification to this Lease must be in writing and executed by the appropriate authorities of City and Lessee.

22.12 Interpretation. The terms of this Lease shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Lease or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Lease. All references to the term "days" in this Lease shall mean calendar days unless otherwise specifically indicated.

22.13 Applicable Law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Lease without regard to conflict of law principles. All legal actions must be instituted and maintained in the Superior Court of the County of Orange, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

22.14 Severability. If any term, provision, covenant, or condition of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Lease shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Lease.

22.15 Administration of Lease. City shall maintain authority of this Lease and the authority to implement this Lease through its City Manager (or his or her duly authorized representative). The City Manager shall have the authority to make approvals, issue interpretations, execute documents, waive provisions, and/or enter into certain amendments of this Lease on behalf of City so long as such actions do not materially or substantially change the uses or development permitted on the Premises or materially add to the costs incurred or to be incurred by City as specified herein. Such approvals, interpretations, waivers and/or amendments may include extensions of time to perform.

22.16 Force Majeure. Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either City or Lessee is prevented or delayed by reason of Force Majeure, the time or times for performance of the obligations will be extended for the period of the delay; provided, however, (a) within thirty (30) days after the beginning of any such delay, the delayed party shall have first notified the other party in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (b) the delayed party cannot, through commercially reasonable and diligent efforts (not including the incurring of overtime premiums or the like), make up for the delay within the time period remaining prior to the applicable completion date. Under no circumstances shall an event of Force Majeure exceed twelve months without City's consent, which consent shall not be unreasonably withheld, conditioned, or delayed.

22.17 Termination. No termination of this Lease shall release any party in default and this Lease shall survive for purposes of allowing a party to enforce its rights and remedies under

this Lease in the event of a default, including, without limitation, the provisions of Section 22.5. All indemnification provisions shall survive the termination of this Lease.

22.18 Authority to Execute. The person(s) executing this Lease on behalf of the parties hereto warrant that (a) such party is duly organized and existing, (b) they are duly authorized to execute and deliver this Lease on behalf of said party, and (c) by so executing this Lease, such party is formally bound to the provisions of this Lease.

22.19 Execution in Counterpart. This Lease may be executed in several counterparts, and all so executed shall constitute one agreement binding on both parties hereto, notwithstanding that both parties are not signatories to the original or the same counterpart.

22.20 Exhibits. This Lease incorporates by reference the following nine (9) exhibits attached hereto:

- Exhibit "A" Area Map of Great Park
- Exhibit "B" Legal Description of Premises
- Exhibit "C" Site Map of Premises
- Exhibit "D" Description of City Improvements
- Exhibit "E" Project Description
- Exhibit "F" Event Marketing Guidelines
- Exhibit "G" Design Review Process
- Exhibit "H" Schedule of Performance
- Exhibit "I" Programs
- Exhibit "J" CRUP
- Exhibit "K" Depiction of City Improvements and Adjacent City Property

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, City and Lessee have entered into this Lease as of the date set forth above.

“CITY”

CITY OF IRVINE, a California municipal corporation

By: _____

Sean Joyce, City Manager

ATTEST:

Molly McLaughlin, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Jeffrey T. Melching, City Attorney

“LESSEE”

IRVINE ICE FOUNDATION, a California non-profit public benefit corporation

By: _____

EXHIBIT "A"

AREA MAP OF GREAT PARK

That certain real property located in the City of Irvine, County of Orange, State of California, described as follows:

[Attached]

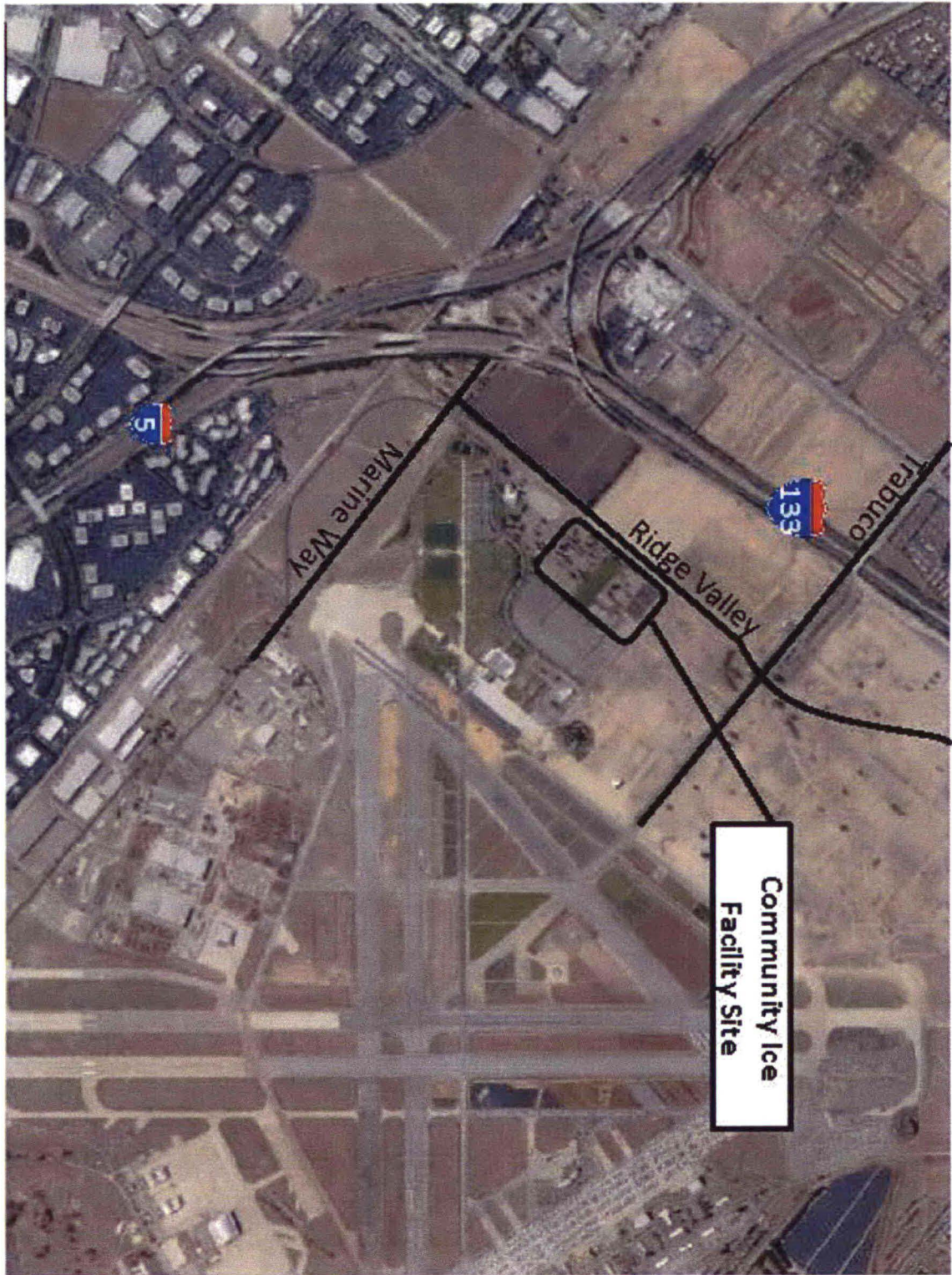


EXHIBIT "B"

LEGAL DESCRIPTION OF PREMISES

That certain real property located in the City of Irvine, County of Orange, State of California, described as follows:

GREAT PARK ICE AND SPORTS COMPLEX

THAT CERTAIN PARCEL OF LAND IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF LOT 279 AS SHOWN ON RECORD OF SURVEY 97-1038, FILED IN BOOK 171, PAGES 1 THROUGH 49, INCLUSIVE, OF RECORDS OF SURVEY, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

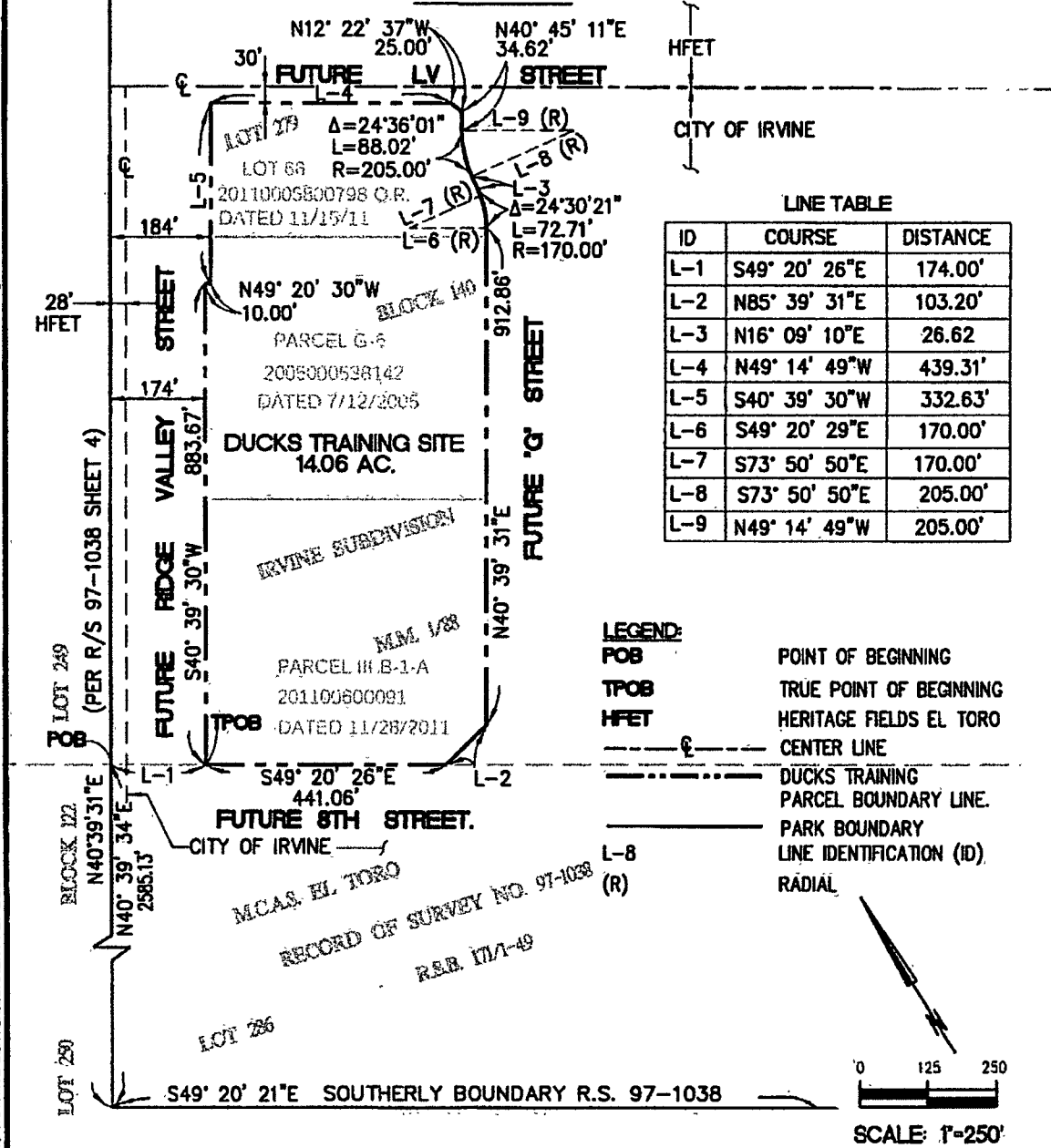
BEGINNING AT A POINT IN THE WESTERLY LINE OF SAID RECORD OF SURVEY BEING NORTHERLY AND DISTANT 2585.13' FEET FROM THE SOUTHWESTERLY TERMINUS OF SAID LINE HAVING A BEARING OF NORTH 40°39'34" EAST, SAID POINT BEING THE **POINT OF BEGINNING (POB)**; THENCE DEPARTING FROM SAID WESTERLY LINE SOUTH 49°20'26" EAST 174.00' FEET TO THE **TRUE POINT OF BEGINNING (TPOB)**; THENCE SOUTH 49°20'26" EAST 441.06' FEET; THENCE NORTH 85°39'31" EAST 103.20' FEET; THENCE NORTH 40°39'31" EAST 912.86' FEET, TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 170.00' FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS NORTH 49° 20' 29" WEST; THENCE NORTHERLY ALONG SAID CURVE 72.71' FEET THROUGH A CENTRAL ANGLE OF 24° 30' 21"; THENCE NORTH 16°09'10" EAST 26.62" FEET; TO THE BEGINNING OF CURVE CONCAVE EASTERLY HAVING A RADIUS OF 205.00' FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS NORTH 73° 50' 50 " WEST; THENCE NORTHERLY ALONG SAID CURVE 88.02' FEET THROUGH A CENTRAL ANGLE OF 24° 36' 01"; THENCE NORTH 40° 45' 11" EAST 34.62' ; THENCE NORTH 12° 22' 37" WEST 25.00' FEET; THENCE NORTH 49°14'49" WEST 439.31'; THENCE SOUTH 40° 39' 30" WEST 332.63' FEET; THENCE NORTH 49° 20' 49" WEST 10.00' ; THENCE SOUTH 40° 39' 30" WEST 883.67' FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 14.06 ACRES, MORE OR LESS.

MORE PARTICULARLY SHOWN ON EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART THEREOF

J:\JOB811531153-83 DUCKS TRAINING CENTER\CURRENT PDF DUCKS PARCEL\FINAL DUCKS LEASE EXHIBIT 12-18-2015-FINAL.dwg, 12/22/2015 11:23:50 AM

EXHIBIT B



LEGAL DESCRIPTION:

That portion of Lot 279 of Block 140 in the City of Irvine, County of Orange, State of California, as shown on Irvin's Subdivision, filed in Book 1 page 88, M.M.

ORANGE COUNTY GREAT PARK

REV 1
REV 2

PREPARED BY:



DMC ENGINEERING

Civil • Surveying • Planning • Construction

Tel: (949) 353-9393 • Fax: (949) 353-9322

18 Technology Drive, Suite 100, Irvine, California 92618

E-Mail: dmc@dmceing.com • www.dmceng.com

SCALE: 1"=250'

DRAFTED BY: MR

CHKD BY: DJM

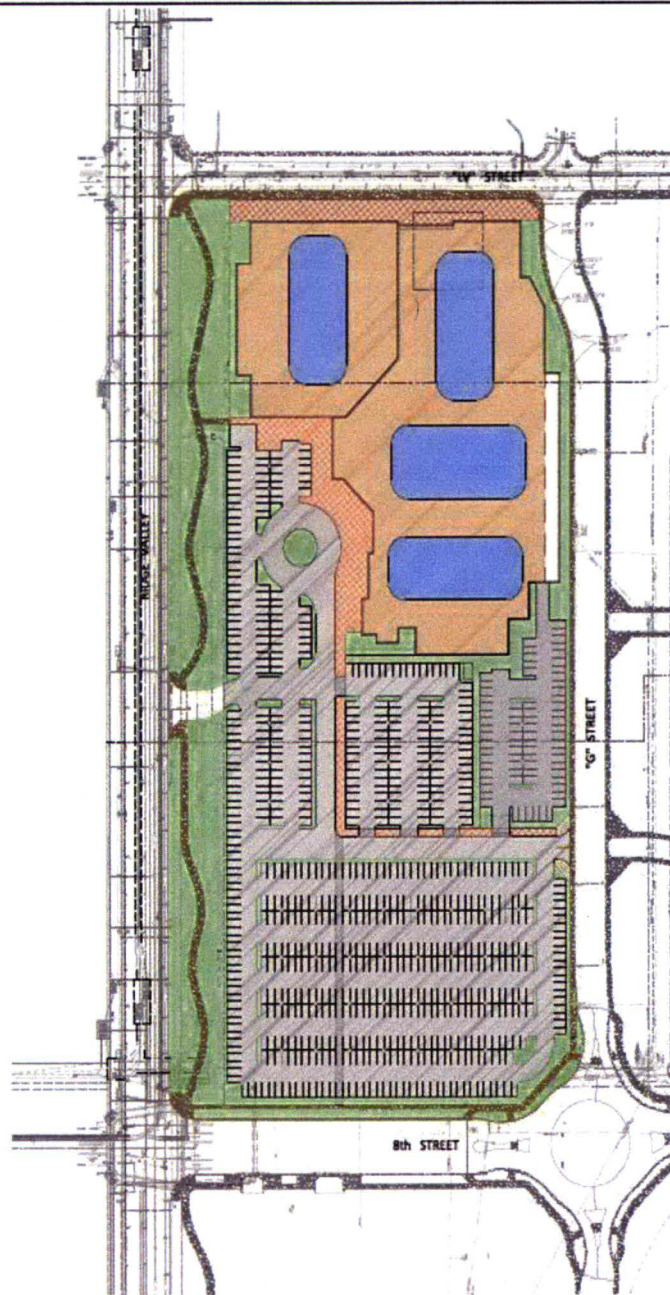
DATE: 12-18-15

SHEET 1 OF 1

EXHIBIT “C”

SITE MAP OF PREMISES

[Attached]



Site Map of Premises
Irvine, California



EXHIBIT "D"

DESCRIPTION OF CITY IMPROVEMENTS

1. City Off-Site Parking. City shall provide the City Off-Site Parking in accordance with Section 8.20 of this Lease.

2. Infrastructure. City shall install or cause to be installed and/or constructed the following utility infrastructure improvements, as further depicted on Exhibit "K"

A. Conduit only (e.g., no wire or cable) for the following utilities from the existing backbone infrastructure to the perimeter of the Premises.

1. Electrical (5")
2. Telephone (4")
3. Cable (4")

B. The following laterals, to be installed and/or constructed from the existing backbone infrastructure to the perimeter of the Premises:

1. Gas line (2")
2. Sewer line (8")
3. Storm drain line (24")
4. Potable water line (8")
5. Reclaimed water line (4")

3. Access. City shall construct or cause to be constructed the following street segments, including curbs, gutters, boundary sidewalks, and street lighting within each of said segments, all in accordance with City standards for such improvements, but not including any parkway landscaping within the Premises, the installation of which shall be the responsibility of Lessee:

A. The segment of Ridge Valley located between Trabuco Road and 8th Street, as depicted on the Site Map.

B. The segment of 8th Street located between Ridge Valley and C Street, as depicted on the Site Map.

C. The segment of G Street located between C Street and LV Street, as depicted on the Site Map.

EXHIBIT "E"

DESCRIPTION OF PROJECT

The Project is the development of a four (4) sheet community ice rink facility consisting of approximately Two Hundred Seventy Thousand Square Feet (270,000 sf), with ancillary uses including, without limitation, lobby/warming area, pro-shop, skate-rental/skate sharpening, sit-down restaurant, concessions, party rooms, arcade, restrooms, Anaheim Ducks training space (including administrative offices and meeting rooms, weight training space, Whirlpool, sauna/steam rooms, players' lounge) storage areas, other training space, lockers, administrative space, mechanical/electrical facilities.

One (1) ice sheet/rink will be developed to Olympic standards (e.g., 100 sf x 200 sf), with a five hundred (500) seat seating area. Each of the remaining three (3) ice sheets/rinks will be developed to National Hockey League standards (e.g., 85 sf x 200 sf), two of which will contain a five hundred (500) seat seating area, and one of which will contain a two thousand five hundred (2,500) seat seating area. The Project includes the construction of right turn driveway apron ingress and egress improvements to and from the Premises to Ridge Valley, as depicted on Exhibit "K", the development of not less than six hundred sixty-five (665) parking spaces to be located on the Premises, and the installation of parkway landscaping within the Premises boundaries, all in accordance with the plans approved by City for the Project.

The Project includes the installation and/or construction of the following utility infrastructure improvements:

A. Extending the conduit installed and/or constructed by City as part of the City Improvements from the perimeter of the Premises to Lessee's on-site point of connection. Installing and/or constructing all wire and/or cable.

B. Extending the following laterals installed and/or constructed by City from the perimeter of the Premises to Lessee's on-site point of connection:

1. Gas line
2. Sewer line
3. Storm drain line.
4. Potable water line
5. Reclaimed water line

The Project includes development and installation of all equipment (including mechanical and electrical), fixtures, furnishings, and other property to operate and maintain a first class community ice rink. Lessee shall expend not less than Thirty-Five Million Dollars (\$35,000,000) to develop the Project.

EXHIBIT “F”

EVENT MARKETING GUIDELINES

In order to not cause confusion between City events at the Great Park, which are funded through City’s Great Park Fund, and events brought to the Great Park through site rental/lease agreements or contract service agreements the following marketing guidelines have been established. Adherence to these guidelines is required under the Lease.

Throughout this document, events and shows that are open to the public and produced at the Great Park through a site rental/lease agreement or contract service agreement are referred to as “community events.”

General Marketing Agreement

All site rental, lease and contract service agreements for Great Park property are covered by the following general marketing agreement, including all guidelines set forth in this document.

Employees of City are not obligated to perform or support the marketing of community events and programs at the Great Park.

Courtesy public relations and marketing functions may be conducted at the discretion of City. This may include the inclusion of one or many community events in the Great Park events calendar. This may be circulated online or in print, at the discretion of City.

City also reserves the right, at its discretion, to promote community events and programs to the local media. City staff will also, upon request, provide media contacts directly to site lessees for their use.

City reserves the right to distribute upcoming Great Park events information at any site rental/leased location while an event is occurring. If appropriate to the setup of the event, City may request a booth to distribute and share information at all events held at the Park.

Through negotiating the site rental/lease agreement or contract service agreement, City staff will be available to review any promotional or marketing materials to ensure compliance with these guidelines. This is a service that will ensure all marketing is conducted to best benefit all parties.

Accepted Terms and Titles

- City reserves the right to list the lessee’s or service provider’s event on the Great Park Web Site (www.ocgp.org) as a “Community Event at the Great Park.”
- When referencing the event location, the following terms are preferred:
 - At the Orange County Great Park in Irvine
 - At the Great Park in Irvine
- Terms *not* to be used:

- Irvine's Great Park
 - OC Great Park
 - Irvine Great Park
 - Preview Park
 - El Toro Marine Base (or any variation)
- Unless otherwise agreed upon in a separate marketing agreement, when titling a community event/program that will be held at the Great Park, the words "Great Park" cannot be used in the name of the event, associated URLs, Twitter user names, Facebook page titles, or any other use that would imply that this is an event funded through City's Great Park Fund. Some *prohibited* examples:
 - Great Park Home Show
 - Bridal Expo at the Great Park
 - Greatparkexpo
 - www.greatparkhomeshow.com
 - Nowhere in any marketing or promotional material or verbiage for your event/program should it be implied that City is partnering, sponsoring or hosting an event/program unless otherwise specified in a separate written marketing agreement between the site lessee or service provider and City.
 - Since the Great Park is on a former military base, there is no official address for the Great Park. The recommended verbiage for describing the location is "Off the 5 freeway at Sand Canyon." Using an address for the Great Park location will result in older GPS systems leading visitors to closed roads.
 - The Great Park amenities such as the Balloon are not included as an amenity in any site rental/lease or service agreement, and should never be referred to as such in marketing a community event/program.

Logos and Imagery

- Imagery of the Great Park Balloon in marketing or promotion for any community event/program is prohibited.
- Images provided by City to be used in any event-related or program-related marketing should include the credit "Photo courtesy of the City of Irvine."
- Photos provided by City for use in event-related or program-related marketing cannot be edited or "photo-shopped" in any way, including, without limitation, adding amenities, modifying the look of the Great Park, adding event logos into the Great Park imagery, or erasing Great Park features.
- Photos of specific site venues at the Great Park are available for use in promotion, but should never be used as the main graphics or imagery in promoting a community event/program.

- The “@the Orange County Great Park” logo was developed to provide community events/programs with a distinctive way to identify their event location. The use of the “@the Orange County Great Park” logo is not required, but if it is used and such use is subject to City’s approval, the following guidelines must be followed:
 - The logo must not be used in conjunction with the community event title or as a primary graphic in any promotional materials.
 - Use only the colors and colorways provided. Full color and grayscale logos are provided.
 - The logo must be used as-is, with no parts removed and nothing added to the graphic.
 - The logo must be used in the given proportion and layout.
 - The overall height of the logo should never be less than ¼”, and should never appear to be larger than half the size of the logo or logotype of the name of the community event.
- City shall have the right to prohibit or restrict Lessee from using any City or Great Park logo, with the understanding that City may grant to other parties exclusive use of certain logos for certain purposes.
- Event-specific signage is permitted in specific locations at the Great Park. Those locations are included in a separate document specific to each event location. Posting signs, banners, fliers or any other marketing outside of these areas is prohibited.
- Any on-site signage, including banners or directional signage, may be subject to City permitting policies.

EXHIBIT “G”

DESIGN REVIEW PROCESS

All design review for the Great Park is conducted by City’s Great Park staff and City’s designated architects.

Stage I: Conceptual Review

The “Conceptual Review” should correspond approximately to 50% completion of the Project’s Schematic Design phase. By August 31, 2016, Lessee shall submit to City for review, the “Conceptual Review” designs, which include the following, with scales specified for architectural drawings:

- 1. Site plan at not smaller than 1:1200 scale (1”-100’).
- 2. Ground floor plan with proximate site area at not smaller than 1:600 scale (1”-50’).
- 3. Above and below ground floor plans at not smaller than 1:600 scale (1”-50’).
- 4. At least two project sections at not smaller than 1:600 scale (1”-50’).
- 5. Tabulation of areas of major exterior and public interior spaces and tabulation of parking spaces by size and type of space.
- 6. Dimensions of site, parking areas, building and setbacks.

Stage II: Preliminary Review

Not later than ninety (90) days after City’s approval of the Conceptual Review designs, Lessee shall submit to City for City’s review, the “Preliminary Review” designs, which include the following, with scales specified for architectural drawings:

- 1. Site plan at not smaller than 1:600 (1”-50’).
- 2. Ground floor plan with proximate site area at not smaller than 1:200 scale (1/16” 1’0” is the same as 1:192).
- 3. Above and below ground floor plans at not smaller than 1:200 scale.
- 4. At least two project sections and two exterior elevations at not smaller than 1:200 scale.
- 5. Two exterior perspective drawings, at least one of which has a street-level viewpoint, and, if applicable, one perspective drawing of a major interior public space. The perspective shall be constructed, two-point drawings; the interior can be a one-point or two-point. The drawing images shall be within a 60-degree cone of vision.

- 6. Tabulation of areas of major exterior and public interior spaces and tabulation of parking by size and type of space.
- 7. Dimensions of site, parking areas, buildings, setbacks, exterior spaces and major public indoor spaces.
- 8. Plant selections for the landscape design.
- 9. A narrative description of the project that includes proposed uses, design concepts, public spaces, urban design materials and landscaping.

Stage III: Final Review

“Final Review” occurs at the end of the design development phase of architectural design, at which time all the major design and cost decisions for a Project should have been made. The design submission for Final Review shall be submitted to City for City’s review within ninety (90) days after City’s approval of the Preliminary Review designs, and includes a completed set of the architect’s design development materials and the artist’s final designs, which update and supplement the Preliminary Review requirements.

- 1. Update Stage II: Preliminary Review site plan requirement.
- 2. Update Stage II: Preliminary Review ground floor plan requirement.
- 3. Update Stage II: Preliminary Review requirement. For floor plans plus roof plan(s) at not smaller than 1:200 scale (1/16”-1’0” is the same as 1:192).
- 4. Update Stage II: Preliminary Review section and elevation requirement plus two project sections and all remaining exterior elevations at not smaller than 1:200 scale.
- 5. Update Stage II: Preliminary Review perspective drawings requirements.
- 6. Update Stage II: Preliminary Review requirement for tabulation of areas and parking spaces.
- 7. Update Stage II: Preliminary Review dimensions requirement.
- 8. Update Stage II: Preliminary Review materials selection requirement plus material and color boards of exterior walls, exterior hardscape (at the ground plane, at visible roofs and at usable roof decks) and major interior public spaces.
- 9. Update Stage II: Preliminary Review landscape requirement plus landscaping site plan, floor plans, sections and elevations at not smaller than 1:200 scale, including hardscape, lighting, equipment, furnishings and planting schedules for on-site and off-site improvements.
- 10. Update Stage II: Preliminary Review outline specifications requirement, making detailed outline specifications for the project.

- 11. Material and color selections for exterior walls, exterior hardscape, and walls and floors of major interior public spaces.

City shall have the authority to waive any of the aforementioned items from the Design Review Process and/or move from one Stage of the process to a subsequent Stage.

EXHIBIT "H"

SCHEDULE OF PERFORMANCE

TIME FOR PERFORMANCE	ITEM OF PERFORMANCE
Date upon which City approves Lease	Effective Date
10 days following Effective Date and no later than Commencement Date or prior to entry on Great Park (Section 4.2.1(e) and Section 14.1)	Lessee delivers evidence of insurance
Upon satisfaction of Lease Conditions in Section 4.2 (Section 4.1)	Commencement Date (not later than Outside Commencement Date)
From Commencement Date until Lease termination or expiration (Section 5.1)	Lessee pays Rent
By August 31, 2016 (Section 6.3.2)	Lessee submits applications for all Project permits and land use approvals and preliminary plans
By the Outside Commencement Date (Sections 4.2.1(a), 4.2.1(c), 4.2.2(a), and 4.2.2(c))	Lessee obtains approval of Final Plans and all Permits for the Project
By the Outside Commencement Date (Sections 4.2.1(b) and 4.2.2(b))	City obtains final approvals for City Improvements
By August 31, 2016 (Section 4.2.1(c))	Lessee submits Lessee's Evidence of Financial Capability
By August 31, 2016 (Section 4.2.1(f))	Lessee submits Lessee's proposed form of Management Agreement
No later than 30 days after receipt of complete submittal of Lessee's Evidence of Financial Capability (Section 4.2.1(c))	City reviews Lessee's Evidence of Financial Capability
No later than 30 days after receipt of submittal of Lessee's proposed form of Management Agreement (Section 4.2.1(f))	City reviews Lessee's proposed form of Management Agreement

TIME FOR PERFORMANCE	ITEM OF PERFORMANCE
By the Outside Commencement Date (Section 4.2.1(d) and Section 4.2.2(c))	Lessee obtains final City approval of grading plans and City ready to issue grading permits and building permits
No later than 15 days following Commencement Date (Section 6.4)	Lessee commences construction of Project
No later than eighteen (18) months following Commencement Date (Section 6.4)	Lessee completes construction of Project
No later than eighteen (18) months following Commencement Date (Section 6.4)	City completes City Improvements
Earlier of certificate of occupancy or eighteen (18) months following Commencement Date (Section 4.1)	Construction Completion Date
On or after Construction Completion Date (Section 4.1)	Parties record Memorandum of Lease
Within ninety (90) days after the end of each Lease Year (Section 8.5.1)	Lessee submits Project Cash Flow statement
No later than 180 days prior to expiration of Term (Section 4.3)	Lessee delivers Option Exercise Notice

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Lease. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Lease, the text shall govern.

EXHIBIT "I"

PROGRAMS

Lessee shall operate the Ice Rink as a community skating facility. Lessee shall provide for or allow the Ice Rink to be made available and open for ice-related sports and activities to the general public (e.g., open or public skate), school and community teams, including youth hockey, adult hockey, and high school hockey, and other community groups, and organizations, including, without limitation, various skating classes and skating programs conducted by Lessee and offered through the City's Parks and Recreation Department.

On or before November 1 of each year, Lessee shall submit to City a proposed program schedule for the Ice Rink for the following calendar year for City's review and approval (each, a "**Proposed Schedule**"). Each Proposed Schedule shall include (i) the days and times the Ice Rink will typically be available for each of the uses described above, and (ii) any Large Ice Events intended to be held at the Ice Rink during the calendar year; provided, however, that Lessee may not hold more than ten (10) Large Ice Events per calendar year. At City's election, City and Lessee shall meet and confer regarding each Proposed Schedule. Lessee shall revise the Proposed Schedule to accommodate any reasonable requests and/or comments provided by City.

Upon City's written approval of a Proposed Schedule, Lessee may not revise the dates for any Large Ice Events without first obtaining City's written approval to the proposed revisions, which approval shall not be unreasonably withheld, conditioned, or delayed.

The Ice Rink shall be open to the public at all times of operation, including during times the Anaheim Ducks are using the Ice Rink for training purposes. The Anaheim Ducks shall use only one (1) individual ice rink at any given time for training purposes, and the Anaheim Ducks' collective use of the Ice Rink shall not exceed three percent (3%) of all "ice time" during operating hours.

Lessee may not use the Ice Rink for any non-ice events without obtaining the prior written consent of the City Manager.

EXHIBIT “J”

CRUP

[Attached]

Tom Daly, Clerk-Recorder

STANDARD INFORMATION REPORT

2011000265425 01:51pm 05/27/11

BB 40B C3R 28

0.00 0.00 0.00 0.00 81.00 0.00 0.00 0.00

Quang Than
Remedial Project Manager
Department of Toxic Substances Control
Southern California Region
5796 Corporate Avenue
Cypress, California 90630

Mary T. Aycock
Superfund Remedial Project Manager
United States Environmental Protection
Agency Region IX
75 Hawthorne Street,
Mail Code SFD-8
San Francisco, California 94105-3901

Kirk V. Berchtold
Executive Officer
Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, California 92501-3339

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

ENVIRONMENTAL RESTRICTION

**(Re: Former Marine Corps Air Station [MCAS] El Toro)
For a Portion of Installation Restoration Program Site 24
[IRP Site 24]**

EPA ID: No. CA6170023208

This Covenant and Agreement ("Covenant") is made by and between the United States of America acting by and through the Department of the Navy ("DON", or the "Covenantor"), the current owner of certain property, situated in the City of Irvine, County of Orange, State of California, described in Exhibits A-1 and A-2 and depicted in Exhibit B as the Areas Requiring Institutional Controls ("ARICs") for a portion of Installation Restoration Program ("IRP") Site 24, which are attached and incorporated herein by this reference (the "Property"), and the California Environmental Protection Agency, Department of Toxic Substances Control ("Department"). The Covenantor and the Department (collectively referred to as the "Parties"), intend that the use of the Property be restricted as set forth in this Covenant, in order to protect present or future human health, safety, and the environment. The Parties have determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence in groundwater of hazardous material as defined in California Health and Safety Code ("Health and Safety Code") section 25260, and enter into this Covenant in accordance with Health and Safety Code section 25355.5, California Civil Code section 1471, and California Code of Regulations, Title 22 section 67391.1. In addition, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") section 104 (42 United States Code ["U.S.C."] § 9604), as delegated to the Covenantor by Executive Order 12580 (as amended) ratified by Congress in 10 U.S.C. section 2701, et seq., and implemented by the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 Code of Federal Regulations ("C.F.R.") Part 300, and implementing guidance and policies, the Covenantor has also determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as

the result of the presence of hazardous substances in the groundwater as defined in CERCLA section 101 (42 U.S.C. § 9601(14)).

The Covenantor currently has legal title and interest in the Property sufficient to enter into and record this Covenant to provide for continuing enforcement of the restrictions contained in this Covenant. This Covenant shall be enforceable against the Property and any portion thereof in that it shall run with the land to all successors and assigns as provided in this Covenant. This Covenant shall take effect for a specific portion of the Property upon conveyance of that portion of the Property out of federal ownership as provided in this Covenant. Nothing in this Covenant shall be construed to establish a contractual commitment, warranty, or guarantee by the Covenantor that the Owner(s) or Occupant(s) will comply with the terms and conditions of the Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01 The ARICs, which encompass a portion of IRP Site 24 and total approximately 335.16 acres, are more particularly described in Exhibits A-1 and A-2 and depicted in Exhibit B, attached hereto and incorporated herein by this reference. The ARICs are located in the southwest portion of the former MCAS El Toro ("Former Base").

1.02 The Former Base was listed on the U.S. Environmental Protection Agency ("U.S. EPA") National Priorities List under CERCLA in February 1990. The Defense Environmental Restoration Program, codified as 10 U.S.C. sections 2701-2709, gave the Department of Defense ("DoD") Environmental Restoration Program statutory status. In October of 1990, the Covenantor entered into a Federal Facility Agreement ("FFA") with the State of California Department of Health Services (the predecessor agency to the Department), U.S. EPA, and the

Regional Water Quality Control Board ("RWQCB"). The FFA establishes a procedural framework for developing, implementing, and monitoring appropriate response actions at the Former Base in accordance with the Resource Conservation and Recovery Act, CERCLA, and other applicable state or federal laws.

1.03 IRP Site 24 comprises two media: soil (vadose zone) and groundwater. The source area of the groundwater contamination at IRP Site 24 (vadose zone) is the former highly industrialized area in and around Hangars 296 and 297, which are not included in this Covenant. Maintenance activities conducted in this area are believed to be the source of the volatile organic compounds ("VOC") contamination; although the precise origin, nature, use, and quantities of trichloroethene ("TCE") released at IRP Site 24 are not documented.

Vadose zone soil - Investigations conducted at IRP Site 24 for vadose zone soil included a Phase I Remedial Investigation ("RI") (*Phase I Remedial Investigation, Draft Technical Memorandum* dated May 1993), a Phase II RI (*Draft Final Phase II Remedial Investigation Report Operable Unit 2A, Site 24*, dated March 1997), and a Phase II Feasibility Study ("FS") (*Draft Final Phase II Vadose Zone Feasibility Study Report, Operable Unit 2A-Site 24*, dated March 1997). Soil vapor extraction was used at IRP Site 24 to remove and permanently destroy contaminants from the vadose zone soils. The *Final Record of Decision, Operable Unit 2A-Site 24, VOC Source Area Vadose Zone*, dated April 2006 for vadose zone soil, documented a no further action determination for soil at IRP Site 24.

Groundwater - The primary media of concern at IRP Site 24 is groundwater which is first encountered at approximately 73 feet below ground surface. The chemicals of concern in the groundwater are VOCs, primarily TCE. Investigations conducted at IRP Site 24 for groundwater included the May 1993 Phase I RI, the March 1997 Phase II RI, and a *Draft Final Phase II*

Groundwater Feasibility Study Report, Operable Unit 2A – Site 24, dated December 1997. A pilot test for groundwater remediation was implemented from 1997 to 1998 (*Draft Groundwater Remediation Pilot Study Report, Operable Unit 2A-Site 24*, dated December 1998). The *Final ROD, Operable Unit 1, Site 18 – Regional Volatile Organic Compound Groundwater Plume, Operable Unit 2A, Site 24 – VOC Source Area* was issued by the DON in June 2002 (“Final ROD”).

The selected remedy for groundwater at these sites is extraction, VOC treatment, and institutional controls (“ICs”). The treatment remedy selected in the Final ROD incorporates the Modified Irvine Desalter Project implemented by the Orange County Water District (“OCWD”) and Irvine Ranch Water District (“IRWD”) pursuant to a Settlement Agreement, which can be found in the Final ROD – Attachment E, entered into by OCWD and IRWD and the Settling Federal Agencies, defined as including the United States, its agencies, departments, and instrumentalities and hence including the DON but excluding the U.S. EPA in its regulatory capacity.

The selected remedy for groundwater includes the following components:

1) construction, operation, and maintenance of a groundwater extraction system to remove VOCs from groundwater; 2) performance monitoring throughout the remedial action; 3) treatment of VOC-contaminated groundwater; 4) confirmatory groundwater and soil vapor sampling at the end of remediation; and 5) ICs to prevent use of contaminated groundwater, protect equipment, and allow access to the DON, OCWD/IRWD, and regulatory agency personnel. The Final ROD specifies that IC objectives are to be achieved through land-use restrictions. ICs are necessary to protect human health and the environment, and maintain the integrity of the remedy until the remedial action objectives are achieved, or are no longer

considered necessary pursuant to CERCLA. A *Final 100 Percent Design Submittal, Shallow Groundwater Unit Remedial Action, IRP Site 24, Volatile Organic Compounds Source Area*, dated March 2005 ("Final RD") finalized the engineering design and specifications for the shallow groundwater unit remedial action at IRP Site 24. In February 2006, the *Final Explanation of Significant Differences(ESD), Site 18 – Regional Volatile Organic Compound Plume (Operable Unit 1), Site 24 – VOC Source Area (Operable Unit 2A)* ("Final ESD") amended the Final ROD to document changes to components of the remedy, specifically relocation of the treatment plants, extraction well locations and extraction rates, and groundwater disposal options. The on-going groundwater remedy of extracting and treating VOC-impacted groundwater commenced in 2006. The *Final Performance Monitoring and Sampling and Analysis Plan, OUI and OU2A Groundwater Remedy*, dated August 2007 ("PMP") was issued as part of a comprehensive Operation and Maintenance ("O&M") Plan for the Site 18 (OU-1) and Site 24 (OU-2A) remedy. The O&M Plan includes three other subsets that have detailed procedures and methods for the activation, service, and continuance of all equipment associated with the performance of the remedy. The PMP identifies the monitoring criteria and analysis methods to evaluate the performance of the OU-1 and OU-2A remedy for both the shallow groundwater unit and the principle aquifer.

The U.S. EPA determined that the IRP Site 24 remedy was Operating Properly and Successfully ("OPS") on 9 September 2010; with the Department concurring on 13 September 2010 and the RWQCB on 2 July 2010. In accordance with CERCLA Section 120(h)(3)(B), 42 U.S.C. § 9620(h)(3)(B), once an OPS determination has been concurred with, the DON can transfer the property subject to the covenants in Section 120(h)(3)(A) of CERCLA, 42 U.S.C. § 9620(h)(3)(A).

1.04 The Covenantor issued a Finding of Suitability to Transfer #6 ("FOST #6") dated February 2011, to transfer the Property. The Department concurred with FOST #6 on March 24, 2011.

ARTICLE II

DEFINITIONS

2.01 Covenantor. "Covenantor" shall mean the United States of America acting through the Department of the Navy ("DON").

2.02 Department. "Department" shall mean the California Environmental Protection Agency Department of Toxic Substances Control and includes its successor agencies, if any.

2.03 U.S. EPA. "U.S. EPA" shall mean the United States Environmental Protection Agency and includes its successor agencies, if any.

2.04 FFA. "FFA" shall mean the Federal Facility Agreement among the DON, (Covenantor), State of California Department of Health Services (the predecessor agency to the Department), U.S. EPA, and RWQCB.

2.05 FFA Signatories. "FFA Signatories" shall mean the agencies who signed the FFA.

2.06 Occupant. "Occupant" shall mean any person or entity other than the Covenantor entitled by leasehold or other legal relationship to the right to occupy any portion of the Property.

2.07 Owner. "Owner" shall mean the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.08 RWQCB. "RWQCB" shall mean the California Regional Water Quality Control Board, Santa Ana Region and includes its successor agencies, if any.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Restrictions"), subject to which the Property and any associated monitoring and other equipment shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered and/or conveyed. These Restrictions are to be construed to be consistent with the separate Restrictions placed in the deed by and in favor of the Covenantor, conveying the Property from the Covenantor to its successor in interest. Each and every Restriction: (a) shall only take effect for a specific portion of the Property upon conveyance of that portion of the Property out of federal ownership; (b) runs with the land in perpetuity pursuant to Health and Safety Code section 25355.5(a)(1)(C) and Civil Code section 1471; (c) inures to the benefit of and passes with each and every portion of the Property; (d) shall apply to and bind all subsequent Owners and Occupants of the Property; (e) is for the benefit of, and is enforceable by the Department, and (f) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners and Occupants. Pursuant to Health and Safety Code section 25355.5(a)(1)(C), this Covenant binds all Owners and Occupants of the Property, their heirs, successors, and assigns, and the agents, employees, and lessees of the Owners, heirs, successors and assignees. Pursuant to Civil Code section 1471, all successive Owners of the Property are expressly bound hereby for the benefit of the Department.

3.03 Incorporation into Deeds, Leases, and/or Rental Agreements. The restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, and/or rental agreements for any portion of the Property to which they are in effect and applicable.

3.04 Conveyance of Property. At least 30 days prior to conveyance of the Property to any other agency, person, and/or entity, the DON or property owner shall provide notice to the FFA signatories of such intended conveyance. This notice shall describe the mechanism by which land use restrictions will continue to be implemented, maintained, inspected, reported, and enforced. Reference to the Final ROD, Final RD, and PMP shall be sufficient description of the mechanism. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law or by administrative order.

3.05 Costs of Administering the Covenant to be Paid by Owner. The Department will incur costs associated with the administration of this Covenant. These costs shall be paid by the Owner or on the Owner's behalf by another party pursuant to California Code of Regulations, title 22, section 67391.1(h). The Owner is ultimately responsible for costs incurred pursuant to this Section 3.05 if such costs are not paid by another party on the Owner's behalf.

3.06 Transfer of Property to Multiple Owners.

3.06.1 The Owner shall, prior to transfer, propose a mechanism for the Department's approval that will provide for performance of the obligations set forth in Sections 3.05 and 4.03 of this Covenant by a single entity on behalf of multiple Owners of the Property if the Property is subdivided into more than two separate subparcels creating either of the following conditions: (1) there will be more than two Owners of different subparcels on the Property, or (2) any of the subparcels will become a common interest development as defined in Section 1351 of the California Civil Code or would in any other way become subject to multiple separate ownership interests.

3.06.2 The Department has determined based on the circumstances involved in the conveyance of the Property that is the subject of this Covenant that it will grant a limited variance to the requirements in Section 3.06.1 above. The limited variance to the requirements in Section 3.06.1 is described in Section 3.06.3 below. The Department based its determination to grant the limited variance on the following circumstances regarding the conveyance of the Property: (1) the Property is being conveyed in three separate parcels by three separate quitclaim deeds, (2) one Covenant is being used because all of the parcels making up the Property require the same Land Use Restrictions, (3) the three quitclaim deeds are to separate unrelated entities, which are Heritage Fields El Toro, LLC; Orange County Society of St. Vincent de Paul; and Families Forward, LLC and the Community Action Partnership of Orange County, (4) Heritage Fields El Toro, LLC intends to immediately transfer a portion of the parcel it receives to the City of Irvine, (5) the City of Irvine intends to immediately transfer a portion of the parcel it receives to the County of Orange, and (6) the plan to transfer the Property as described above has been in place for some time. For the reasons described above, the Department has determined it will grant a limited variance to the requirements set forth in Section 3.06.1.

3.06.3 The Department has determined that the nature of the conveyance(s) discussed in Section 3.06.2 would normally trigger the requirement in Section 3.06.1 that an Owner propose a mechanism for the Department's approval that will provide for performance of the obligations set forth in Sections 3.05 and 4.03 of this Covenant by a single entity on behalf of multiple Owners of the Property. Based on the circumstances discussed in Section 3.06.2 the Department is granting a limited variance to that requirement for the specific conveyances described in Section 3.06.2 of this Covenant. Therefore, those conveyances shall not require an Owner to propose the mechanism required by Section 3.06.1. However, this limited variance shall not relieve any of

the entities identified in Section 3.06.2 of any obligations of an Owner under this Covenant, excepting those in Section 3.06.1, once the conveyances identified in Section 3.06.2 have been completed. Any subsequent conveyances of any portion of the Property to a party not identified in Section 3.06.2 will require that a mechanism be provided for the Department's approval that will provide for performance of the obligations set forth in Sections 3.05 and 4.03 of this Covenant by a single entity on behalf of multiple Owners.

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.01 Land Use Restrictions. The Owner or Occupant shall not:

- a. Install new groundwater wells of any type within the ARICs (Exhibits A-1 and A-2) without prior review and written approval from the DON and the Department. As concurred upon by the FFA signatories, the Department will consult, as appropriate, with the U.S. EPA and the RWQCB during the review and approval process. Additionally, all permits, as required by the Orange County Health Care Agency and IRWD shall be obtained for any new groundwater wells installed within the ARICs.
- b. Alter, disturb or remove groundwater monitoring and extraction wells, injection wells, and any associated piping and equipment that are included in the remedial action within the ARICs, without the prior review and written approval from the DON and the Department. As concurred upon by the FFA signatories, the Department will consult, as appropriate, with the U.S. EPA and the RWQCB during the review and approval process.
- c. Use VOC-impacted groundwater within the ARICs without prior review and written approval from the FFA signatories.

4.02 Access. The FFA signatories, and their authorized agents, employees, contractors, and subcontractors shall have reasonable right of entry and access to the Property to conduct long-term monitoring, investigations, sampling, surveys, inspections, maintenance; or construct, operate, and maintain the remedial action described in the Final ROD, Final RD, and PMP; or undertake any other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.03 Inspection and Reporting Requirements. The Owner, or another party on the Owner's behalf, shall conduct annual site inspections and annual compliance reporting to address the monitoring and maintenance necessary to ensure compliance with the Restrictions and Requirements, and Terms of the Covenant. Submission by the Owner or by another party on the Owner's behalf of Covenantor's form, Portion of IRP Site 24 Land Use Controls Compliance Certificate ("Compliance Certificate"), consistent with the form attached hereto as Exhibit C, shall be deemed to comply with the reporting requirements of this Paragraph. In addition, if any deficiencies are found during the annual inspection, the Owner or by another party on the Owner's behalf shall provide to the Covenantor, the Department, U.S. EPA, and the RWQCB written explanation with the Compliance Certificate stating the specific deficiencies that were found and what efforts or measures have or will be taken to correct those deficiencies.

Inspections and monitoring are discussed in the PMP, a component of the O&M Plan for IRP Site 24. After recording of the Covenant, the Compliance Certificate, and any written explanation of deficiencies, shall be sent by certified mail with return receipt and signature required to the Covenantor, the Department, U.S. EPA, and the RWQCB pursuant to Section 7.03 of this Covenant by January 15 of each calendar year. In addition, the Owner or by another party on the Owner's behalf shall notify the Covenantor, the Department, U.S. EPA, and the

RWQCB within ten (10) business days of discovery of any activity on the Property inconsistent with the land use restrictions. The Owner or by another party on the Owner's behalf shall work with the Covenantor, the Department, U.S. EPA, and the RWQCB to correct the problem(s) discovered. The Owner is ultimately responsible for the requirements of this Section 4.03. The Owner shall cooperate with and assist as necessary any entity that is obligated to perform the requirements required by this Section 4.03.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Owner or Occupant to comply with any of the Restrictions specifically applicable to the Property shall be grounds for the Department by means of this Covenant to require that the Owner modify or remove any improvements ("Improvements" herein shall include, among other things, all earthen fills, caps, piers, structures, buildings, roads, driveways, paved parking areas, and landscaping) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant by the Owner or Occupant may result in the imposition of civil and/or criminal remedies including nuisance or abatement against the Owner or Occupant as provided by law.

ARTICLE VI

VARIANCE AND TERMS

6.01 Variance. The Owner, or with the Owner's consent, any Occupant, may apply to Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Health and Safety Code section 25233. The Department will grant

the variance only after finding that such a variance would be protective of human health, safety, and the environment and in coordination with the FFA signatories.

6.02 Termination. The Owner, or with the Owner's consent, any Occupant, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with Health and Safety Code section 25234. No termination of the Restrictions or other terms of this Covenant shall extinguish or modify the retained interest held by the United States.

6.03 Term. This Covenant shall run with the land and continue in effect in perpetuity unless ended in accordance with the Termination Paragraph 6.02 above, or by law.

ARTICLE VII

MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Recordation. The Covenantor shall record this Covenant, with Exhibits A-1, A-2, B, and C in the County of Orange within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03 Notices. Whenever any person gives or serves any notice ("notice" as used here includes any demand or other communication with respect to this Covenant), each such notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, two (2) or three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: United States Navy
BRAC Program Management Office West
1455 Frazee Road Suite 900
San Diego, California 92108-4310
Attention: Director

To Department: Department of Toxic Substances Control
Southern California Region
5796 Corporate Avenue
Cypress, California 90630
Attn: Performance Manager
Brownfields and Environmental
Restoration Program

To U.S. EPA: Ms. Mary T. Aycock
Superfund Remedial Project Manager
United States Environmental Protection Agency Region IX
75 Hawthorne Street, Mail Code SFD-8
San Francisco, California 94105-3901

To RWQCB: Kurt V. Berchtold
Executive Officer
Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, California 92501-3339

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this Paragraph.

7.04 Partial Invalidity. If this Covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.05 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference. Exhibits include:

Exhibits A-1 and A-2 – Areas Requiring Institutional Controls (ARICs) Legal

Descriptions

Exhibit B – Property Diagram (Includes ARICs and General Well Locations)

Exhibit C – Portion of IRP Site 24 Land Use Controls Compliance Certificate

7.06 Section Headings. The Section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.07 Representative Authority. The undersigned representative of each party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.

7.08 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.
COVENANTOR:

UNITED STATES OF AMERICA,
Acting by and through the Department of the Navy

By: Esther P. Ewell
ESTHER P. EWELL
Real Estate Contracting Officer

Date: April 7, 2011

State of California
County of San Diego

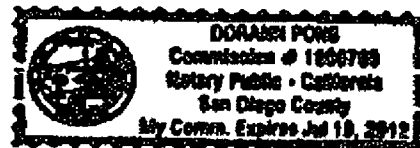
On April 7, 2011 before me Dorann Pons, Notary Public
(insert name and title of the officer)

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


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

WITNESS my hand and official seal.

Signature Dorann Pons (Seal)



CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: 
QUANG THAN
Remedial Project Manager
Brownfields and Environmental Restoration Program

Date: April 7, 2011

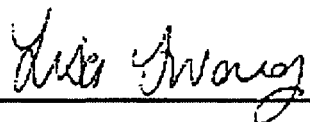
State of California
County of Orange

On April 7, 2011 before me Lisa Twarog, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)

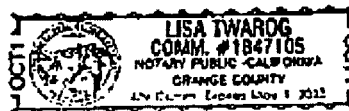


EXHIBIT A-1
Legal Description

ARIC-01:

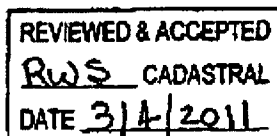
IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF LOTS 279,280,285, AND 286 OF BLOCK 140 AND LOTS 281 AND 284 OF BLOCK 155 OF IRVINE'S SUBDIVISION, AS SHOWN ON THE MAP FILED IN BOOK 1, PAGE 88 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY, LYING WITHIN THE U.S.M.C.A.S. EL TORO PROPERTY, AS SHOWN ON RECORD OF SURVEY 97-1038, FILED IN BOOK 171, PAGES 1 THROUGH 49, INCLUSIVE, OF RECORDS OF SURVEY, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

POINT OF BEGINNING (POB) BEING THE SOUTHWESTERLY TERMINUS OF A CERTAIN COURSE ON THE NORTHWESTERLY BOUNDARY OF SAID PROPERTY DESCRIBED AS "NORTH 40°39'31" EAST 5230.34 FEET" AS SHOWN ON SHEET 4 OF SAID RECORD OF SURVEY THENCE ALONG THE SAID NORTHWESTERLY BOUNDARY OF SAID PROPERTY NORTH 40°39'31" EAST 3072.31 FEET; THENCE LEAVING SAID NORTHWESTERLY BOUNDARY SOUTH 49°20'29" EAST 799.19 FEET; THENCE NORTH 40°39'31" EAST 88.33 FEET; THENCE SOUTH 49°20'29" EAST 1185.57 FEET; THENCE NORTH 40°39'31" EAST 64.14 FEET; THENCE SOUTH 47°28'22" EAST 3946.31 FEET; THENCE SOUTH 68°59'53" EAST 342.11 FEET; THENCE SOUTH 00°57'09" WEST 105.32 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 120.00 FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS SOUTH 89°02'51" EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE 89.47 FEET THROUGH A CENTRAL ANGLE OF 42°43'00" TO THE END OF A NON-TANGENT CURVE, A RADIAL LINE TO SAID END OF CURVE BEARS SOUTH 48°14'09" WEST; THENCE SOUTH 22°33'33" WEST 432.82 FEET; THENCE SOUTH 17°00'09" EAST 1113.16 FEET; THENCE SOUTH 38°25'50" WEST 1015.15 FEET; THENCE SOUTH 08°02'01" WEST 336.30 FEET; THENCE SOUTH 39°18'52" WEST 783.87 FEET; TO A POINT ON THE SOUTHWESTERLY BOUNDARY OF SAID PROPERTY; THENCE ALONG SAID SOUTHWESTERLY BOUNDARY; NORTH 49°20'21" WEST 889.53 FEET; THENCE LEAVING SAID SOUTHWESTERLY BOUNDARY NORTH 40°39'39" EAST 54.73 FEET; THENCE NORTH 49°14'50" WEST 730.01 FEET; THENCE NORTH 40°26'50" EAST 312.00 FEET; THENCE SOUTH 49°14'50" EAST 730.01 FEET; THENCE NORTH 40°58'55" EAST 265.12 FEET; NORTH 37°34'54" EAST 93.51 FEET; THENCE NORTH 40°22'21" EAST 214.08 FEET; TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 359.21 FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS SOUTH 54°09'48" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE 74.78 FEET THROUGH A CENTRAL ANGLE OF 11°55'29" TO THE END OF A NON-TANGENT CURVE, A RADIAL LINE TO SAID END OF CURVE BEARS SOUTH 66°05'18" EAST; THENCE NORTH 20°55'51" EAST 394.10 FEET;

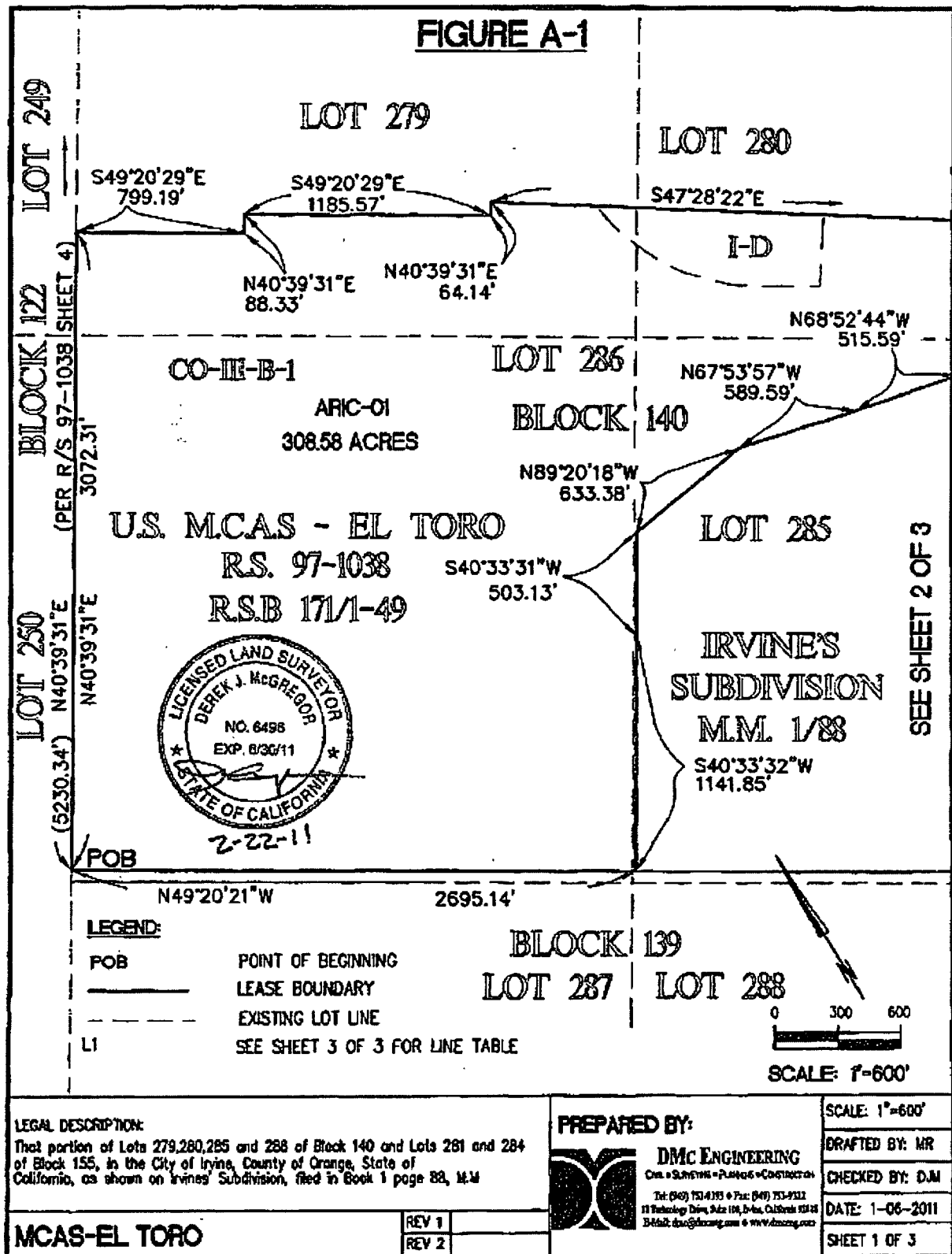
THENCE SOUTH 68°41'25" EAST 264.78 FEET; THENCE NORTH 21°33'09" EAST 321.39 FEET; THENCE SOUTH 69°51'28" EAST 21.69 FEET; THENCE NORTH 20°32'12" EAST 23.01 FEET; THENCE NORTH 69°35'19" WEST 9.29 FEET; THENCE NORTH 20°48'15" EAST 465.35 FEET; THENCE NORTH 66°06'03" WEST 54.03 FEET; THENCE NORTH 10°02'34" WEST 123.47 FEET; THENCE NORTH 21°08'31" EAST 221.19 FEET; THENCE NORTH 68°21'47" WEST 597.14 FEET; THENCE NORTH 21°19'22" EAST 639.64 FEET; THENCE NORTH 68°44'17" WEST 1322.09 FEET; THENCE SOUTH 22°08'00" WEST 7.32 FEET; THENCE NORTH 68°43'11" WEST 197.58 FEET; THENCE NORTH 09°05'26" WEST 8.03 FEET; THENCE NORTH 68°52'44" WEST 515.59 FEET; THENCE NORTH 67°53'57" WEST 589.59 FEET; THENCE NORTH 89°20'18" WEST 633.38 FEET; THENCE SOUTH 40°33'31" WEST 503.13 FEET; THENCE SOUTH 40°33'32" WEST 1141.85 FEET TO SAID SOUTHWESTERLY BOUNDARY OF SAID PROPERTY; THENCE NORTH 49°20'21" WEST 2895.14 FEET; ALONG SAID SOUTHWESTERLY BOUNDARY OF SAID PROPERTY TO THE POINT OF BEGINNING (POB).

CONTAINING 308.58 ACRES, MORE OR LESS.

 2-22-11
DEREK J. MCGREGOR P.L.S #8496 EXP. 6/30/2011



PAGE 2 OF 2



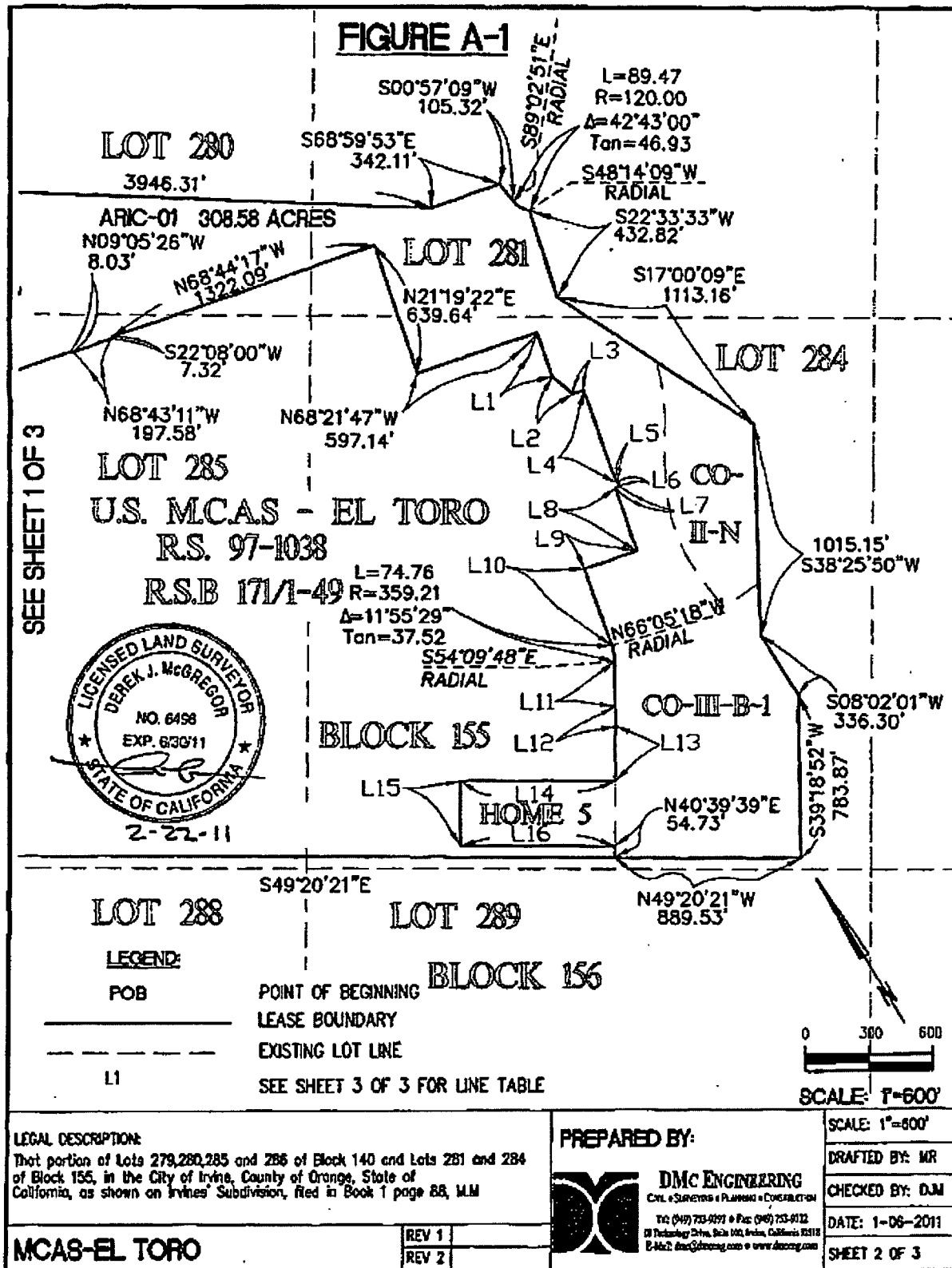


FIGURE A-1

LINE TABLE:

LINE	LENGTH	BEARING
L1	221.19'	N21°08'31"E
L2	123.47'	N10°02'34"W
L3	54.03'	N66°06'03"W
L4	465.35'	N20°48'15"E
L5	9.29'	N69°35'19"W
L6	23.01'	N20°32'12"E
L7	21.69'	S69°51'28"E
L8	321.39'	N21°33'09"E
L9	264.78'	S68°41'25"E
L10	394.10'	N20°55'51"E
L11	214.08'	N40°22'21"E
L12	93.51'	N37°34'54"E
L13	265.12'	N40°58'55"E
L14	730.01'	S49°14'50"E
L15	312.00'	N40°26'50"E
L16	730.01'	N49°14'50"W



Z-ZZ-11

REVIEWED & ACCEPTED
RWS CADASTRAL
DATE 3/4/2011

LEGAL DESCRIPTION:

That portion of Lots 279, 280, 285 and 286 of Block 140 and Lots 281 and 284 of Block 155, in the City of Irvine, County of Orange, State of California, as shown on Irvine's Subdivision, filed in Book 1 page 88, M.M.

MCAS-EL TORO

REV 1
REV 2

PREPARED BY:



DMC ENGINEERING

Civil, Surveying, Planning & Construction

Tel: (949) 713-1191 • Fax: (949) 713-9122

11 Technology Drive, Suite 100, Irvine, California 92618

E-Mail: dmc@dmce.com • www.dmceng.com

SCALE: N/A

DRAFTED BY: MR

CHECKED BY: DJM

DATE: 1-06-2011

SHEET 3 OF 3


EXHIBIT A-2
LEGAL DESCRIPTION

ARIC -02:

IN THE CITY IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF LOT 285 OF BLOCK 140 AND LOT 284 OF BLOCK 155 OF IRVINE'S SUBDIVISION, AS SHOWN ON THE MAP FILED IN BOOK 1, PAGE 88 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY, LYING WITHIN THE U.S.M.C.A.S. EL TORO PROPERTY, AS SHOWN ON RECORD OF SURVEY 97-1038, FILED IN BOOK 171, PAGES 1 THROUGH 49, INCLUSIVE, OF RECORDS OF SURVEY, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

POINT OF BEGINNING (POB) BEING THE SOUTHWESTERLY TERMINUS OF A CERTAIN COURSE ON THE NORTHWESTERLY BOUNDARY OF SAID PROPERTY DESCRIBED AS "NORTH 40°39'31" EAST 5230.34 FEET" AS SHOWN ON SHEET 4 OF SAID RECORD OF SURVEY: THENCE ALONG THE SOUTHWESTERLY BOUNDARY OF SAID PROPERTY SOUTH 49°20'21" EAST 3698.68 FEET TO THE TRUE POINT OF BEGINNING (TPOB); THENCE LEAVING SAID SOUTHWESTERLY BOUNDARY OF SAID PROPERTY NORTH 40°07'24" EAST 341.97 FEET; THENCE SOUTH 50°38'08" EAST 121.45 FEET; THENCE NORTH 38°54'13" EAST 204.10 FEET; THENCE SOUTH 49°20'57" EAST 1526.15 FEET; THENCE SOUTH 40°31'30" WEST 162.82 FEET; THENCE SOUTH 49°20'00" EAST 730.00 FEET; SOUTH 40°31'30" WEST 388.01 FEET TO SAID SOUTHWESTERLY BOUNDARY OF SAID PROPERTY; THENCE NORTH 49°20'21" WEST 2369.40 FEET; ALONG SAID SOUTHWESTERLY BOUNDARY OF SAID PROPERTY TO THE TRUE POINT OF BEGINNING (TPOB).

CONTAINING 26.58 ACRES, MORE OR LESS.

 1-24-2011
DEREK J. MCGREGOR P.L.S #6496 EXP. 6/30/2011

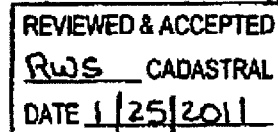
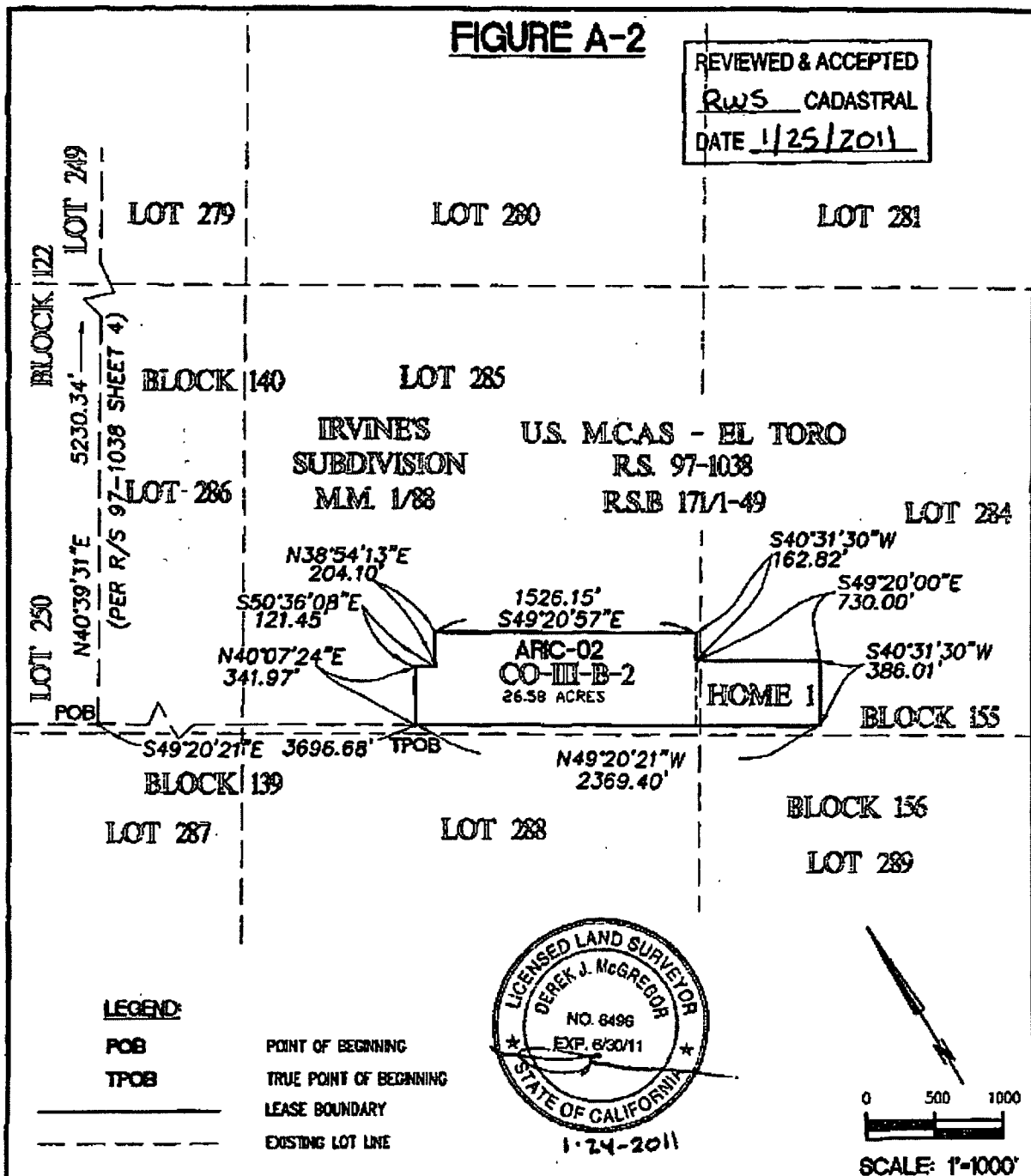


FIGURE A-2

REVIEWED & ACCEPTED
RWS CADASTRAL
DATE 1/25/2011



<p>LEGAL DESCRIPTION: That portion of Lot 285 of Block 140 and Lot 284 of Block 155 in the City of Irvine, County of Orange, State of California, as shown on Irvin's Subdivision, filed in Book 1 page 88, M.M.</p> <p>MCAS-EL TORO</p>	<p>PREPARED BY: DMC ENGINEERING CIVIL & SURVEYING & PLANNING & CONSULTING Tel: (949) 753-9792 • Fax: (949) 753-8322 31 Technology Drive, Suite 100, Irvine, California 92618 E-Mail: dmc@dmcengineering.com • www.dmceng.com</p>	<p>SCALE: 1"=1000'</p> <p>DRAFTED BY: MR</p> <p>CHECKED BY: D.M</p> <p>DATE: 1-24-2011</p> <p>SHEET 1 OF 1</p>
<p>REV 1</p> <p>REV 2</p>		

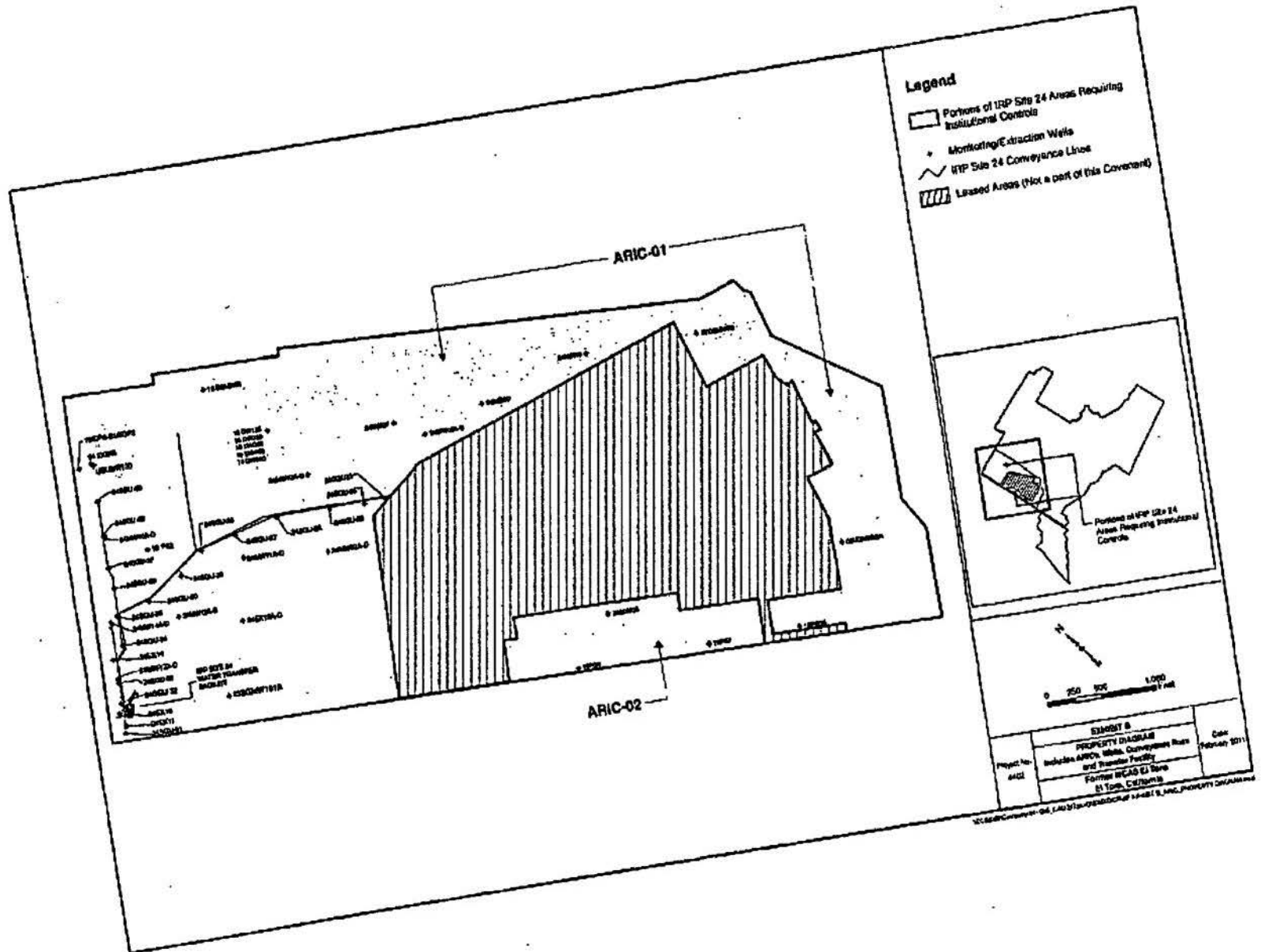


Exhibit C
Land Use Controls Compliance Certificate
Portions of Installation Restoration Program (IRP) Site 24
Former Marine Corps Air Station El Toro
EPA I.D. Number: CA6170023208

Property Owner: _____

This evaluation is the final Navy certification just prior to site conveyance (yes or no) _____

If for an annual inspection, this evaluation covers the period from through _____

Checklist

	<u>In Compliance</u>	<u>Non-Compliance</u>	<u>See Comment</u>
1) No installation of new groundwater wells of any type within the areas requiring institutional controls. ^{b,c}	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2) Transferee(s) have obtained permits for new wells as required by Orange County Health Care Agency and Irvine Ranch Water District (assuming approval from the Department of the Navy and the California Department of Toxic Substances Control). ^{b,c}	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3) No altering, disturbing, or removing groundwater monitoring wells and associated equipment within the areas requiring institutional controls. ^{b,c}	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4) VOC-impacted groundwater within the areas requiring institutional controls has not been used without prior approval from the Department of the Navy and California Department of Toxic Substances Control. ^{b,c}	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5) Any violations of these land-use restrictions were reported, and an explanation provided of those actions taken or planned to be taken, were provided within 10 days of discovery.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments:

Exhibit C (continued)
Land Use Controls Compliance Certificate
Portions of Installation Restoration Program (IRP) Site 24
Former Marine Corps Air Station El Toro
EPA I.D. Number: CA6170023208

I, the undersigned, hereby certify that the above-described land use restrictions have been complied with for the period noted. Alternately, any known deficiencies and completed or planned actions to address such deficiencies are described in the attached Explanation of Deficiencies.

Signature

Date

Notes:

- ^a A Homeowners Association may submit this form on behalf of all Property Owners, whose property is subject to the "Covenant to Restrict Use of Property - Former Marine Corps Air Station El Toro, For a Portion of IRP Site 24" and the Quitclaim Deed.
- ^b A property owner may seek a variance or termination of restrictions on the property contained in the state "Covenant to Restrict Use of Property - Former Marine Corps Air Station El Toro - For a Portion of IRP Site 24."
- ^c A property owner may seek a variance or termination of restrictions on the property contained in the Quitclaim Deed pursuant to the variance and termination provisions in that document.

Mail completed form(s) to the Department of the Navy (DON), U.S. Environmental Protection Agency (EPA), Department of Toxic Substances Control (DTSC), and Regional Water Quality Control Board (RWQCB) by January 15th of each calendar year.

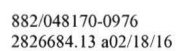
Department of the Navy
Base Realignment and Closure
Program Management Office West
1455 Frazee Road, Suite 900
San Diego, CA 92108-4310
Attention: Director

Department of Toxic Substances Control
Southern California Region
5796 Corporate Avenue
Cypress, CA 90630
Attn: Performance Manager
Brownfields and Environmental Restoration
Program

U.S. Environmental Protection Agency
Superfund (SDF 8-2) Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Santa Ana Regional Water Quality
Control Board
California Tower
3737 Main Street, Suite 500
Riverside, CA 92501-3348
Attn: Executive Officer

DEPICTION OF CITY IMPROVEMENTS AND ADJACENT CITY PROPERTY



**LESSOR CONSENT TO LEASEHOLD
DEED OF TRUST AND AGREEMENT**

Effective Date: _____, 2017

Lessor: City of Irvine, a California municipal corporation

Lessor's Notice Address: City of Irvine
City Hall
One Civic Center Plaza
Irvine, CA 92623-9575
Attention: City Manager

Facsimile: _____

Email: PCarmichael@CityofIrvine.org

Lessee: Irvine Ice Foundation

Lessee's Notice Address: Irvine Ice Foundation
3150 Barranca Parkway
Irvine, CA 92606-5202
Attention: William J. Foltz

Facsimile: _____

Email: bfoltz@hsventures.org

Lender: Farmers & Merchants Bank of Long Beach, its successors
and/or assigns

Lender's Notice Address: 302 Pine Avenue
Long Beach, California 90802
Attention: Jeffery R. Spinelli

Loan: \$75,000,000 U.S. loan made by Lender to Lessee

Lease: Ground Lease dated as of March 15, 2016 between Lessor
and Lessee

Leased Property:

The premises leased by Lessor to Lessee as described in the Lease.

LESSOR CONSENT TO LEASEHOLD DEED OF TRUST AND AGREEMENT

This Lessor Consent to Leasehold Deed of Trust and Agreement (as it may be amended, restated, supplemented, extended or renewed from time to time pursuant to the terms hereof, called this “**Agreement**”) is made as of the Effective Date by and among Lessor, Lender and Lessee.

BACKGROUND

A. Lessor is the fee owner of the real property described on **Exhibit “A”** (the “**Property**”). Lessor and Lessee have entered into a Lease with respect to the Property and improvements described in the Lease (called the “**Leased Property**”).

B. Lender has agreed to make the Loan to Lessee. The Loan will be secured by a Construction Leasehold Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (as the same may be modified, amended, replaced or supplemented from time to time, the “**Deed of Trust**”) with respect to Lessee’s interest under the Lease, as well as the collateral described on **Exhibit “B”** (the “**Collateral**”).

C. Capitalized terms used herein shall have the meanings ascribed to such terms as set forth in the Lease unless otherwise defined herein.

D. Lender and Lessee have requested that Lessor enter into this Agreement to define and describe the rights and obligations of Lender, Lessee, and Lessor with respect to the Lease and the Leased Property.

AGREEMENT

Lessor, Lessee, and Lender, as applicable, represents, warrants, covenants, and agree, by their respective execution of this Agreement, as follows:

1. **Lease.** Lessor represents, warrants and certifies to Lender that, as of the date of this Agreement: (a) the Lease, a memorandum of which is recorded concurrently herewith in the real property records in Orange County, California, is in full force and effect and is enforceable against Lessor in accordance with its terms; (b) upon Lessee’s satisfaction of all of the City Lease Conditions set forth in Section 4.2.1 of the Lease, the Commencement Date (e.g., the term for Lessee’s possession of the Leased Property) will commence, which term is comprised of an initial term of twenty-five (25) years, with up to five (5) renewal terms of five (5) years each; (c) for the period commencing upon the Commencement Date and continuing until the Construction Completion Date, rent under the Lease is the sum of One Dollar (\$1.00), and such rent has been paid, and for each Lease Year, rent under the Lease is the lesser of (i) twenty-five percent (25%) of the Project Cash Flow for such Lease Year, or (ii) the sum of Two Hundred Fifty Thousand Dollars (\$250,000); (d) no additional rent or charge (including taxes, maintenance, operating expenses or otherwise) that has been billed to Lessee by Lessor is overdue; (e) all conditions precedent to the effectiveness of the Lease have been fully satisfied and the Lease is in full force and effect; (f) no third party has any option or preferential right to purchase all or any part of the Leased Property; (g) Lessor has not received written notice that it is in violation of any

governmental law or regulation applicable to its interest in the Leased Property and has no reason to believe that there are grounds for any claim of any such violation; (h) no union of the interests of Lessor and Lessee will result in a merger of the Lease into any superior leasehold interest or the fee interest in the Leased Property; (i) as of the date hereof, the Lease has not been modified, amended, or changed in any material respect; (j) the Lease is the entire agreement conveying the leasehold interest in the Leased Property from Lessor to Lessee; and (k) to Lessor's actual knowledge, without duty of inquiry or investigation, there are no existing defaults by Lessee under the Lease nor has any event or omission occurred which, with the giving of notice or the lapse of time, or both, would constitute a default thereunder. Lessor acknowledges and agrees that no amendment, modification, or waiver of any provision of the Lease which impacts Lender will be effective and binding against Lender or the successors and assigns of Lender, unless the amendment, modification, or waiver has been approved in writing by Lender. Lessee and Lessor shall not enter into any agreement providing for the surrender, cancellation, or material amendment or modification of the Lease or this Agreement, and Lessor shall not accept a surrender of the Lease from Lessee, without the prior written consent of Lender, and no such surrender, cancellation, or material amendment or modification shall be binding on the Lender or Lessee without the prior written consent of the Lender. Lessor acknowledges that Lender is relying on this Agreement in connection with the Loan.

2. **Consent.** Lessor consents to the execution by Lessee of the Deed of Trust. The parties agree that the Deed of Trust and the other documents executed or delivered in connection with the Loan and any assignment thereof and any modification or amendment of any of the terms thereof, including, without limitation, any extension, renewal or refinancing of any indebtedness secured thereby or an additional advance secured by any leasehold mortgage or any additional leasehold mortgage now or hereafter given to secure the same (these documents, together with the Deed of Trust, being referred to as the **"Loan Documents"**), will only encumber the Collateral and Lessee's leasehold estate under the Lease and do not constitute a lien, encumbrance, assignment, or security interest on or with respect to Lessor's rights under the Lease or the fee interest in the Leased Property. Lessor acknowledges that the Deed of Trust may include a power of attorney in favor of Lender or other authorization for Lender to act in the place of Lessee. Lessor agrees to recognize and be bound by all actions undertaken by Lender in the place of Lessee and to accept the performance by Lender, to the extent provided in this Agreement. Lender shall not be deemed to have assumed Lessee's obligations under the Lease by virtue of Lender exercising its rights under any power of attorney unless and until Lender has completed a foreclosure of the Deed of Trust or accepted an assignment of the Lease in lieu of foreclosure as contemplated by Section 7 below. Lessor further acknowledges and agrees that (i) the Lender is an **"Approved Institution"** as defined in the Lease; (ii) the Deed of Trust constitutes a **"Leasehold Mortgage"** as defined in the Lease and (iii) the Lender is the **"Leasehold Mortgagee"** as defined in the Lease.

3. **Ownership of Improvements.** While the Lease is in effect, Lessee owns the buildings, structures, fixtures, and improvements located at the Leased Property (the **"Improvements"**); however, title to the Improvements shall vest in Lessor upon the expiration or earlier termination of the Lease (but Lessor's vesting is subject to the right of Lender to succeed to the Lessee's title to the Improvements as a result of Lender exercising its right to enter into a New Lease pursuant to Section 7 below).

4. **Subordination of Lessor's Lien as to Collateral.** Lessor subordinates any contractual, statutory, or common law landlord's lien or security interest that may now exist or that in the future may exist with respect to the Collateral, including any rights of levy or distraint for rent, to the Deed of Trust and the security interest of Lender in the Collateral. Further, Lessor agrees that, notwithstanding the terms of the Lease, the Deed of Trust and security interest of Lender in the Collateral shall be deemed senior to any such Lessor's lien and security interest that may now exist or that in the future may exist with respect to the Collateral.

5. **Lease Default; Cure by Lender.**

(a) Lessor will send Lender a copy of any notice of default that Lessor gives Lessee under the Lease (each, a "**Default Notice**") at the same time Lessor gives the Default Notice to Lessee.

(b) Lender may cure any Lessee default (a "**Lessee Default**") within the greater of (i) the thirty (30) days after the actual cure period provided to Lessee under the Lease, or (ii) ninety (90) days after Lender's receipt of a Default Notice of the Lessee Default. If the Lessee Default cannot be cured by the payment of money and Lender begins to cure the Lessee Default within forty-five (45) days after Lender's receipt of a Default Notice and diligently continues to cure the Lessee Default, the time period to cure will be extended for as long as is reasonably necessary to cure the Lessee Default. If the Lessee Default is not cured within the greater of the applicable cure period established in the Lease and the applicable cure period described above for Lender to cure the default, and Lessor elects to terminate the Lease or Lessee's right to possession of the Leased Property, Lessor shall send Lender a written notice of termination (the "**Termination Notice**") prior to terminating the Lease or right of possession.

(c) Any default by Lessee that is not susceptible of being cured by the Lender shall be deemed to have been waived (and all rights of Lessee under the Lease and this Agreement reinstated) by Lessor upon Lender's (or its designee's) completion of foreclosure proceedings or upon Lender's (or its designee's) acquisition of Lessee's interest in the Lease and this Agreement, it being understood and agreed that the Lender, or its designee, or any purchaser in foreclosure proceedings (including, without limitation, an entity formed by the Lender) may become the legal owner and holder of Lessee's interest under the Lease and this Agreement through such foreclosure proceedings or by assignment of Lessee's interest under the Lease and this Agreement in lieu of foreclosure. Lender expressly agrees that a monetary default, such as Lessee's failure to pay rent, under the Lease, is susceptible to being cured by the Lender.

(d) Lessor's recourse against Lender shall be expressly limited to the Lender's interest in the Lease.

(e) Lessor's rights to terminate the Lease for Lender's failure to continuously operate the Ice Rink at the Leased Property or pay rent shall be subject to the terms of Section 7(b) below.

(f) The foregoing provisions are in addition to any rights of a “**Leasehold Mortgagee**” (as defined in the Lease) under Section 18 of the Lease.

6. Lender’s Right with Respect to the Collateral.

(a) Subject to the terms and requirements in Section 8 below, Lender may remove the tangible Collateral from the Leased Property at all reasonable times after the occurrence and during the continuation of an Event of Default (as defined in the Loan Agreement) so long as Lender has given Lessor at least sixty (60) days prior written notice. Notice shall not be required, however, if Lessor has given a Termination Notice. Lender, at its option, will either repair any damage caused by the removal or reimburse Lessor for the reasonable cost of repairing the damage.

(b) If Lessor terminates the Lease or Lessee’s right to possession of the Leased Property, Lender may enter the Leased Property to remove the tangible Collateral for a period of ninety (90) days (the “**Removal Period**”) following receipt by Lender of the required Termination Notice. If Lender does not remove the tangible Collateral within the Removal Period, the tangible Collateral will be deemed abandoned by Lender, and Lessor may dispose of the tangible Collateral, at no cost to Lender and without liability to Lender, subject to the rights, if any, of Lessee under the Lease. A failure by Lessor to give Lender a Termination Notice will not affect the validity of any Lease termination but instead will only delay the commencement of the Removal Period until Lessor gives the Termination Notice to Lender.

(c) Except to the extent that, pursuant to the Lease, Lessee would have had the right to remove the items upon expiration of the term of the Lease, Lender, in exercising Lender’s rights pursuant to this Section 6, will not repossess or remove any item of property constituting fixtures or otherwise incorporated into the improvements at the Leased Property.

(d) Lender may enter upon the Leased Property at any reasonable time in order to inspect the Collateral.

(e) The foregoing provisions are in addition to any rights of a “**Leasehold Mortgagee**” (as defined in the Lease) under Section 18 of the Lease.

Notwithstanding anything herein to the contrary, Lender’s rights pursuant to this Section 6 to remove Collateral from the Leased Property are limited to Collateral valuing not more than the amount then outstanding under the Loan.

7. Lender’s Right to Assign Lease or Enter New Lease; Alternate Community Sports Use of Premises.

(a) Subject to the terms and requirements in Section 8 below, if Lender exercises its rights pursuant to the Deed of Trust and forecloses on Lessee’s interest in the Lease or obtains a deed or assignment of Lessee’s leasehold interest in lieu of foreclosure (the date upon which Lender acquires title pursuant to any of the foregoing, the “**Lender Acquisition Date**”):

(i) Lender will acquire and obtain the interest of Lessee under the Lease pursuant to the foreclosure or transfer in lieu of foreclosure.

(ii) If Lender acquires the interest of Lessee under the Lease, Lender may further and freely assign its interest as tenant under the Lease to any third party approved by Lessor, which approval will not be unreasonably withheld, conditioned, or delayed. So long as the assignee assumes in writing Lessee's obligations under the Lease from and after the date of assignment, then, upon an assignment of the Lease by Lender as provided in this Agreement, and provided Lender has cured or caused to be cured any Lessee Defaults capable of being cured by payment of money and any other Lessee Defaults reasonably susceptible of being cured, Lender shall be released from all liability for performance or observance of the covenants and conditions in the Lease and this Agreement from and after the date of such assignment.

(iii) At either Lender's or Lessor's written election following Lessor's termination of the Lease as to the interest of Lessee or if the Lease has been terminated or rejected in any bankruptcy or insolvency proceeding, then, in lieu of an assignment of the Lease, Lessor will enter into a new lease of the Leased Property with Lender or a third party described in Section 7(a)(ii) (a "**New Lease**"). The New Lease shall have the same terms as the Lease and for the remaining term of the Lease, subject to the terms of this Agreement. The Lessor, however, shall not be obligated to enter into any such New Lease unless all Lessee Defaults that can be cured by the payment of money and all other Lessee Defaults that are reasonably susceptible of being cured have been cured. Any request for a New Lease must be made by Lender within 60 days after the earlier of: (A) the Lender Acquisition Date; and (B) written notification by Lessor to Lender that the Lease has been terminated or rejected in Lessee's bankruptcy or insolvency proceedings.

(b) Subject to the terms of this subparagraph (b), if Lender or its designee becomes the tenant under the Lease and determines that use or continued use (as applicable) of the Leased Property as a community ice rink facility is "Commercially Infeasible" (as defined below), the following shall apply:

(i) Within forty-five (45) days of the Lender Acquisition Date, Lender or its assignee shall submit to Lessor a financial feasibility analysis of the ice rink facility and its operations that has been prepared, at Lender's cost, by Keyser Marston, or if Keyser Marston is no longer in business or has changed its operations or management, by another financial consulting firm reasonably acceptable to both Lessor and Lender, evidencing that continued use of the Leased Property as a community ice rink facility is Commercially Infeasible (the "**Commercially Infeasible Analysis**"). As used in this Agreement, use or continued use (as applicable) of the Leased Property as a community ice rink facility shall be deemed to be "**Commercially Infeasible**" if such use or continued use (as applicable) cannot for the foreseeable future generate sufficient revenue necessary to maintain operations and timely pay the amounts due under the Loan Documents (or otherwise support the debt service under the Loan).

(ii) Commencing upon the Lender Acquisition Date (but subject to Lender timely providing to Lessor the Commercially Infeasible Analysis pursuant to paragraph (i) above), and continuing until such time as Lessor has approved a “Lender Alternative Use Proposal” (as that term is defined in paragraph (iv) below) (the “**Use/Continuous Operation/Rent Suspension Period**”), any provisions of the Lease relating to the payment of rent, the operation of the Leased Property as a community ice rink facility or requiring continuous operation of the Leased Property shall be temporarily suspended or shall not apply. Notwithstanding the foregoing, however, the Use/Continuous Operation/Rent Suspension Period shall automatically terminate on the earlier of (x) sixty (60) days following the date Lender receives written notice from Lessor that Lender has failed to comply with the provisions of this Section 7(b), if Lender has failed to cure such nonperformance during said sixty (60) day period; or (y) the date that is eighteen (18) months from the Lender Acquisition Date. The Use/Continuous Operation/Rent Suspension Period may be extended beyond the initial eighteen (18) month period described in clause (y) of the foregoing sentence pursuant to the following requirements:

(A) Prior to expiration of the Use/Continuous Operation/Rent Suspension Period, Lender may submit to Lessor a written request for a six (6) month extension (each six (6) month such extension, an “**Extension**”). Lender may request a total of up to three (3) Extensions.

(B) City shall only consider a request for an Extension if Lender, in good faith, has fully complied with all of the provisions in this Section 7(b), including, without limitation, all of the reporting and meeting requirements set forth in paragraph (iii) below, but due to no fault of Lender, City and Lender have not agreed upon an alternative Community Sports Use.

(C) Subject to the terms of paragraph (B) above, City shall approve the first request for an Extension. City may, in City’s sole and absolute discretion, approve or deny any subsequent request for an Extension.

(iii) Within thirty (30) days after the Lender Acquisition Date, Lessor and Lender shall meet and confer, in good faith, and commence discussions for a possible alternative for-profit or nonprofit community sports or similar use of the Leased Property (any such use, a “**Community Sports Use**”). Throughout the remainder of the Use/Continuous Operation/Rent Suspension Period, Lender (or its assignee) shall, (i) use diligent efforts to determine an alternative Community Sports Use and identify a tenant that desires and is capable of operating the Leased Property as such new Community Sports Use (any such tenant, a “**Potential Tenant**”), and (ii) provide Lessor with written reports, not less frequently than monthly (unless a less frequent period is approved, in writing, by the City Manager of Lessor) (the “**Monthly Update Report**”), detailing Lender’s good faith efforts towards, and the status of, development and marketing plans for an alternative Community Sports Use and identifying any person or entity that could be a Potential Tenant, and shall meet with Lessor not less frequently than quarterly (unless a less frequent period is approved, in writing, by the City Manager of

Lessor) to discuss the Monthly Update Reports submitted in the prior three (3) months. During the Use/Continuous Operation/Rent Suspension Period, City shall not negotiate with any potential tenant for the lease or use of the Leased Property, except in consultation and coordination with Lender.

(iv) Lessor shall reasonably approve, disapprove or conditionally approve any proposed alternative Community Sports Use and Potential Tenant (each such proposal, a “**Lender Alternative Use Proposal**”) within sixty (60) days after Lessor’s receipt thereof. Notwithstanding anything herein to the contrary, use as a boxing, martial arts, mixed martial arts, or wrestling facility, or any use similar to boxing, martial arts, mixed martial arts, and/or wrestling, shall not constitute a Community Sports Use.

(v) Commencing on the first day of the first calendar month following Lessor’s approval of a Lender Alternative Use Proposal (any such approved alternative use contained in the Lender Alternative Use Proposal hereafter referred to as an “**Approved Use**”), Lender shall begin paying Lessor rent in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) per year.

(vi) Promptly following Lessor’s approval of a Lender Alternative Use Proposal, Lessor, in consultation with Lender, shall diligently and in good faith attempt to negotiate a lease agreement or an amendment of the New Lease with the Potential Tenant on terms generally similar to those set forth in the Lease and which sets forth, in addition to other provisions, (a) a detailed schedule of performance for the construction of improvements to the Leased Property necessary to enable the Approved Use, and the opening date for the Approved Use, and (b) the operating and management requirements for the Approved Use (the “**Approved Use New Lease**”). Notwithstanding anything to the contrary, the Approved Use New Lease shall require that the Leased Property be open to the public with the Approved Use within eighteen (18) months after Lessor’s approval of the Lender Alternative Use Proposal (the “**Opening/Operations Deadline**”). Until such time as the Approved Use New Lease is in effect, but subject to the Opening/Operations Deadline, any provisions of the Lease relating to the operation of the Leased Property as a community ice rink facility or requiring continuous operation of the Leased Property shall be temporarily suspended or shall not apply. At such time as the Approved Use New Lease is in effect, the terms of the Approved Use New Lease shall apply with respect to operation and use of the Leased Property and payment of rent.

(c) Concurrently with the execution and delivery of any New Lease or Approved Use New Lease pursuant to the terms of this Section 7, Lessor shall assign to the tenant named therein all of its right, title and interest in and to moneys (including insurance proceeds and condemnation awards), if any, then held by or payable to Lessor which Lessee would have been entitled to receive but for the termination of the Lease. Upon the execution of any New Lease or Approved Use New Lease (as applicable), the tenant named therein shall be entitled to any rent received under any sublease in effect during the period from the date of termination of the Lease to the date of execution of such

New Lease or Approved Use New Lease (as applicable). Effective upon the commencement of the term of any New Lease or Approved Use New Lease (as applicable), all subleases shall be assigned and transferred to the tenant under the New Lease or Approved Use New Lease (as applicable).

(d) The foregoing provisions are in addition to any rights of a **"Mortgagee"** (as defined in the Lease) under Section 18 of the Lease.

8. **Loan Default; Cure by Lessor.**

(a) Lender will send Lessor a copy of any notice of default that Lender gives Lessee under the Loan Documents (each, a **"Lender Default Notice"**) at the same time Lender gives the Lender Default Notice to Lessee; provided, the failure by Lessor to send any such notice to Lessor shall not extend or otherwise modify any cure rights of the Lessee under the Loan Documents.

(b) Lessor may cure any such Lessee default (a **"Lessee Loan Default"**) within the greater of (i) the thirty (30) days after the actual cure period provided to Lessee under the Loan Documents, or (ii) ninety (90) days after Lessor's receipt of a Lender Default Notice of the Lessee Loan Default. If the Lessee Loan Default cannot be cured by the payment of money and Lessor begins to cure the Lessee Loan Default within thirty (30) days after Lessor's receipt of a Lender Default Notice and diligently continues to cure the Lessee Loan Default, the time period to cure will be extended for as long as is reasonably necessary to cure the Lessee Loan Default. If the Lessee Loan Default is not cured within the greater of the applicable cure period established in the Loan Documents and the applicable cure period described above for Lessor to cure the default, and Lender elects to exercise any of its rights under the Loan Documents, including, without limitation, acceleration of the Loan, Lender shall send Lessor a written notice, specifying the rights elected by Lender (a **"Lender Exercise Notice"**) prior to Lender taking any such action.

9. **Lessee's Joinder and Consent to Lessor's Actions.** Lessee consents to the execution and delivery of this Agreement and Lessee agrees to the terms and conditions of this Agreement notwithstanding any provision of the Lease or the Loan Documents to the contrary. Lessee agrees that, from and after any Lessee Default and without creating any liability of Lessor in favor of Lessee, Lessor may take any and all actions deemed advisable by Lessor in order to exercise its rights under this Agreement, including communicating and or entering into agreements directly with Lender (with or without Lessee's knowledge and participation) regarding the Leased Property, the Lease, the Loan Documents and the subject matter of this Agreement. Lessee releases Lessor and agrees to defend, indemnify, and hold harmless Lessor and the Orange County Great Park Corporation and their respective elected and appointed boards, members, officials, officers, agents, contractors, representatives, employees and volunteers, for, from, and against any loss, claim, damage, or expense relating to the Loan, Loan Agreement, Deed of Trust or this Agreement, including Lessor's exercise of its rights under this Agreement. The foregoing indemnity shall be in addition to and not in limitation of any indemnities or similar agreements contained in the Lease and the foregoing indemnity shall survive the expiration or termination of this Agreement and/or the Lease.

10. **Insurance Proceeds and Condemnation Awards.** Notwithstanding any provision of the Lease to the contrary, upon any casualty or condemnation, the portion of the insurance proceeds or condemnation awards allocable to the leasehold estate shall be paid first to Lender or its assignee to satisfy the outstanding principal balance of the Loan and all accrued and unpaid interest thereon and then shall be allocated between Lessor and Lessee in accordance with the terms of the Lease. Notwithstanding the foregoing, Lender agrees that so long as no event of default has occurred and is continuing pursuant to the Loan Documents, insurance proceeds and condemnation awards will be applied to repair and restore the Leased Property as more particularly provided in the Lease. Upon the Lender's request, the name of such Lender may be added to the "**Loss Payable Endorsement**" of any and all insurance policies required to be carried by the Lessee under the Lease.

11. **Lessor Confirmation.** Within 10 days after a request by Lender, Lessor shall provide Lender with a signed statement indicating whether the Lease, and any amendments, is in full force and effect, and whether or not any defaults exist under the Lease.

12. **Notices.**

(a) **Addresses.** All notices, demands, requests, directions, or other communications (collectively, "**Notices**") required or expressly authorized to be made pursuant to this Agreement will be written and addressed: (i) if to Lessor to the address established for Lessor on the first page of this Agreement or any other address as shall be notified in writing to Lender after the Effective Date; (ii) if to Lender, at the address established for Lender on the first page of the Agreement or any other address as shall be notified in writing to Lender after the Effective Date; and (iii) if to Lessee at the address established for Lessee on the first page of the Agreement or any other address as shall be notified in writing to Lessor and Lender after the Effective Date. Notices may be given by hand delivery; by overnight delivery service, freight prepaid; or by US mail, postage paid.

(b) **Effectiveness.** Notices given as described above shall be effective and be deemed to have been received: (i) upon personal delivery to a responsible individual at the address of the recipient, if the Notice is given by hand delivery; (ii) one business day after delivery to an overnight delivery service, if notice is given by overnight delivery service; and (iii) two business days following deposit in US mail, if notice is given by US mail.

13. **General Provisions.**

(a) **No Effect on Documents.** Except as specifically described in this Agreement, nothing contained in this Agreement shall have any effect whatsoever on: (i) the Lease or any document related to the Lease or executed in connection with the Lease; (ii) the obligations of Lessee under the Lease or any other document executed by and between Lessee and Lessor, whether or not related to the Leased Property; (iii) the rights of Lessor under the Lease or any document related to the Lease or executed in connection with the Lease or any other document executed by and between Lessee and Lessor, whether or not related to the Leased Property; or (iv) guaranties of the Lease, if any, and Lessor specifically retains any and all rights it may have against any guarantors of any of Lessee's obligations under the Lease.

(b) ***Successors and Assigns.*** This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, representatives, successors, and assigns.

(c) ***Controlling Law.*** This Agreement is made and entered into under, and shall be construed according to, the laws of the State and the jurisdiction where the Leased Property are located.

(d) ***Inconsistent Provisions.*** If any of the provisions, terms, and conditions of this Agreement are inconsistent or conflict with any of the terms and provisions of the Lease, the Loan Documents, any amendments to the foregoing, or any other documents executed in connection with the Lease or the Loan Documents, the provisions, terms, and conditions of this Agreement shall control. That notwithstanding, the fact that any of this Agreement, the Lease, the Loan Documents, any amendments to the foregoing, or any other documents executed in connection with the Lease or the Loan Documents provide for greater, lesser or different obligations or requirements shall not be deemed a conflict unless the applicable provisions are inconsistent and could not be simultaneously enforced or performed.

(e) ***Lessor and Lessor's Liability under this Agreement; Fee Deed of Trust.*** The term "**Lessor**" as used in this Agreement means the fee title owner from time to time of the Leased Property. If any mortgage, deed of trust, deed to secure debt, or similar instrument encumbers Lessor's interest in the Leased Property (a "**Fee Mortgage**") and is senior in priority to the Lease, Lessor agrees to: (i) obtain a non-disturbance agreement in form reasonably satisfactory to Lender pursuant to which the holder of the Fee Mortgage agrees not to disturb the possession of Lender and its successors and assigns so long as Lender and its successors and assigns comply with this Agreement; and/or (ii) obtain the consent of the holder of the Fee Mortgage to this agreement in form reasonably satisfactory to Lender.

(f) ***WAIVER OF JURY TRIAL.*** LESSOR, LESSEE AND LENDER, TO THE FULLEST EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT AND ANY OTHER TRANSACTION CONTEMPLATED BY THE LEASE. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.

(g) ***Execution and Counterparts.*** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart.

(h) **No Merger.** If fee title to the Leased Property and the leasehold estate of Lessee pursuant to the Lease are held by the same person, the interest shall not merge but shall remain separate and distinct. No union of the interests of Lessor and Lessee shall result in a merger of the Lease into any superior leasehold interest or the fee interest in the Leased Property.

(i) **Entire Agreement.** This Agreement embodies the entire agreement of the parties and supersedes all prior agreements and understandings, oral or written, relating to its subject matter. Lessor and Lessee acknowledge and affirm that Lessor or Lessee, as the case may be, did not rely on any statement, oral or written, not contained in this Agreement in making its decisions to enter into this Agreement

(j) **Run with Land.** This Agreement, the covenants, terms and conditions hereof and the rights and obligations created hereby shall run with the land and be binding upon and inure to the benefit of Lessor, Lessee, Lender and their respective successors and assigns.

(k) **Termination.** This Agreement, the covenants, terms and conditions hereof and the rights and the obligations created hereby shall terminate upon the satisfaction in full of all indebtedness and other obligations related to the Loan secured by the Deed of Trust.

[The remainder of this page is intentionally left blank.]

[Signatures follow on next pages.]

COUNTERPART SIGNATURE PAGE

This Lessor Consent to Leasehold Deed of Trust and Agreement is executed and delivered as of the Effective Date described above.

LESSOR:

CITY OF IRVINE

By: _____

Name _____

Title _____

[Lessor Consent to Lessor Deed of Trust and Agreement]

COUNTERPART SIGNATURE PAGE

This Lessor Consent to Leasehold Deed of Trust and Agreement is executed and delivered as of the Effective Date described above.

LESSEE:

IRVINE ICE FOUNDATION

By: _____

Name _____

Title _____

[Lessor Consent to Leasehold Deed of Trust and Agreement]

COUNTERPART SIGNATURE PAGE

This Lessor Consent to Leasehold Deed of Trust and Agreement is executed and delivered as of the Effective Date described above.

LENDER:

FARMERS AND MERCHANTS BANK OF
LONG BEACH

By: _____
Name:
Title:

[Lessor Consent to Leasehold Deed of Trust and Agreement]

EXHIBIT A

DUCKS TRAINING SITE:

THAT CERTAIN PARCEL OF LAND IN THE CITY OF IRVINE, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF LOT 279 AS SHOWN ON RECORD OF SURVEY 97-1038, FILED IN BOOK 171, PAGES 1 THROUGH 49, INCLUSIVE, OF RECORDS OF SURVEY, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

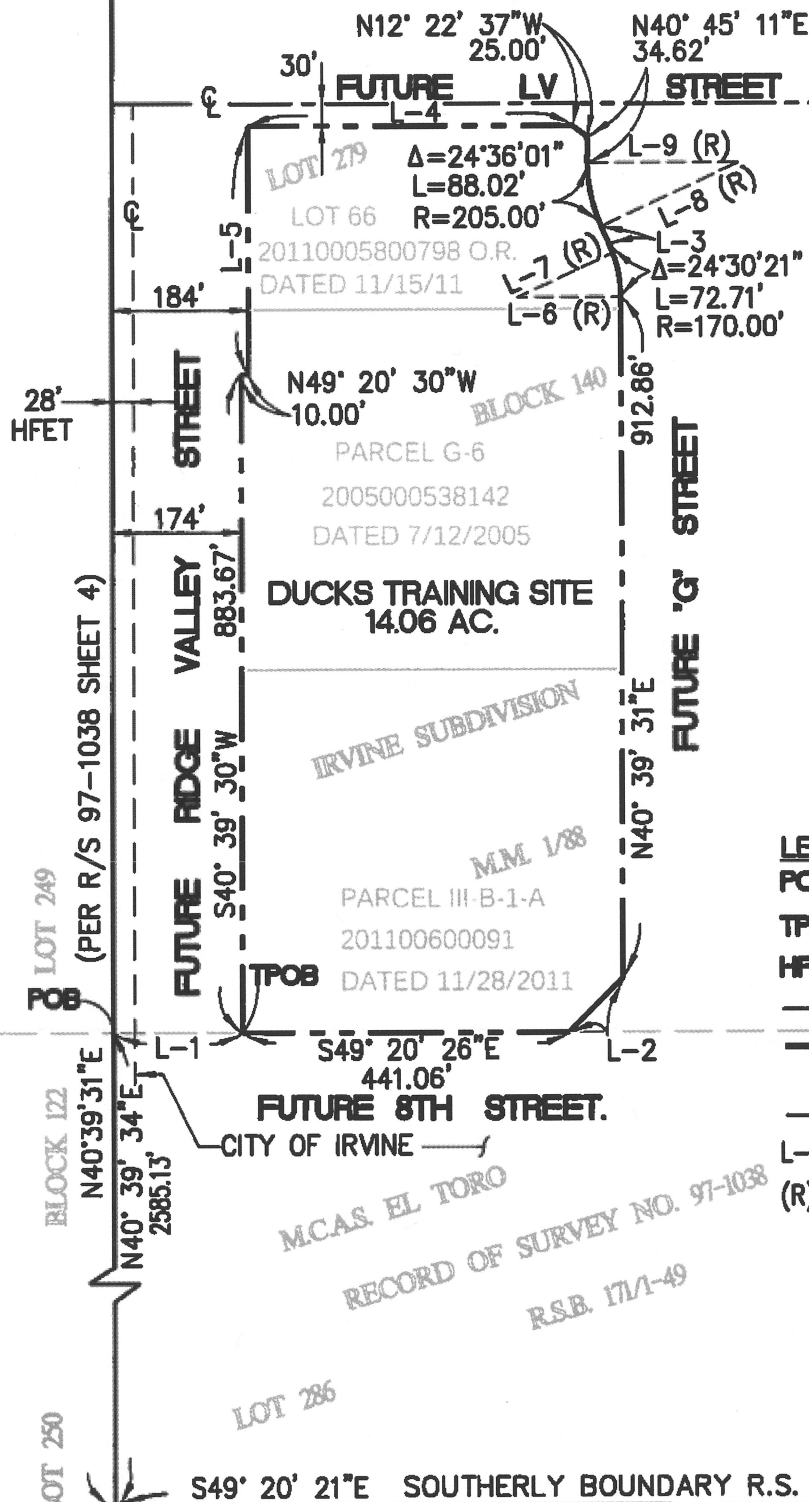
BEGINNING AT A POINT IN THE WESTERLY LINE OF SAID RECORD OF SURVEY BEING NORTHERLY AND DISTANT 2585.13' FEET FROM THE SOUTHWESTERLY TERMINUS OF SAID LINE HAVING A BEARING OF NORTH 40°39'34" EAST, SAID POINT BEING THE **POINT OF BEGINNING (POB)**; THENCE DEPARTING FROM SAID WESTERLY LINE SOUTH 49°20'26" EAST 174.00' FEET TO THE **TRUE POINT OF BEGINNING (TPOB)**; THENCE SOUTH 49°20'26" EAST 441.06' FEET; THENCE NORTH 85°39'31" EAST 103.20' FEET; THENCE NORTH 40°39'31" EAST 912.86' FEET, TO THE BEGINNING OF A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 170.00' FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS NORTH 49° 20' 29" WEST; THENCE NORTHERLY ALONG SAID CURVE 72.71' FEET THROUGH A CENTRAL ANGLE OF 24° 30' 21"; THENCE NORTH 16°09'10" EAST 26.62" FEET; TO THE BEGINNING OF CURVE CONCAVE EASTERLY HAVING A RADIUS OF 205.00' FEET, A RADIAL LINE TO SAID BEGINNING OF CURVE BEARS NORTH 73° 50' 50 " WEST; THENCE NORTHERLY ALONG SAID CURVE 88.02' FEET THROUGH A CENTRAL ANGLE OF 24° 36' 01"; THENCE NORTH 40° 45' 11" EAST 34.62' ; THENCE NORTH 12° 22' 37" WEST 25.00' FEET; THENCE NORTH 49°14'49" WEST 439.31'; THENCE SOUTH 40° 39' 30" WEST 332.63' FEET; THENCE NORTH 49° 20' 49" WEST 10.00' ; THENCE SOUTH 40° 39' 30" WEST 883.67' FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 14.06 ACRES, MORE OR LESS.

MORE PARTICULARY SHOWN ON EXHIBIT B ATTACHED HERETO AND BY THIS REFERENCE MADE A PART THEREOF

SUBJECT TO ANY COVENANTS, CONDITIONS, RESTRICTIONS OR EASEMENTS OF RECORD, IF ANY

DEREK J. MCGREGOR P.L.S #6496 EXP. 6/30/2017

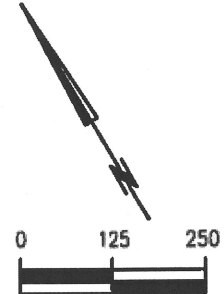


LINE TABLE

ID	COURSE	DISTANCE
L-1	S49° 20' 26"E	174.00'
L-2	N85° 39' 31"E	103.20'
L-3	N16° 09' 10"E	26.62
L-4	N49° 14' 49"W	439.31'
L-5	S40° 39' 30"W	332.63'
L-6	S49° 20' 29"E	170.00'
L-7	S73° 50' 50"E	170.00'
L-8	S73° 50' 50"E	205.00'
L-9	N49° 14' 49"W	205.00'

LEGEND:

POB	POINT OF BEGINNING
TPOB	TRUE POINT OF BEGINNING
HFET	HERITAGE FIELDS EL TORO
---	CENTER LINE
---	DUCKS TRAINING PARCEL BOUNDARY LINE.
---	PARK BOUNDARY LINE IDENTIFICATION (ID)
L-8 (R)	RADIAL



SCALE: 1"=250'

LEGAL DESCRIPTION:

That portion of Lot 279 of Block 140 in the City of Irvine, County of Orange, State of California, as shown on Irvin's Subdivision, filed in Book 1 page 88, M.M.

PREPARED BY:



DMC ENGINEERING

CIVIL • SURVEYING • PLANNING • CONSTRUCTION

Tel: (949) 753-9393 • Fax: (949) 753-9322

18 Technology Drive, Suite 100, Irvine, California 92618

E-Mail: dmc@dmcceng.com • www.dmceng.com

SCALE: 1"=250'

DRAFTED BY: MR

CHKD BY: DJM

DATE: 12-18-15

SHEET 1 OF 1

ORANGE COUNTY GREAT PARK

REV 1

REV 2

EXHIBIT B

IRVINE ICE FOUNDATION COLLATERAL DESCRIPTION

A 270,000 square foot ice and sports complex with classrooms, offices and meeting rooms and (b) an approximately 30,231 square foot, one-story building with four ice rinks, training facilities, team rooms, classrooms, administrative space, a parking lot, and other ancillary facilities (the "Collateral")

2.2

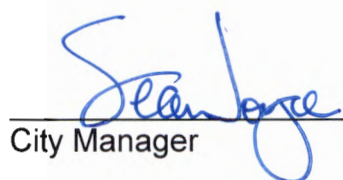


REQUEST FOR BOARD ACTION

MEETING DATE: APRIL 25, 2017

TITLE: SCOREBOARDS AND SPONSORSHIP AT THE GREAT PARK SPORTS COMPLEX


Director, Orange County Great Park


City Manager

RECOMMENDED ACTION

1. Recommend the City Council authorize the City Manager to execute Second Amendment to August 4, 2016 Letter Agreement Between the City of Irvine and Heritage Fields El Toro, LLC Regarding Expenditure of Quimby Funds for Additional Sports Park Improvements.
2. Recommend the City Council approve a budget appropriation of \$517,175 from the unallocated Great Park Fund balance to the Capital Improvement Project Fund, Project No. 361616, Sports Park Subarea Improvements, for the recommended scoreboard design enhancements.

EXECUTIVE SUMMARY

On September 8, 2015, the City Council approved the use of \$4,686,314 for design and construction enhancements within the Sports Park. On August 9, 2016, the City Council approved a Letter Agreement with Heritage Fields specifying the terms and procedures governing the payment for those Sports Park enhancements. The letter authorized an escrow account through which Heritage Fields has drawn funds for construction of the designated enhancements. The Letter Agreement dated August 4, 2016 is included as Attachment 1.

As Sports Park construction has progressed, City staff has worked closely with Five Point Communities (Five Point), Development Manager for Heritage Fields, to finalize design and identify opportunities for reducing long-term cost of ownership and enhancing revenue. One such opportunity is the potential for incorporation of sponsorship and advertising at the Sports Park, based on its potential as a regional draw for tournaments and other major sporting events. Staff has engaged a consultant to evaluate the City's options for sponsorship and advertising, including projected costs and return on investment, and plans to return to the Board for consideration this summer.

One important potential platform for sponsorship is the sports facility scoreboards planned for each of the five primary sporting facilities. As final design has progressed and the opportunities for sponsorship have become more clear, several enhancements to the scoreboards have been proposed by Five Point to provide prominent naming opportunities and improved advertising platforms. Based on the long lead time for materials and a narrowing window of constructability (as sidewalks, buildings, and landscaping is installed around scoreboard locations), a decision needs to be made as soon as possible regarding the additional investment.

The proposal includes three primary enhancements as outlined below. An exhibit showing a comparison of the specified scoreboards with the proposed enhanced scoreboards is included as Attachment 2.

- Field/Court Naming – Addition of prominent field and court naming signage at volleyball, tennis, baseball, softball championship facilities and non-championship fields.
- Upgraded Advertising Platform - Upgrade of scoreboards to a custom-fabricated pole and frame system allowing for significantly larger, internally-lit advertising panels at Championship soccer, and later additions to Championship baseball and softball. The structural framework and space for the later additions of internally-lit advertising panels at tennis and volleyball facilities where currently there are none.
- Aesthetics – The proposed design would adapt the look and feel of the large, prominent scoreboard structures to be more consistent with the contemporary architecture of the adjacent Sports Park stadium and support buildings.

The cost of the proposed upgrades is \$517,175. A preliminary estimate of these enhancements, performed by the City's consultant, Kosmont Companies, suggests that the marginal increase in sponsorship and advertising revenue would be in the range of \$50,000 to \$75,000 annually for a return on investment of approximately 10 to 15 percent. The consultant felt that this return could improve if the naming and advertising on the scoreboards were bundled with a more comprehensive package for sponsorship and advertising throughout the Sports Park.

Staff recommends an appropriation of \$517,175 from the available Great Park fund balance to pay for the scoreboard enhancements. If approved by the Board and City Council, the upgraded scoreboards would be ordered and installed by Five Point and funded by way of an amendment to the Letter Agreement with Heritage Fields governing the payment for Sports Park design enhancements. Amendment No. 2 to the Letter Agreement (Attachment 3) contains a brief description of the enhancements above and would subject the withdrawal of funds by Five Point to the same control provisions regarding costs and the release of funds in place for enhancements previously approved by the Board and City Council.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Not applicable.

ANALYSIS

On November 26, 2013, the City Council approved the Second Agreement with City of Irvine as Adjacent Landowner (ALA II) between the City of Irvine and Heritage Fields El Toro, LLC. (Heritage Fields). The ALA II set forth the concept plans and programming for the development of 688 acres within the Orange County Great Park. The ALA II further subdivided the 688-acre Great Park Improvement Area into a number of subareas, one of which is the Sports Park. Construction of Phase 1 of the Sports Park is underway and includes a 2,500 seat soccer stadium, six soccer fields, six volleyball courts, 25 tennis courts and associated support buildings.

On September 8, 2015, the City Council approved \$4,686,314 to be used for selected design enhancements within the Sports Park. The appropriation was necessary as the cost of the enhancements exceeded the Additional Allowance Fund, a set-aside designated in the ALA II for City-selected improvements beyond the basic scope of work. On August 9, 2016, the City Council approved a Letter Agreement with Heritage Fields specifying the terms and procedures governing the payment for the enhancements previously approved by the City Council. The Letter Agreement includes a summary of the design enhancements and the associated cost for each item. It also includes control provisions regarding costs and the release of funds that requires City review and approval.

As construction of the Sports Complex has progressed, City staff has worked with representatives from Five Point to finalize design. As is typical in a large construction project, design challenges and opportunities arise during the process that can be addressed during construction far more efficiently than after completion. These situations often present the chance to reduce the City's long-term cost of ownership or increase revenue. One such opportunity is the integration of sponsorship and advertising at the Sports Park. The size and quality of the facilities will likely position the Sports Park as a highly sought-after regional destination. As such, there is a distinct opportunity to integrate sponsorship into the design and programming of the Sports Park facilities. Potential examples include: field and/or stadium naming, integration of advertising in wayfinding or other digital displays, and inclusion of sponsorship or advertising at other high visibility locations in the Great Park.

To assist in evaluating potential sponsorship opportunities, including costs and potential return on investment, staff has engaged Kosmont Companies, a real estate and financial advisory firm. The firm put together a small team with specific expertise in sports facility sponsorship and marketing to develop options for the strategic integration of sponsorship

and advertising. Staff plans to bring these options to the Board and City Council for consideration this summer.

One important potential platform for sponsorship is the sports facility scoreboards. The Sports Park design calls for scoreboards at each of the five primary sporting facilities, including soccer, tennis, baseball, softball, and volleyball. The scoreboards are mounted on poles, elevated above fence lines and other obstructions, providing clear line of site for visitors and spectators. As final design has progressed for the Sports Park and the opportunities for sponsorship have become more clear, several enhancements to the scoreboards have been proposed by Five Point. Due to the progress of construction, these proposed enhancements have become a critical path item in construction sequencing. Based on the lead time for procurement of materials and the narrowing window of constructability (as sidewalks, buildings, and landscaping are installed around scoreboard locations), a decision needs to be made as soon as possible regarding the additional investment in the scoreboard enhancements.

The cost of the proposed upgrades is \$517,175 and includes enhancements to the scoreboards at the championship facilities for each of the five major sports. Attachment 2 to this report shows a comparison of the currently specified and proposed scoreboards for each of the facilities. The enhancements are summarized below.

- Field / Court Naming – The proposed scoreboards would add a prominent naming platform for the volleyball, tennis, softball, baseball championship facilities and non-championship fields. The naming platform at the soccer stadium would be illuminated.
- Upgraded Advertising Platform –
 - a. In the current specification, up-lit advertising panels are included at the soccer, baseball and softball championship facilities. Due to the limited capacity of the poles, footings and sign assembly, the advertising panels are relatively small at 3 feet by 5 feet. The proposed scoreboards are built on a custom-fabricated pole and frame system with increased structural capacity that provides for larger advertising panels of up to 12 feet by 8 feet on soccer and expanded panels on the other championship scoreboards.
 - b. The signage panels at the soccer, baseball and softball championship facilities would be light boxes with internal LED lighting, rather than the currently specified external up-lighting, which would improve visibility.
 - c. Internally-lit advertising panels would be included at the championship tennis and volleyball courts where currently none exist.
- Aesthetics – The proposed design would adapt the look and feel of the prominent scoreboard structures to be more consistent with the contemporary architecture of the adjacent Sports Park stadium and support buildings. The structures would adopt the architecture's clean lines, and add a curved roof line suggestive of the

shade structures at each of the stadiums. The custom scoreboards black frames and white poles provide architectural consistency and improved visibility.

The total cost of \$517,175 is broken down in further detail across each of the proposed facilities below.

Scoreboard Enhancement	Original Cost	New Cost	Increase
Championship Soccer	\$228,965	\$453,965	\$225,000
Championship Tennis	\$34,800	\$63,550	\$28,750
Championship Volleyball	\$4,080	\$36,755	\$32,675
Championship Softball	\$32,080	\$134,080	\$102,000
Championship Baseball	\$51,655	\$180,405	\$128,750
Total	\$351,580	\$868,755	\$517,175

The City's consultant, Kosmont Companies, performed a preliminary evaluation of the potential return on investment for the upgraded scoreboard naming and advertising features. The consultant took a conservative approach, assuming that the enhanced revenue opportunity was limited only to the larger, more visible advertising panels and field naming platforms without any more comprehensive, packaged sponsorship opportunities in the Sports Park. Based on this rough analysis, the marginal increase in annual revenue based on the upgraded scoreboards is anticipated to be approximately \$50,000 to \$75,000. This represents an approximate 10 to 15 percent annual return on investment, significantly higher than the average annual return that these same funds yield in the Great Park Fund balance.

The anticipated return on the investment in the enhanced scoreboards may be improved as a more comprehensive approach to sponsorship and advertising at the Sports Park is developed. Staff anticipates a return to the Board this summer for consideration of a more comprehensive approach. Depending on Board direction, a more strategic approach throughout the Sports Park may include stadium building and sports complex naming, integration of advertising into wayfinding signage and digital displays, and other placement opportunities throughout the park. An investment in enhanced scoreboards now creates a more robust platform for sponsorship and advertising that could be packaged with a more comprehensive opportunity throughout the Sports Park, improving the potential for additional revenue in the future.

If the Board and City Council approves the investment in enhancements to the scoreboards, staff recommends an Amendment to the Letter Agreement Regarding the Use of City Funds for Sports Park Design Enhancements. This would be Amendment No. 2 to this agreement and would increase the funds available by \$517,175. The amendment would also include a list of the scoreboard enhancements authorized for payment out of the account, similar to previous enhancements authorized by the Board and City Council. The Letter Agreement includes control provisions regarding costs and the release of

funds. Each request for release of funds by Five Point must be reviewed and approved by City staff before funds are released.

ALTERNATIVES CONSIDERED

The Board could choose not to recommend that the City Council approve the appropriation for scoreboard enhancements and proceed with the currently specified scoreboards. Further, the Board may wish to await a more comprehensive evaluation of sponsorship and advertising opportunities at the Park prior to committing funds.

The scoreboard enhancements are being presented to the Board at this time given the importance of a timely decision to prevent construction delays. Making the investment now in the enhanced scoreboards allows for installation to occur during the construction phase to minimize later disruption, while preserving the opportunities for future placement of advertising and sponsorship panels on the scoreboards as the options are determined through a comprehensive evaluation.

FINANCIAL IMPACT

The total cost for the design enhancements to the Sports Park scoreboards is \$517,175. The proposed upgrades to the scoreboards would enhance visibility, increase advertising and naming opportunities, and potentially increase future advertising and sponsorship revenues for the City. Based on preliminary estimates, the enhanced scoreboards could yield \$50,000 to \$75,000 in additional revenue annually for a return on investment of approximately 10 to 15 percent. Further, a comprehensive approach to sponsorship and advertising will be developed over the next several months and brought forth for consideration. If the Board and City Council direct staff to pursue other opportunities in this regard, the upgraded scoreboards could be bundled with other naming and advertising to generate additional revenue.

Unless otherwise directed, these funds are to be drawn from the unallocated Great Park Fund balance and transferred to the Capital Improvement Project Fund, Project No. 361616, Sports Park Subarea Improvements. The current Great Park unallocated fund balance is \$44.9 million.

REPORT PREPARED BY

Christopher Koster, Manager Great Park Planning and Development

ATTACHMENTS

1. Letter Agreement dated August 4, 2016 Regarding the Use of City Funds for Sports Park Design Enhancements
2. Comparison of currently specified and proposed scoreboards
3. Second Amendment to August 4, 2016 Letter Agreement Between the City of Irvine and Heritage Fields El Toro, LLC Regarding Expenditure of Quimby Funds for Additional Sports Park Improvements

Heritage Fields El Toro, LLC

August 4, 2016

City of Irvine
City Hall
One Civic Center Plaza
Irvine, California 92623-9575
Attention: Eric Tolles, Assistant City Manager–Great Park

Re: Second Agreement with City of Irvine as Adjacent Landowner, dated November 26, 2013 (“**ALA2**”), by and between HERITAGE FIELDS EL TORO, LLC, a Delaware limited liability company (“**Heritage Fields**”), and THE CITY OF IRVINE, a California charter city (the “**City**”)

Dear Mr. Tolles:

Reference is hereby made to the ALA2; capitalized terms not defined in this letter agreement (“**Letter Agreement**”) shall have the meaning ascribed to such terms in the ALA2, unless otherwise indicated.

On July 28, 2015, the Orange County Great Park Board approved the plans for the 175-acre Sports Park Subarea and recommended allocating the entire Additional Allowance Fund for this particular Subarea in the amount of \$5,040,000 to enhancements to be incorporated into the Sports Park Subarea. On September 8, 2015, the City Council took several actions, including appropriating funds in the amount of \$4,686,314.00 from available City Quimby funds to pay for additional enhancements to the Sports Park (the “**Quimby Allowance**”), and approving the list of specific enhancements to be financed by the Quimby Allowance, including an additional restroom facility, additional shade structure, entry gates, fencing, upgraded scoreboards and backstops, and other items, all as more particularly detailed on Exhibit A attached to this Letter Agreement (the “**Quimby Improvements**”). Given the integrated nature of the Quimby Improvements with the Sports Park Subarea improvements being designed and constructed by Heritage Fields, the City desires to have Heritage Fields design and construct the Quimby Improvements as part of its overall work on the Sports Park Subarea, subject to the City’s obligation to fund such design and construction.

While Heritage Fields has no obligation to design, construct or otherwise install the Quimby Improvements (also referred to as the “**Additional Sports Park Work**”), in order to allow for the efficient completion of the Additional Sports Park Work, Heritage Fields and the City agree to follow the procedures set forth in this Letter Agreement with respect to completion of the Additional Sports Park Work.

1. **Appointing Representatives** – For purposes of implementing the Additional Sports Park Work, Heritage Fields hereby appoints LJ Edgcomb (the “**Heritage Fields Representative**”), and the City appoints Eric Tolles (the “**City Representative**,” and together with the Heritage Fields Representative, each a “**Representative**”), each to be the point of contact for his respective Party. Either Party may change that Party’s representative by written notice to the other Party.
2. **Improvements to be Incorporated into the Great Park Improvements** – Subject to the City’s satisfaction of the terms and conditions specified in this Letter Agreement, including without limitation the obligation to pay Heritage Fields for all the fees, costs (including design costs) and expenses of the Additional Sports Park Work, Heritage Fields shall design and cause the construction of the Additional Sports Park Work as part of the Great Park Improvements. The provisions of the ALA2 applicable to Heritage Fields’ construction of the Great Park Improvements shall also apply to the Additional Sports Park Work, provided that, in all cases the cost of the Additional Sports Park Work shall be paid to Heritage Fields by the City in accordance with this Letter Agreement. The City acknowledges and agrees that the Additional Sports Park Work may

be built in phases, and that disbursements from the Escrow Agent (defined below) may be requested in accordance with the terms of this Letter Agreement in order to fund such phased construction of the Additional Sports Park Work. The Additional Sports Park Work shall be performed concurrently with the corresponding phases of Sports Park Subarea improvements being designed and constructed by Heritage Fields.

3. **Finalization of the Improvement Plans / Responsibility for Cost Overruns** – Heritage Fields has caused design drawings and plans to be prepared and has obtained bids for the Additional Sports Park Work. The Quimby Allowance is based on those bids and Heritage Fields' estimate of the cost of the Quimby Improvements at the time the Quimby Allowance was approved by the City Council. However, the Parties recognize that the plans and specifications for the Quimby Improvements have not yet been approved by the City, and may not reflect the final design, construction, soft costs and other costs associated with construction of the Quimby Improvements.
 - a. **Design** - Heritage Fields will cause engineers, architects and other consultants to prepare plans and specifications for the Additional Sports Park Work to be reviewed by the City pursuant to its normal regulatory process. Such plans and specifications shall indicate the scope and parameters of the Additional Sports Park Work separate and apart from the remainder of the Great Park Improvements.
 - b. **City Changes** - If there are any changes to the scope or design of the Additional Sports Park Work resulting from the plan check or other regulatory review or inspection process, such changes shall be subject to Heritage Fields' review and approval. Notwithstanding Section 2(c) of the ALA2, or anything else to the contrary, to the extent any changes to the Additional Sports Park Work are required by the City during the plan check process, or at any time prior to the acceptance of the Additional Sports Park Work by the City, such changes shall be undertaken by Heritage Fields at the sole cost and expense of the City, and if necessary the City shall allocate additional funding for the Quimby Allowance (in the case of the Quimby Improvements) to cover such additional costs. Upon imposition of a change or additional requirement by the City (whether through the regulatory review process or otherwise), Heritage Fields shall deliver written notice to the City which notice shall set forth in reasonable detail the estimated additional costs of such change or requirement and the City shall allocate additional funding for the Additional Sports Park Work to cover such additional costs. If the City Representative does not commit in writing to fund such change or additional requirement within ten (10) business days after receipt of the notice, Heritage Fields shall have no obligation to implement such requested change or additional requirement, provided that if such change or additional requirement is required to conform to a mandated code change, Uniform Construction Codes or a building or construction requirement pursuant to state or federal law, and the City does not commit in writing to fund such change or additional requirement within ten (10) business days of receipt of the notice, then Heritage Fields shall not proceed with the Additional Sports Park Work impacted by such change.
 - c. **Cost Increases** - To the extent the price of the Additional Sports Park Work, as reflected in the final bids for such contracts or in any change order with respect to such contracts, exceeds the Quimby Allowance, Heritage Fields shall deliver written notice to the City which notice shall set forth in reasonable detail the estimated additional costs to complete the applicable Additional Sports Park Work and the City shall allocate additional funding for the Quimby Allowance to cover such additional costs. Cost savings with respect to the Quimby Improvements may be used to off-set any increase in costs. If additional funds as required to fully fund the applicable Additional Sports Park Work are not allocated by the City within forty-five (45) calendar days after receipt of written notice from Heritage Fields to the City of such increased costs, then Heritage Fields shall not proceed with the applicable Additional Sports Park Work impacted by such additional costs.
4. **City Payment for Additional Sports Park Work** – City is responsible to pay for all the fees, costs and expenses of the Additional Sports Park Work, including (without limitation) design, permitting,

construction, inspection and any other costs incurred by Heritage Fields prior to acceptance of the Additional Sports Park Work by the City (the "**Additional Work Project Costs**"). The City agrees to pay for the Additional Work Project Costs as follows:

a. **Initial Quimby Budget; Quimby Improvements Account** – Heritage Fields currently estimates the Quimby Improvements will total approximately Four Million, Five Hundred Seventy-One Thousand, Three Hundred Thirty-Six Dollars (\$4,571,336) (the "**Initial Quimby Budget**"), which excludes permit fees. The City and Heritage Fields shall enter into separate written escrow instructions with the Irvine, California, office of First American Title Insurance Company (the "**Escrow Agent**"), and cause Escrow Agent to establish and maintain an interest bearing escrow account, denominated the "**Quimby Improvements Account**" at a banking institution mutually acceptable to the City and Heritage Fields in the Parties' reasonable discretion. The purpose of the Quimby Improvements Account is to administer the distribution of funds from the account to Heritage Fields to pay for the Additional Work Project Costs attributable to the Quimby Improvements. Interest or investment earnings on funds deposited in the Quimby Improvements Account shall be deposited into, and become a part of, the Quimby Improvements Account. All fees, costs and expenses of the Escrow Agent with respect to the Quimby Improvements Account established pursuant to this Letter Agreement shall be paid for by the City.

b. **Initial Deposit** – Within ten (10) days following execution of this Letter Agreement by both Parties, the City shall make an initial deposit into the Quimby Improvements Account in an amount equal to the Initial Quimby Budget (the "**Initial Deposit**").

c. **Required City Deposit** – To the extent that after the Initial Deposit the City imposes changes or additional requirements or the cost of the Quimby Improvements increases (as contemplated in Section 3 of this Letter Agreement), the City shall deposit into the Quimby Improvements Account an amount at least equal to the amount specified in the notice of estimated additional costs, within thirty (30) days of the City's receipt of such notice.

d. **Release of Funds** – From and after the execution of this Letter Agreement, the Escrow Agent will release funds from the Quimby Improvements Account to Heritage Fields as follows:

- i. From time to time (but not more frequently than two times per calendar month), Heritage Fields may submit a written request (a "**Release Request**") to the City and Escrow Agent to release funds from the Quimby Improvements Account when Heritage Fields: (i) is prepared to issue a notice to proceed to any contractor or consultant with respect to work on one or more Quimby Improvements (a "**Notice to Proceed**") pursuant to a binding consulting agreement, construction contract, or other written agreement (each, a "**Sports Park Work Contract**"); and/or (ii) has entered into a binding contractual agreement and is prepared to issue a notice under such agreement to purchase materials or supplies ("**Construction Materials**") to be used in connection with the Quimby Improvements (a "**Materials Contract Order**"). Heritage Fields shall deliver to the City with any Release Request reasonably satisfactory evidence that Heritage Fields has either: (i) entered into a binding Sports Park Work Contract, and/or (ii) issued a Materials Contract Order. A Release Request shall also include an estimated schedule showing when the funds are anticipated to be spent.
- ii. Within five (5) business days of the City's receipt of the Release Request, the City Representative shall deliver to the Escrow Agent and Heritage Fields' Representative a "**Release Approval Letter**" (substantially in the form attached hereto as **Exhibit B**), authorizing the Escrow Agent to release funds from the Quimby Improvements Account to Heritage Fields in an amount equal to the requested amount. If the City Representative does not respond to Heritage Fields Representative and Escrow Agent

in writing within such five (5) business day period, either approving the release of funds specified in the Release Request or specifying valid reasons why such amounts should not be released, then Heritage Fields may submit a written notice to the City (a "**Reminder Notice**") reminding the City of the Release Request. If the City Representative does not respond to the Reminder Notice within five (5) business days after receipt, then the City shall be deemed to have approved of the Release Request, after which the Escrow Agent shall release funds from the Quimby Improvements Account in an amount equal to the amount specified in the Release Request. Heritage Fields shall cause any Release Request, which is the subject of an objection by the City, to be revised to respond to such objection and subsequently re-submitted and processed as provided in this Section 4. Heritage Fields shall have no obligation to issue a Notice to Proceed or authorize procurement of Construction Materials unless and until it has actually received funds from the Quimby Improvements Account in the full amount of the cost to complete the work authorized by such Notice to Proceed and/or the full cost to purchase the Construction Materials to be authorized by Heritage Fields for purchase under the applicable Sports Park Work Contract or Materials Contract Order.

- iii. Heritage Fields shall, prior to the first release of funds and quarterly thereafter, submit to City Notices to Proceed with contracted scope and price, cancelled checks, invoices, or receipts, documenting the hard and soft costs spent or committed to be spent in connection with the Quimby Improvements (the "**Documented Costs**"). Submittals may include Documented Costs that were expended, incurred or committed to prior to the date of this Letter Agreement.
- e. **True Up** - The City shall close the Quimby Improvements Account upon the completion of the Quimby Improvements. Prior to closing the Quimby Improvements Account, the Parties shall meet and confer to agree upon a reconciliation of the actual Documented Costs spent with respect to the Quimby Improvements ("**Actual Costs**") against the aggregate amounts of funds disbursed from the Quimby Improvements Account ("**Projected Costs**"). This meet and confer shall occur within 90 days of the later of: (i) completion of the Quimby Improvements and payment by Heritage Fields of all Documented Costs (including retention), or (ii) the Acceptance Date for all of the Quimby Improvements. If such reconciliation discloses a positive difference between Projected Costs and Actual Costs, then Heritage Fields shall deposit into the Quimby Improvements Account an amount equal to such positive difference (the "**True-Up Deposit**") within 120 days of the later of: (i) completion of the Quimby Improvements and payment by Heritage Fields of all Documented Costs (including retention), or (ii) the Acceptance Date for all of the Quimby Improvements. Any remaining funds in the Quimby Improvements Account (including the True-Up Deposit, if any) shall be returned to the City.

Nothing set forth in this Letter Agreement shall amend, modify or alter the terms of the ALA2, except as expressly provided herein.

If the provisions of this Letter Agreement are acceptable to the City, please sign and return a copy of this Letter Agreement to Heritage Fields.

Except as implemented and/or clarified by the terms of this Letter Agreement, each of the City and Heritage Fields acknowledges that the ALA2 remains unchanged and in full force and effect. This Letter Agreement is governed by the laws of the State of California, without regard to conflicts of laws principles. This Letter

Agreement may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument; facsimile and pdf signatures of this Letter Agreement shall be valid as if manually signed.

Sincerely,

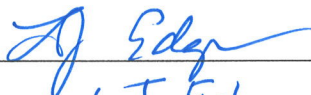
HERITAGE FIELDS EL TORO, LLC,
a Delaware limited liability company

By: Heritage Fields El Toro Sole Member LLC,
a Delaware limited liability company
Its: Sole Member

By: Heritage Fields LLC,
a Delaware limited liability company
Its: Sole Member

By: Five Point Heritage Fields, LLC,
a Delaware limited liability company
Its: Administrative Member

By: Five Point Operating Company, LLC,
a Delaware limited liability company
Its: Sole Member

By: 
Print Name: LJ Edgcomb
Print Title: Vice President

**ACKNOWLEDGED AND AGREED TO ON BEHALF OF CITY
PURSUANT TO THE AUTHORITY GRANTED BY SECTION
15(o) OF THE ALA2**

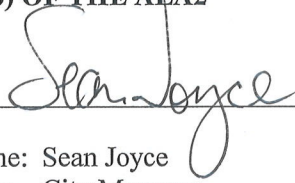

Name: Sean Joyce
Title: City Manager

EXHIBIT A
Quimby Improvements

Description of Quimby Plans:

Phase 1

OCGP Sports Park Design Package #6 Quimby Phase 1 Enhancements, Plan Check No. 00650933-PARK, submitted for 5th plancheck, not yet approved by City of Irvine.

Phase 2

OCGP Sports Park Design Package #6 Quimby Phase 2 Enhancements, Plan Check No. 00650942-PARK, submitted - for 5th plancheck, not yet approved by City of Irvine.

Phase 3

OCGP Sports Park Design Package #6 Quimby Phase 3 Enhancements including Building C, Plan Check No. 00650984-PARK, submitted for 5th plancheck, not yet approved by City of Irvine.

Phase 4

OCGP Sports Park Design Package #6 Quimby Phase 4 Enhancements, Plan Check No. 00650968-PARK, submitted for 5th plancheck, not yet approved by City of Irvine.

Item Ref.	Item	# of Units	Unit
Phase 1			
1	Upgraded Seating - Championship Tennis		
	Permanent Seats	132	EA
2	Upgraded Seating - Volleyball		
	Permanent Seats	156	EA
3	Added Drinking Fountains - Tennis		
	Haws model with 1" PVC piping+sump	3	EA
4	Added Entry Gates		
	Building A		
	Type A Main Gate (3 Pairs)	3	PR
	Building B		
	Type A Gate Single	2	EA
	Type A Main Gate	3	PR
5	Added Championship Soccer Fencing		
	6' Gates - Decorative 2 Type	2	EA
	6' Fencing - Decorative 2 Type	1274	LF
6	Upgraded Championship Soccer Scoreboard		
	"Platinum" style	1	EA
7	Added Tennis Scoreboard	1	EA
8	Added Volleyball Scoreboard	1	EA
9	Shade Structure at Children's Play Area	4	EA
10	Added CCTV Cameras		
	Building A (3) day 1 cameras (fully installed), and infrastructure for (8) future cameras	See Item	
	Building B: (2) day 1 cameras, and infrastructure for (5) future cameras	See Item	
	Buildings H1 & H2: infrastructure for (2) future cameras	See Item	
Phase 2			
11	Added Drinking Fountain		
	Haws model with 1" PVC piping+sump	1	EA
12	Added CCTV Cameras		
	Building D infrastructure for (4) future cameras	See Item	
Phase 3			
13	Upgraded Seating at Baseball Fields #1-#3		
	Permanent Seats	408	EA
14	Upgraded Seating at Multipurpose Fields #1-#3		
	Permanent Seats	312	EA
15	Added Drinking Fountains		
	Haws model with 1" PVC piping+sump	3	EA
16	Added Entry Gates		
	Building E		
	Type A Gate Single	1	EA
	Type A Main Gates	2	PR
17	Added Championship Baseball Fencing		
	6' Gates - Decorative 2 Type	2	EA
	6' Fencing - Decorative 2 Type	1382	LF
18	Upgraded/ Added Scoreboards		
	Upgraded Championship Baseball		
	Upgraded "Gold" style	1	EA
	Credit "Bronze" style	1	EA
	Relocate conduit	560	LF
	Added 3 Baseball Fields & 3 Multi-Purpose Fields		
	Added "Silver" style	6	EA

EXHIBIT A
Quimby Improvements

Item Ref.	Item	# of Units	Unit
	Added conduit	3207	LF
19	Upgraded Non-Championship Baseball Backstops		
	Added Masonry Wall	6	EA
	Added Channel Padding	6	EA
20	Added Baseball Batting Cage		
	Baseball Batting Cages	4	EA
	Perimeter Lighting-Pole Fixture & Conduit	8	EA
21	Added Restroom (Building "C")		
	Similar to Bldg. D	1554	SF
22	Added CCTV Cameras		
	Building E: (3) day 1 cameras, and infrastructure for (13) future cameras	See Item	
	Building F: infrastructure for (2) future cameras	See Item	
Phase 4			
23	Upgraded Seating at Softball Fields #2 & #3		
	Permanent Seats x 2 fields	120	EA
24	Upgraded Seating at Softball Fields #4 & #5		
	Bleachers, 2 per field	4	EA
25	Added Drinking Fountains		
	Haws model with 1" PVC piping+sump	2	EA
26	Added Entry Gates		
	Building G		
	Type A Main Gate (3 Pairs)	3	PR
27	Added Championship Softball Fencing		
	6' Gates - Decorative 2 Type	2	EA
	6' Fencing - Decorative 2 Type	837	LF
28	Upgraded/Added Scoreboards		
	Upgraded Championship Softball Scoreboard		
	Upgraded "Silver"	1	EA
	Credit "Bronze"	-1	EA
	Added Conduit	385	LF
	Added Softball Scoreboards		
	Added "Silver" style	4	EA
	Added Conduit	1784	LF
29	Upgraded Non Championship-Softball Backstops		
	Added Masonry Wall	4	EA
	Channel Padding	4	EA
30	Added Softball Batting Cages		
	Softball Batting Cages	4	EA
	Perimeter Lighting-Pole Fixture & Conduit	8	EA
31	Added CCTV Cameras		
	Building G: (2) day 1 cameras, and infrastructure for (8) future cameras	See Item	
All Phases			
Public Safety			
32	Added Security Cameras (Site Only)		
	Camera Ready Pole and Mount	23	EA
	Conduit, Wire and Fiber including Boxes & Structure	15720	LF
	Axis Network Camera	23	EA
33	Added Command Vehicle		
	Turf Block	15710	SF
	Rolled Curb	570	LF
	Cam-Lock System	3	EA
34	Added Parking Lot Gates		
	Manual Barrier Gate	9	SETS
35	Added Controlled Access Bollards		
	Removable Bollard	25	EA
36	Added Middle Arm Benches	1	EA
Functionality/Sustainability			
37	Added Conduit to Parking Lots for Future Solar		
	Conduit Only-Includes Trenching & Backfill	26780	LF

EXHIBIT B
(Sample) Release Approval Letter

_____, 201__

Eric Tolles
City of Irvine
1 Civic Center Plaza
Irvine, CA 92606

First American Title Insurance Company

Irvine, CA

Re: Letter Agreement dated July 20, 2016 ("Letter Agreement") between Heritage Fields El Toro, LLC ("Heritage Fields") and the City of Irvine ("City") – Release Request for Release of Funds from the Quimby Improvements Account (Escrow Account No. ____)

Capitalized terms used but not specifically defined in this Release Request shall have the meaning assigned to them in the Letter Agreement.

As provided for in the Letter Agreement, Heritage Fields hereby provides to the City and Escrow Agent this Release Request for release of funds from the Quimby Improvements Account (First American Title Insurance Company Escrow Account No. ___, referred to herein as the "**Escrow Account**") in the amount of _____ Dollars (\$_____) (the "**Requested Amount**"). The conditions set forth in Section 4.d.i which are precedent to a Release Request have been met for the entire Requested Amount.

Heritage Fields requests that within five (5) business days of the City's receipt of this Release Request, the City Representative shall deliver to the Escrow Agent and the Heritage Fields Representative a copy of this letter, executed below by the City Representative, authorizing the Escrow Agent to release to Heritage Fields funds from the Escrow Account in an amount equal to the Requested Amount.

Total Release Request

\$ _____

If you have any questions or require any additional information, please do not hesitate to contact Lacie Daniels at (949) 349-1086.

Kind Regards,

LJ Edgcomb
Community President
Five Point Communities Management, Inc.
Development Manager for Heritage Fields El Toro, LLC

cc: Lacie Daniels

City Representative Authorization:

Escrow Agent is authorized to release to Heritage Fields funds from the Escrow Account equal to the Requested Amount.

City Representative Signature

Date

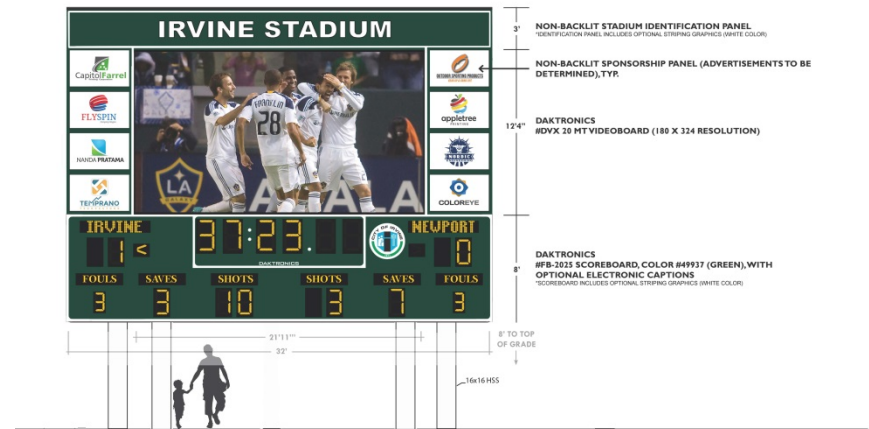
Print Name

Title

Championship Soccer

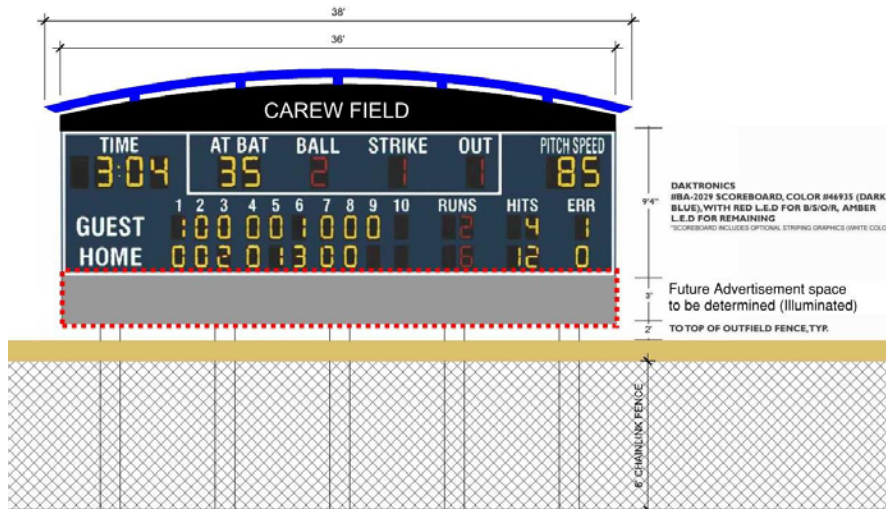


Enhanced scoreboard with video board and sponsorship/ advertising panels

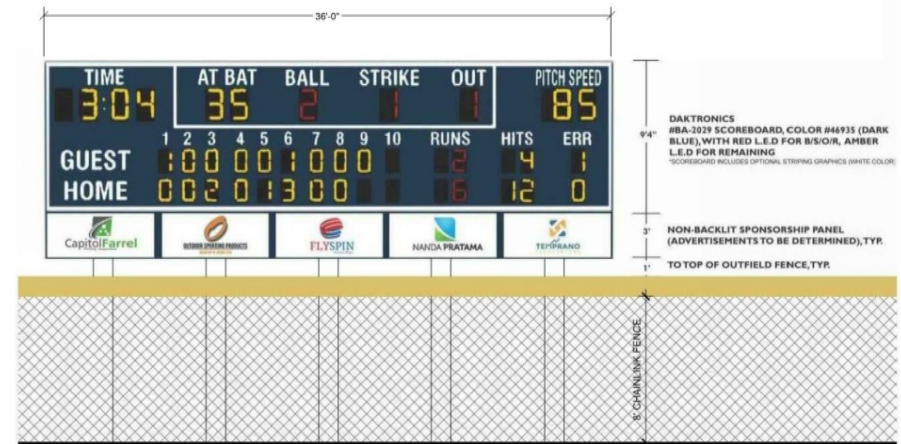


Current specified scoreboard with video board and sponsorship/ advertising panels

Championship Baseball



Enhanced scoreboard with name identification and space for future sponsorship/advertising panels

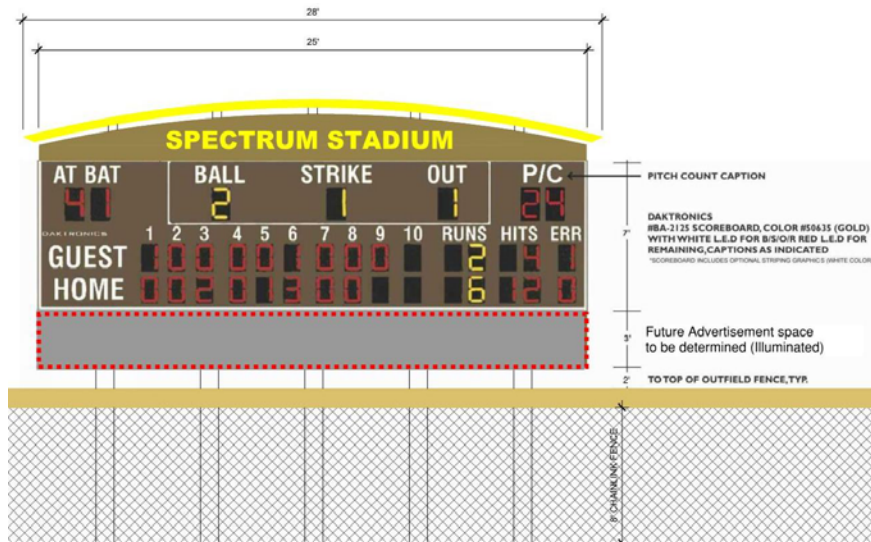


Current specified scoreboard with sponsorship/advertising panels

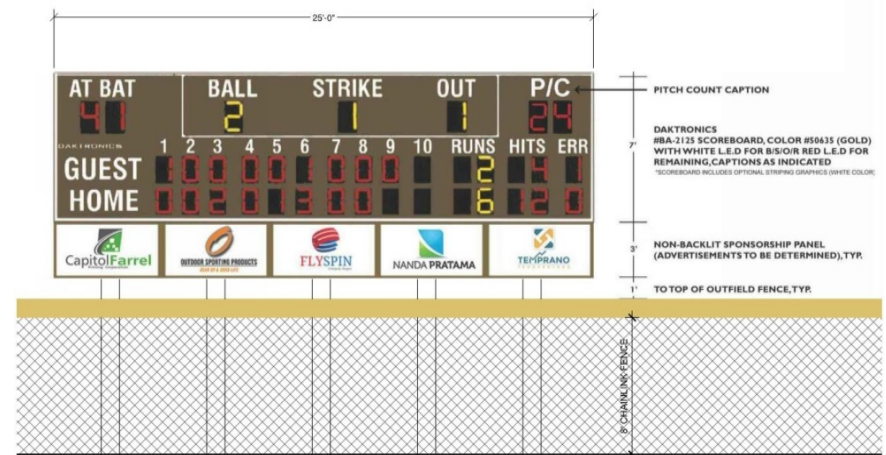
Note that bottom of scoreboard assembly sits 2' above the 8' high chain link fence at outfield

Orange County Great Park – Sports Park – April 18, 2017

Champion Softball



Enhanced scoreboard with
name identification and space
for future sponsorship/
advertising panels

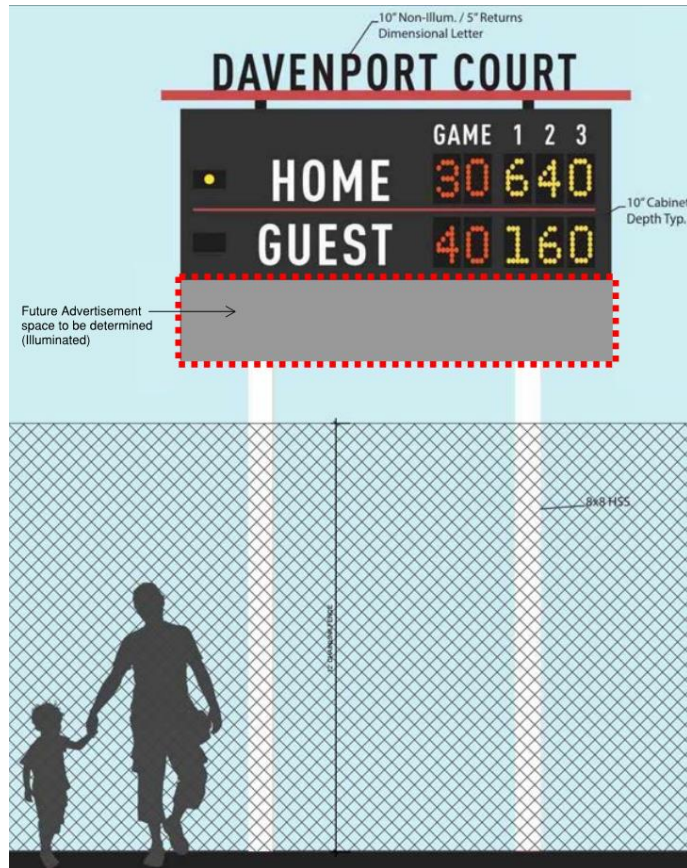


Current specified scoreboard
with sponsorship/advertising
panels

Note that bottom of scoreboard assembly sits 2' above the 8' high chain link fence at outfield

Orange County Great Park – Sports Park – April 18, 2017

Championship Tennis



Enhanced scoreboard with name identification and space for future sponsorship/advertising panels



Current specified scoreboard

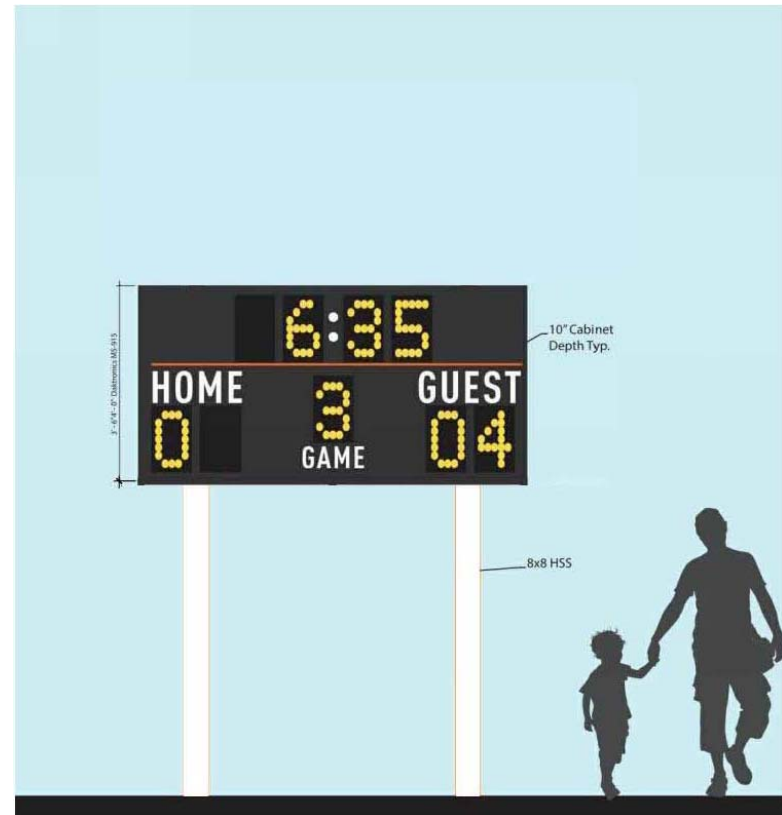
Note that bottom of scoreboard assembly sits 2' above the 12' high chain link fence at tennis court

Orange County Great Park – Sports Park – April 18, 2017

Championship Volleyball

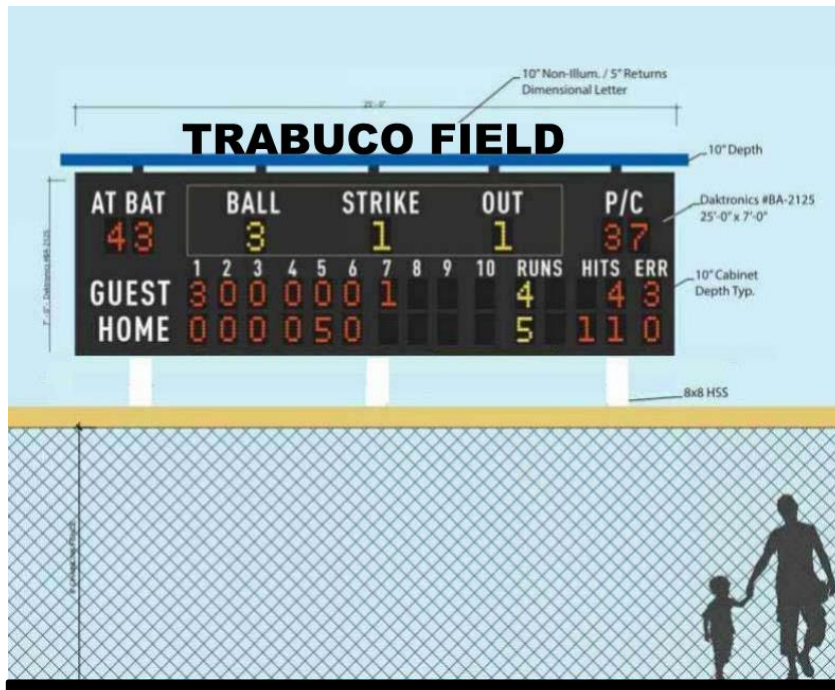


Enhanced scoreboard with
name identification and space
for future sponsorship/
advertising panels

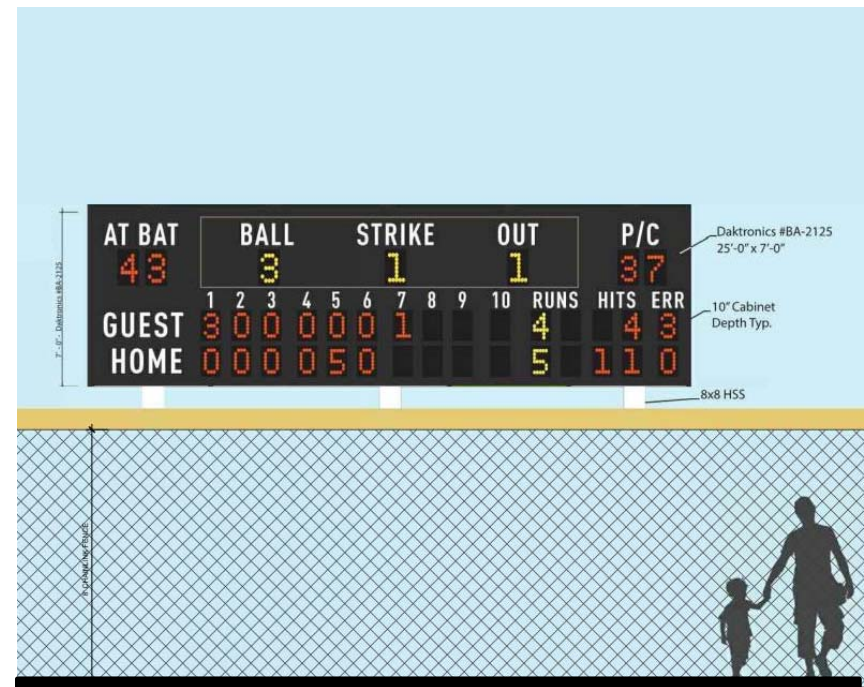


Current specified
scoreboard

Baseball, Multi-purpose, and Softball (Non-Championship Fields)



Enhanced scoreboard with
name identification



Current specified
scoreboard

Note that bottom of scoreboard assembly sits 2' above the 8' high chain link fence at outfield

Orange County Great Park – Sports Park – April 18, 2017



April 25, 2017

Mr. LJ Edgcomb
Five Point Communities Management, Inc.
25 Enterprise, Suite 300
Aliso Viejo, CA 92656

RE: Second Amendment to August 4, 2016 Letter Agreement Between the City of Irvine and Heritage Fields El Toro, LLC Regarding Expenditure of Quimby Funds for Additional Sports Park Improvements

Dear Mr. Edgcomb:

This letter constitutes a second amendment ("Second Amendment") to that Letter Agreement dated August 4, 2016, between the City of Irvine ("City") and Heritage Fields El Toro, LLC ("Heritage Fields"). Said August 4, 2016 Letter Agreement is referred to herein as the "Quimby Agreement." Capitalized terms not defined in this Second Amendment shall have the meanings ascribed to such terms in the Quimby Agreement, unless otherwise indicated.

The Quimby Agreement provides for funding and procedures for the construction by Heritage Fields of additional Sports Park work in the Orange County Great Park, and reimbursement of Heritage Fields by the City for the cost of those improvements. The City and Heritage Fields desire to add additional improvements to be constructed under the Quimby Agreement which were not specified therein. The City and Heritage Fields agree that Heritage Fields will construct the additional improvements described in Exhibit D attached hereto, and the City will reimburse Heritage Fields for the cost of that construction, the estimated costs of which are also set forth on Exhibit D, subject to all of the conditions stated in the Quimby Agreement. The source of this reimbursement will be a City fund known as the "180 fund."

Nothing set forth in this Second Amendment shall amend, modify or alter the terms of the Quimby Agreement, except as expressly provided herein. This Second Amendment may be executed in several counterparts, each of which when executed and delivered is an original, but all of which together shall constitute one instrument. Electronically transmitted signatures of this Second Amendment shall be valid as if manually signed.

Sincerely,

Sean Joyce
City Manager

ATTACHMENT 3

Mr. LJ Edgcomb
April 25, 2017
Page 2 of 3

cc: Pete Carmichael, Director, Orange County Great Park

ACKNOWLEDGED AND AGREED TO ON BEHALF OF HERITAGE FIELDS

HERITAGE FIELDS EL TORO, LLC,

a Delaware limited liability company

By: Heritage Fields El Toro Sole Member LLC,
a Delaware limited liability company
Its: Sole Member

By: Heritage Fields LLC,
a Delaware limited liability company
Its: Sole Member

By: Five Point Heritage Fields, LLC,
a Delaware limited liability company
Its: Administrative Member

By: Five Point Operating Company, LLC,
a Delaware limited liability company
Its: Sole Member

By: _____

Print Name: _____

Print Title: _____

APPROVED AS TO FORM:

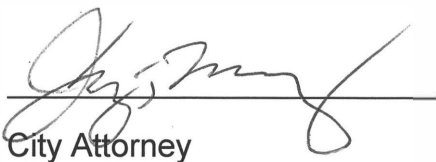

City Attorney

EXHIBIT “ D”

Description of Improvement	Cost Change
Championship Soccer enhanced scoreboard	\$225,000
Championship Tennis enhanced scoreboard	\$28,750
Championship Volleyball enhanced scoreboard	\$32,675
Championship Softball enhanced scoreboard	\$102,000
Championship Baseball enhanced scoreboard	\$128,750
Total	\$517,175

2.3



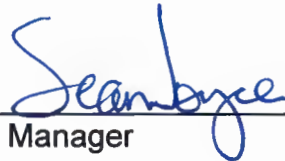
REQUEST FOR BOARD ACTION

MEETING DATE: APRIL 25, 2017

TITLE: WATERPARK REQUEST FOR PROPOSALS RESPONSE AND NEXT STEPS

A handwritten signature in blue ink, appearing to read "Peter Ceind".

Director, Orange County Great Park

A handwritten signature in blue ink, appearing to read "Sean Boyce".

City Manager

RECOMMENDED ACTION

Direct staff to cancel and release a new Request for Proposals for the Design, Development, Lease, and Operation of a Waterpark at the Orange County Great Park.

EXECUTIVE SUMMARY

On October 25, 2016 the Great Park Board directed staff, by unanimous vote, to release a Request for Proposals (RFP) for the design, development, lease, and operation of a waterpark at the Orange County Great Park. The staff report and minutes excerpt from the October 25, 2016 Board meeting are included as Attachment 1 and the RFP is included as Attachment 2. The RFP had four primary requirements: qualifications, a development plan, an operations and management plan, and a statement of proposed financial terms and assumptions.

The City received two proposals. The first proposal was significantly incomplete in that it did not include audited financial statements, and the respondent failed to register with the Department of Industrial Relations, as is required for all public works projects. These two requirements were clearly stated in the RFP.

The second proposal was submitted as three separate proposal documents under a single cover letter identifying the proposal as a joint venture. The letter indicated that the three components were part of a phased proposal, yet the proposals were otherwise unrelated. Each proposal had its own operational plan, management and financing plans, and its own distinct site plan. With the exception of the cover letter, there was nothing that integrated the three proposals from a financing, development, or operating standpoint. The lack of integration made it very difficult to evaluate the bid as a single

proposal. Because the cover letter stated that the three groups were a joint venture, it was also difficult to evaluate the three concepts independently.

Given the nature of the responses, staff recommends cancelation of the RFP so that the RFP document can be updated and re-released. An updated RFP would provide a specific requirement for the full integration of proposals in the event of partnerships, as well as other changes geared towards soliciting a broader response. Most significantly, staff recommends re-releasing the RFP after the grand opening of the Sports Park to capitalize on the anticipated positive media coverage showcasing the regional appeal of the Great Park and the attractive opportunities for cross-visitation with a new waterpark.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Not applicable.

ANALYSIS

On March, 22, 2016, the Orange County Great Park Board directed staff to explore locations for a possible waterpark within the Orange County Great Park. At the June 28, 2016 Great Park Board meeting, staff returned with two potential sites within and adjacent to the Cultural Terrace district of the Great Park. At the conclusion of the discussion, the Board directed staff by a vote of 4–1 (Board Member Schott opposed) to prepare a Request for Proposals (RFP) for a waterpark at the Great Park. The RFP was prepared and unanimously approved for release at the Board's October 25, 2016 meeting.

The RFP included four primary goals: activation of the Great Park, design excellence, revenue generation, and consistency with other Great Park uses. The RFP contained four primary sections requiring input from the respondent:

1. Qualifications: Respondents were required to outline their qualifications, including background on key individuals and consultants on their team, development and operating experience, including specific detailed examples of other similar projects, and financial capacity.
2. Development Plan: The RFP responses were to include a preliminary development concept, including a proposed site plan for all proposed recreational facilities, parking, concessions, as well as preliminary construction schedule, and budget. Because the site of the waterpark has not been finalized, respondents were asked to create a preliminary development concept that encapsulates their vision and outlines their basic site layout and requirements, which could be reconfigured as necessary depending on final location within the Great Park.

3. Management and Operations Plan: Respondents were to submit a plan for ongoing operations that includes information related to staffing, safety, concessions, traffic and parking management, water and utility requirements, and proposed conservation and sustainability strategies.
4. Statement of Proposed Financial Terms and Assumptions: This portion of the response was to be submitted under separate cover and required respondents to describe the key financial components of the proposal, including:
 - Ground rent and/or revenue sharing to the City
 - Development and operating pro forma, showing total projected cost of development, as well as projected cash flow for the period beginning with the inception of lease, through construction, and the first five years of operation
 - Sources and amount of debt and equity capital sufficient to design and construct the project outlined by the respondent along with documented conditional commitment for capital from identified sources

The RFP was released on November 8, 2016. It was sent to 15 firms and two industry associations. One hundred twenty-four firms were notified via the Bids Online system. Forty of those firms downloaded the bidding documents. Eleven firms attended the mandatory pre-bid meeting held at the Great Park on December 8, 2016. Proposals were due February 28, 2017.

The City received two proposals. The first proposal was significantly incomplete in that it did not include audited financial statements, and the respondent failed to register with the Department of Industrial Relations, as is required for all public works projects. These two requirements were clearly stated in the RFP. The second proposal was submitted as three separate proposal documents under a single cover letter identifying the proposal as a joint venture. As pertains to the second proposal, the three parties were:

- Western Whitewater Works and S2O Design and Engineering – 20-25 acre rafting and kayaking whitewater park.
 - Western Whitewater Works is based in Orange and has been in business for three years.
 - S2O is a design and engineering firm based in Lyons, Colorado. The firm designed the U.S. National Whitewater Center in Charlotte North Carolina and the Riversport Rapids Whitewater Park in Oklahoma City, Oklahoma.
- Surfloch, LLC - 15+ acre surfing lake with supporting training center and athlete accommodations.

- Surfloch is a maker of artificial wave making equipment based in San Diego. The firm's equipment has been installed on cruise ships and other locations around the world.
- Wild Rivers Water Park and Bergman KPRS – 25-acre traditional water park.
 - Wild Rivers is based in Redondo Beach and operated the former Wild Rivers, Irvine. The firm has a long-standing interest in bringing a water park to the Great Park, having expressed same at several City Council meetings in recent years and having pursued an opportunity on County land in 2013 that did not materialize due to its inability to secure the required financing, according to media reports published at the time.
 - Bergman KPRS is a construction and project management firm located in Brea. The firm's portfolio includes retail and commercial projects throughout in the Western U.S. The firm is affiliated with KPRS, the general contractor engaged by Five Point Communities for construction of the buildings at the Great Park Sports Complex.

The letter indicated that the three components are part of a single proposal, yet the proposals are otherwise unrelated. Each proposal has its own operational plan, management and financing plans, and its own distinct site plan. With the exception of the cover letter, there was nothing that integrated the three proposals from a financing, development, or operating standpoint. The lack of integration in this proposal made it very challenging to perform a reasonable evaluation based on several important factors:

- Site Plan and Sizing: The RFP requested a site plan. Each of the three components of the proposal provided a distinct independent site plan without any information as to how the three concepts would work together cohesively. Further, each of the three elements had an independent acreage requirement that amounted to over 60 acres in total before accounting for parking, nearly 25% of the entire Cultural Terrace acreage.
- Management and Operations: Each of the three components includes its own distinct management and operations plan with unique operating methodologies.
- Vision: The three pieces of the proposal did not have a unifying vision or marketing approach. Further, each of the three components offered a separate project summary to describe the way in which the project would meet the goals of the City
- Financials: The proposal presents three sets of financial terms and assumptions, including separate cash flow projections, and proposed ground rent arrangements.
- Risk Profile: The three elements of the proposal embody very different risk profiles. Traditional waterparks are a fairly known quantity and have generally predictable market performance, safety and usage metrics. Market feasibility and

safety/usage metrics for a white water rafting attraction or a surf pool are less certain due to the limited number of these types of facilities that are operational.

The lack of integration made it very difficult to evaluate the bid as a single proposal for the reasons outlined above, yet the cover letter stating that the three groups are a joint venture also made it difficult to evaluate the three concepts independently. For this reason, staff is recommending cancelation of the RFP process so that the RFP document can be updated and reissued. An updated RFP would provide a specific requirement for the full integration of proposals in the event of partnerships. Additionally, staff consulted with AECOM's Economics Practice Group, which focuses on cultural and amusement destination feasibility, to evaluate strategies that would elicit more responses to the RFP. Several recommendations were developed.

- Ground lease information - Provide additional information regarding potential flexibility in City ground lease structures
- Pre-bid meeting - Change the pre-bid meeting from a mandatory in-person format to a web-based format making it easier for potential bidders from out of the area to participate
- Marketing the RFP - Market to a broader array of industry contacts including developers, operators, and supporting consultants through AECOM's industry network
- Release RFP after the opening of the Sports Park - Release the updated RFP after the Sports Park opening this summer to capitalize on the anticipated positive media coverage and enhanced visibility of the Orange County Great Park at that time. This would allow for the inclusion of media clips and imagery in the RFP to showcase the top quality facilities, regional appeal of the Park, and opportunities for cross-visitation with a new waterpark

A release of the updated RFP in the fall would also provide an opportunity to market the RFP at the Amusement Park Industry's premier annual trade show, the International Association of Amusement Parks and Attractions (IAAPA), which attracts 30,000 industry-affiliated attendees annually.

Should the Board adopt the staff recommendation to cancel the RFP process and release an updated RFP document based on the changes outlined above, staff would target release of the new document in the fall after the opening of the Sports Park. The RFP would be released just prior to the annual International Association of Amusement Parks and Attractions (IAAPA) Conference in November, which would then serve as a major platform to market the opportunity to a wide audience of investors, operators, designers, and consultants.

A re-release of the RFP in Fall 2017 also provides a better fit with the anticipated timeline for the Cultural Terrace Joint Studies planning effort. The first phase of the

Joint Studies is focused on conceptual level master planning and will likely bring forth more specific options for waterpark siting within the Cultural Terrace area. These conceptual level drawings, once reviewed by the Board, likely in late summer or early fall, could then be included in the RFP package to provide a more comprehensive vision of the waterpark opportunity.

ALTERNATIVES CONSIDERED

Alternatives to the staff recommendation include, but are not limited to, the following:

1. The Board could direct staff to release a new RFP now rather than waiting for the opening of the Sports Park and the industry conference opportunity later this year. Although this approach would not capitalize on the opportunity for broader marketing outlined above, it would yield responses sooner.
2. The Board could also direct staff to cancel the RFP and negotiate with the responding parties directly rather than releasing a new RFP. This approach would take advantage of the positive aspects of the submitted proposals and may yield a developer/operator sooner than releasing a new RFP.

FINANCIAL IMPACT

Cancellation of the RFP and release of a new RFP will not have a significant direct financial impact to the City, outside of some additional staff and consultant time required for modification and re-release of the document. Should the Board approve the recommendation, it would be staff's intent to attend the IAAPA annual conference later this year to market the RFP opportunity. This expense would be anticipated in the FY 2017/18 budget for travel and business expenses.

Updating the RFP based on the suggested modifications listed above and re-releasing the document on the heels of the Sports Park opening could increase the number of respondents. With a potentially larger respondent pool, the City would have a broader array of opportunities which could improve the financial terms of the eventual deal with a waterpark developer/operator.

REPORT PREPARED BY

Pete Carmichael, Director Orange County Great Park

ATTACHMENTS

1. Staff report (without attachments) and minutes excerpt from October 25, 2016 Orange County Great Park Board meeting
2. Request for Qualifications and Proposals for the Design, Development, Lease, and Operation of a Waterpark at the Orange County Great Park

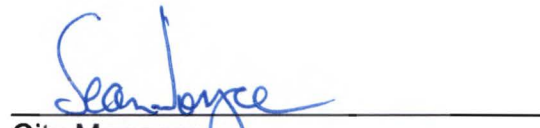


REQUEST FOR BOARD ACTION

MEETING DATE: OCTOBER 25, 2016

TITLE: REQUEST FOR QUALIFICATIONS AND PROPOSALS FOR THE DESIGN, DEVELOPMENT, LEASE, AND OPERATION OF A WATERPARK AT THE ORANGE COUNTY GREAT PARK


Director, Orange County Great Park


City Manager

RECOMMENDED ACTION

Approve and authorize staff to release a Request for Qualifications and Proposals for the Design, Development, Lease, and Operation of a waterpark at the Orange County Great Park, substantially in the form attached.

EXECUTIVE SUMMARY

Pursuant to direction from the Orange County Great Park Board at its June 28, 2016 meeting by a vote of 4-1 (Board Member Schott opposed), staff has prepared a Request for Qualifications and Proposals for the Design, Development, Lease, and Operation for a waterpark at the Orange County Great Park (RFP), included as Attachment 1.

The RFP allows for a variety of responses that could include a range of different water recreational facilities including a traditional waterpark with slides, as well as a surf wave pool, or white water type attraction. The waterpark is expected to be a regional destination and could eventually be sited in a number of potential locations, primarily in or adjacent to the Cultural Terrace district of the Great Park. The RFP contemplates a land use agreement through which the City retains ownership of the property and the waterpark developer and/or operator has a long-term interest, likely through a ground lease and would be expected to make the initial capital investment for construction of the project.

If so directed by the Board, staff would release the RFP and allow approximately four months for responses. Respondents would be required to make a \$50,000 deposit with their response to be used for the successful respondent's application processing; unsuccessful proposers would be refunded their deposits. The RFP has four primary response requirements:

- Professional Qualifications
- Preliminary Development Concept
- Management and Operations Plan
- Statement of Proposed Financial Terms and Assumptions

Each submitted proposal would be evaluated based on a 100-point scale distributed across the RFP response components outlined above.

At the conclusion of the RFP process, staff will return to the Board with a recommendation for selection of a developer and/or operator for the waterpark and consideration of an Exclusive Negotiating Agreement (ENA) with the selected respondent. An ENA is a legal agreement commonly used by cities when selecting a developer or operator for a long-term contract. It provides for a period of mutual exclusivity, during which the City and the selected respondent can finalize ground lease terms and site plan. The ENA period also provides time for more comprehensive planning of the Cultural Terrace district, as well as requisite environmental review under CEQA (California Environmental Quality Act), allowing for proper siting of the waterpark in relationship to other planned uses, roadways, and infrastructure.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

Not applicable.

ANALYSIS

From approximately 1986 to 2011, a recreational waterpark called Wild Rivers operated in Irvine on a site located near Interstate 405 and Irvine Center Drive through a ground lease with the Irvine Company. The facility grew into a popular attraction with a loyal regional following with approximately 400,000 visitors annually. Following the close of the facility in 2011, local residents and regional visitors have expressed an interest in continuing the waterpark tradition in Irvine.

On March 22, 2016, the Orange County Great Park Board directed staff to explore locations for a possible waterpark within the Orange County Great Park. At the June 28, 2016 Great Park Board meeting, staff returned with two potential sites within and adjacent to the Cultural Terrace district of the Great Park. At the conclusion of the discussion, the Board directed staff to prepare a Request for Proposals (RFP) for a waterpark at the Great Park. Meeting minutes from the June 28, 2016 Great Park Board meeting are included as Attachment 2 and a brief excerpt from said meeting outlining the Board's specific direction is included below:

“Move forward with a Request for Proposals process to pursue the siting of a waterpark within the Orange County Great Park, to include both proposed locations as well as alternative sites that might be presented.”

Based on Board direction, staff has prepared an RFP for the design, lease, construction, and operation of a waterpark at the Orange County Great Park. The RFP contemplates the selection of a developer/operator who could fund the cost for design, development, lease, and operation of a recreational waterpark at the Great Park. The RFP stipulates that the City will retain ownership of any property used for the waterpark and that the developer/operator would be responsible for the capital investment required for construction of the facility. Four primary goals for the waterpark are identified in the RFP:

- Activation of the Great Park: A primary goal of the City through this RFP is to generate proposals for a waterpark that will create a vibrant and active destination at the Orange County Great Park.
- Design Excellence: The City seeks a waterpark that reflects design excellence. Respondents will be expected to provide a preliminary development concept in their proposals reflecting a high quality and efficient site plan consistent with the high standards set by the City of Irvine and the Orange County Great Park.
- Revenue Generation: The City expects responses to this RFP to give important consideration to revenue generation for the City. It is anticipated that proposals will include provisions for ground rent and revenue participation for the City in exchange for the long-term land use provided to the developer/operator.
- Consistency with other Park Uses: The City seeks a development proposal that takes into account adjacent uses at the Great Park and proposes ways to mitigate traffic, noise, aesthetics and other potentially disruptive characteristics of a waterpark attraction.

Request for Proposals

The RFP contains four primary sections requiring input from the respondent:

- Qualifications: Respondents will be required to outline their qualifications including background on key individuals and consultants on their team, development and operating experience, including specific detailed examples of other similar projects, and financial capacity.
- Development Plan: The RFP must include a preliminary development concept including a proposed site plan for all proposed recreational facilities, parking, concessions, as well as preliminary construction schedule, and budget. Because the site of the waterpark has not been finalized, respondents are being asked to create a preliminary development concept that encapsulates their vision and

outlines their basic site layout and requirements, which could be reconfigured as necessary depending on final location within the Great Park.

- Management and Operations Plan: Respondents must submit a plan for ongoing operations that includes information related to staffing, safety, concessions, traffic and parking management, water and utility requirements, and proposed conservation and sustainability strategies.
- Statement of Proposed Financial Terms and Assumptions: This portion of the response, to be submitted under separate cover, requires respondents to describe the key financial components of the proposal, including:
 - Ground rent and/or revenue sharing to the City
 - Development and operating pro forma, showing total projected cost of development, as well as projected cash flow for the period beginning with the inception of lease, through construction, and the first five years of operation
 - Sources and amount of debt and equity capital sufficient to design and construct the project outlined by the respondent along with documented conditional commitment for capital from identified sources

Following release of the RFP, respondents will have four months to prepare and submit their proposals. A mandatory on-site meeting at the Great Park will take place early in the RFP process, allowing interested parties to ask questions and tour the Great Park. The RFP allows for, and establishes a deadline for, additional inquiries mid-way through the process. Responses to all inquiries will be shared with all respondents.

Respondents to the RFP will be required to make an initial deposit of \$50,000, which is refundable to those developers not selected. The deposit will offset the cost of processing an application, which is charged according to the hours spent by staff in reviewing and analyzing the project.

Evaluation of Submitted Proposals

Once received, staff would review all proposals, evaluating each respondent across the four sections of the RFP document. An in-person interview will also be conducted with respondents, allowing for deeper discussion relative to plans and qualifications. Up to a total of 100 points can be awarded through the evaluation process, with the distribution of total available points weighted as follows:

- Qualifications, 50 points: The evaluation of the developer's qualifications would include an assessment of their ability, experience and track record in designing, building and operating waterparks. The purpose of this metric is to ensure the

selected respondent will be able to meet the terms of the eventual development and lease agreements.

- Preliminary Development Concept, Management and Operations Plan, 25 points: Evaluation of the development concept and operations plan would include an assessment of each respondent's overall vision. The plan would be evaluated as to its capacity for activation of the Great Park, design excellence and compatibility with surrounding uses.
- Statement of Financial Terms and Assumptions, 25 points: The proposed financial terms would be evaluated to determine the respondent's financial capability to execute the proposed project as well as the potential for generation of revenue to the City.

Respondent Selection and Next Steps

After the completion of the RFP process, staff would present a recommended respondent to the Board and City Council based on the criteria outlined above. Upon direction and approval by the Board and City Council, staff would draft an Exclusive Negotiating Agreement (ENA) with the selected respondent. An ENA is commonly used by public agencies when selecting a developer or long-term partner. The ENA provides mutual exclusivity allowing the respondent to invest additional time and resources in design and financing. During the ENA period, the City and the selected respondent would draft the terms of a ground lease agreement including the mutual commitments for delivery of infrastructure and construction. Design for the waterpark facility and any requisite environmental review, including satisfaction of CEQA (California Environmental Quality Act) requirements would also take place during this period. A waterpark is not part of the current Great Park master plan and has not been evaluated from an environmental/CEQA standpoint.

The ENA period also allows time for further progress in the planning of the Cultural Terrace district. A better understanding of the layout for the other proposed uses in this section of the Great Park and the associated roadway and infrastructure planning will further inform the final siting for the waterpark. By selecting the waterpark developer/operator early in this broader planning process, it allows said partner to contribute valuable expertise in the identification of a final site for the waterpark.

ALTERNATIVES CONSIDERED

The Board could decide not to release the RFP at this time, awaiting additional input from the Cultural Terrace planning and public outreach process. The Board could also direct that staff change the terms of the RFP as deemed appropriate prior to release.

FINANCIAL IMPACT

Approval of the Request for Qualifications and Proposals for the Design, Development, Lease, and Operation of a Waterpark at the Orange County Great Park has no financial impact. The financial impact of evaluating the successful proposal through initial processing and permitting is secured by the \$50,000 deposit required at the time the proposal is submitted.

RFP respondents are required to submit detailed financial terms in their responses related to operating cash flow and proposed ground rent or other revenues to the City. A long-term ground lease agreement has the potential to generate direct income to the City. The operation of a waterpark at the Great Park also has potential for long-term indirect revenues to the City through associated sales, property, and transient occupancy (hotel) taxes.

REPORT PREPARED BY Steve Torelli, Management Analyst I

ATTACHMENTS

1. Request for Qualifications and Proposals for the Design, Development, Lease, and Operation of a Waterpark at the Orange County Great Park.
2. Minutes excerpt from June 28, 2016 Orange County Great Park Board Meeting

differences between fee categories; noted the inclusion of reduced fees for Irvine youth sports; importance of a proper cost recovery model and adjusting as needed to obtain optimal cost recovery; significance of preserving the intent of the Great Park to serve as a neighborhood park for nearby residents; and noted that the Great Park was a combination of a community, citywide and countywide park.

ACTION: Moved by Director Lalloway, seconded by Vice Chairwoman Schott, and unanimously carried to:

Recommend that the City Council adopt – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINE, CALIFORNIA, TO ADOPT THE ORANGE COUNTY GREAT PARK SPORTS COMPLEX FIELD ALLOCATION AND FEE POLICY

2.2 REQUEST FOR QUALIFICATIONS AND PROPOSALS FOR THE DESIGN, DEVELOPMENT, LEASE, AND OPERATION OF A WATERPARK AT THE ORANGE COUNTY GREAT PARK

Pete Carmichael, Director, Orange County Great Park, presented the staff report and responded to questions.

Courtney Santos, Irvine resident, spoke in favor of a waterpark at the Orange County Great Park.

Board discussion included: whether a site tour was a mandatory component of the Request for Proposals (RFP) process and if bidders would be disqualified if they did not participate; questioned the process for distributing the RFP; whether a suitable roadway system existed to handle ingress and egress; noted the importance of intelligent planning and not moving forward until the project was fully analyzed and vetted; expressed concern about a false expectation of immediate gratification; questioned the timeline associated with necessary infrastructure; noted the importance of being proactive and moving forward with the project; questioned qualification requirements; expressed concern about changing amenities and the impacts to the overall character of the Great Park; expressed concern about potential noise and traffic impacts; ability to reject all bids if City's needs were not met; expressed concern that bidders may not respond properly due to the lack of a specific site; evaluating proposals based on experience, financial ability, and public benefits brought forth by each entity; and exploring public/private partnerships.

ACTION: Moved by Director Shea, seconded by Director Lalloway, and unanimously carried to:

Approve and authorize staff to release a Request for Qualifications and Proposals for the Design, Development, Lease, and Operation of a waterpark at the Orange County Great Park, substantially in the form attached to the staff report.

2.3 REQUEST FOR PROPOSALS FOR DESIGN REVIEW SERVICES AND MARKET FEASIBILITY STUDY FOR THE ORANGE COUNTY GREAT PARK GOLF COURSE

Pete Carmichael, Director, Orange County Great Park, presented the staff report and responded to questions.

Board discussion included: concern with amount of land dedicated for the golf course; modifying the golf course to nine holes in an effort to allow more space for passive use; possibility of also using some of the land for the proposed waterpark; potential financial impacts to private golf courses in the City if a public golf course was built at the Great Park; whether concurrence from Five Point Communities (FivePoint) was required to remove or amend the golf course site; suggested continuing the item indefinitely while other features of the Great Park were completed to determine how the land could be best used; and questioned community interest for the golf course.

Jeffrey Melching, Board Counsel, noted that the City was contractually obligated under the Adjacent Landowner Agreement (ALA II) to move forward with the golf course and that mutual consent from both parties was required in order to remove a major design element.

ACTION: Moved by Director Krom, seconded by Vice Chairwoman Schott, to:

Continue the matter indefinitely and not proceed until such time as the Board is able to see how the balance of what is currently under development and is currently subject to Requests for Proposals proceeds.

Chairman Choi suggested amending the main motion to direct staff to confer with FivePoint to determine its interest and flexibility in adjusting the golf course to nine holes, and returning to the Board within six months, to which Director Krom stated her preference to keep her original motion intact.



November 8, 2016

REQUEST FOR PROPOSALS for

Design, Development, Lease, and Operation of a Recreational Waterpark at the Orange County Great Park

Thank you for considering the attached Request for Proposals (RFP). If you are interested in submitting a Proposal, please follow these instructions for submissions.

Only RFP documents downloaded from the City's website (www.cityofirvine.org/purchasing) shall be considered official, as the City must track RFP holders in the event an addendum is issued. Failure to register and download the RFP document and any addendum from the website will result in disqualification of the proposal.

Due Date and Time:

No Later than February 28, 2017 at 4:00:00 PM

RFP Number:

17-1186

This RFP number must be clearly marked on the outside of the envelope containing one (1) original and three (3) copies of the proposal. The original proposal must be unbound. Financial statements and the certified or cashier's check shall be submitted in a separate sealed envelope as set forth in the RFP document.

Submit Proposal to:

By mail:

City of Irvine
Purchasing Agent
P.O. Box 19575
Irvine, CA 92623-9575

Overnight or hand delivery:

City of Irvine
c/o Receptionist for Purchasing Agent
1 Civic Center Plaza
Irvine, CA 92606-5208

A MANDATORY PRE-PROPOSAL conference and site tour will be held on December 8, 2016 at 9:00 a.m. at the Orange County Great Park Operations Offices for interested proposers. Please refer to map for directions (Exhibit C), as GPS and online directions to this location are not reliable. Failure to attend this meeting shall result in your firm being disqualified from proposing.

Any requests for clarification or other questions concerning this RFP must be submitted in writing and sent via email to Steve Torelli with a copy to Portia Mina (at the email addresses provided below) no later than January 9, 2017 at 4:00 p.m.

Steve Torelli, Management Analyst
Email: storelli@cityofirvine.org

Portia Mina, Senior Buyer
Email: pmina@cityofirvine.org

The City of Irvine reserves the right to reject any or all Proposals, to waive any informality in any Proposal, and to select the Proposal that best meets the City's needs.

ATTACHMENT 2

**REQUEST FOR PROPOSALS
FOR
DESIGN, DEVELOPMENT, LEASE, AND OPERATION OF A
RECREATIONAL WATERPARK
AT THE ORANGE COUNTY GREAT PARK**

Dear Proposers:

The City of Irvine (the "City") is requesting proposals to design, construct, and operate a waterpark at the Orange County Great Park pursuant to an agreement and long-term ground lease with the City of Irvine.

Proposals must be submitted to the Purchasing Agent, City of Irvine, no later than the date and time stated on this RFP cover sheet. Proposals shall be reviewed and rated based on the qualifications of the respondent, the respondent's development and operating plans for the facility, and the proposed financial terms.

If hand delivered to the Civic Center, proposals shall be submitted to the Receptionist for the Purchasing Agent at the Reception Desk located on the first floor. Proposals shall be submitted in a sealed envelope marked on the outside, **"Design, Development, Lease, and Operation of a Recreational Waterpark at the Orange County Great Park, RFP No. 17-1186."** Financial statements and the certified or cashier's check shall be submitted in a separate sealed envelope marked on the outside, **"Confidential, RFP 17-1186, (company name)."** (Please see cover sheet for additional submittal information.)

LATE PROPOSALS WILL NOT BE ACCEPTED

The City reserves the right to reject any or all proposals, to waive any informality in any proposal and to select the proposal that best meets the City's needs.

OVERVIEW AND SCOPE OF WORK

This Request for Proposals is for the Design, Development, Lease, and Operation of a Recreational Waterpark at the Orange County Great Park as set forth in Attachment I.

TERMS AND CONDITIONS

Please refer to Attachment I, Section III, entitled, "Required Terms & Conditions," and the prevailing wage requirements set forth below.

Prevailing Rates of Wages. Prevailing wage requirements apply to public works projects with a value exceeding \$1,000.00. The definition of “public works” is found at Labor Code Section 1720, *et seq.*

The CITY is subject to the provisions of law relating to public contracts in the State of California. It is agreed that all provisions of law applicable to public contracts are a part of this Agreement to the same extent as though set forth herein, and will be complied with by CONTRACTOR. CONTRACTOR shall abide by all applicable Sections of the California Labor Codes including Sections 1770 -1781, *et seq.* In accordance with the provisions of Section 1773 of the California Labor Code, the general prevailing rates of per diem wages and holiday and overtime work in the locality in which the Work is to be performed shall be in accordance with the rates posted on the Department of Industrial Relations website, found at <http://www.dir.ca.gov/dirdatabases.html>. The CONTRACTOR, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workers employed in the execution of this Agreement.

The City of Irvine reminds all contractors and subcontractors of the adoption of **SB 854**, and encourages them to understand and comply with the requirements as set forth on the Department of Industrial Relations (DIR) website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. **All contractors and subcontractors who plan to bid on a public works project (including maintenance work) with a value exceeding \$1,000.00 must first be registered and pay an annual fee with the DIR. The City requires all contractors and subcontractors to be registered with the DIR prior to submitting a bid on any public works project.** Subject to the exceptions set forth in Labor Code Section 1725.5, bids from contractors that are not currently registered will be deemed nonresponsive. Further, the City will not award a contract to and no contractor or subcontractor will be allowed to work on a City public works project unless they are registered with the DIR pursuant to Labor Code Section 1725.5. Please visit the DIR website for further information.

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

At the discretion of the City, any or all parts of the respondent's proposal shall be made a binding part of the selected firm's Contract. The City reserves the right to reject in whole or in part any of the proposals.

ORGANIZATION OF PROPOSAL

The proposal will be evaluated by the City and shall include, at a minimum, the following information:

A. Cover Letter

Provide a cover letter describing the respondent, the name and address of the entity submitting the proposal, and the name, address, and telephone number of the person or persons who will serve as the entity's principal contact person authorized to make representations on behalf of the respondent. The letter must bear the signature of the person having proper legal authority to make the proposal for the entity.

B. Table of Contents

Provide a table of contents listing the individual sections of the proposal and their corresponding page numbers.

C. Project Summary

Provide a brief synopsis of the highlights of the proposal, summarizing the key benefits of the proposal and describing how the proposal meets the goals of the project, as described in Attachment I—, Section II.

D. Qualifications – Identify Development Entity

A complete description of the development entity, including the following information:

1. Identification and type of legal entity which would;
 - a. Contract with the City for use of City property
 - b. Develop the facility
 - c. Operate the facility
2. Intended role of each development partner/major consultant in the design and development of the facility and the responsible entity and individual in the organizational structure for project management;
3. Roles and resumes of project manager and key individuals who would implement the planning and construction of the project;
4. Key consultants and relevant experience, including but not limited to architecture, engineering, general contractor (if known) and legal consultants;
5. Identification and resume of individual that would serve as respondent's lead negotiator with City;
6. Identification of any possible conflicts of interests; past or pending litigation; and any past or pending civil or criminal investigations;
7. Disclosure of any conflict or potential conflict of interest related to any previous or ongoing work related to the Orange County Great Park, Great Park Neighborhoods, or the development/ownership entities related to the Orange County Great Park or Great Park Neighborhoods.

E. Qualifications – Describe Development Experience

Describe relevant planning and development project experience, particularly with projects similar to the type and size of waterpark contemplated in your proposal.

Additionally, describe any relevant experience working with public entities in previous projects. Identify specific projects that demonstrate development experience as noted above, including the following specific information for each project identified:

1. Location, site plan, and photographs;
2. Waterpark size, visitor capacity, and average annual attendance;
3. Development timeline (from developer selection/site control to completion of construction, indicating any phasing if relevant);
4. Project cost, land use framework (e.g., fee ownership, ground lease, etc.), capital and financing sources used;
5. General description including role of development entity, and unique challenges of project.

F. Qualifications – Describe Financial Capacity

Provide evidence of access to debt or equity capital sufficient for the design and construction of the proposed facility, supported by:

1. One (1) copy of the most recent year's, and the most recent prior year's, CPA firm-audited (or CPA firm-reviewed) annual financial statements for each principal participant is required; however, in lieu of financial statements, the most recent year's, and the most recent prior year's, company tax return (or Schedule C if a sole proprietorship), may be submitted. Please blackout any personal information such as a social security number on the documents. Financial statements or tax returns must be placed in a separate sealed envelope marked "Confidential, RFP 17-1186, (company name)." **Failure to provide this information shall result in proposal disqualification.**
2. Composition of current waterpark/recreational facility portfolio, listing the following for each asset: project name, type, location (city, state), date completed, project size, value, role (developer, property manager, etc.), ownership interest, financing structure;
3. Recent history in obtaining financing commitments, detailing type of project, financing source, amounts committed;
4. Any other available documentation to demonstrate respondent's ability to finance the project, including conditional commitment letters or letter of credit from financing sources.

G. Qualifications – Describe Operating Experience

Describe relevant waterpark facility management and operating experience, particularly with regard to projects similar to the type and size of the waterpark contemplated in your proposal. Identify specific facilities that demonstrate operating and management experience, including the following specific information for each project identified:

1. Location, site plan, and photographs
2. Waterpark size, visitor capacity, and average annual attendance
3. General description including unique challenges of project and history
4. Operating plan for the park including key operating features, such as:

- a. Hours and days of annual operation
 - b. Number and type of staff
 - c. Insurance
 - d. Copy of annual operating budget
- 5. Summary of economic performance
- 6. Copy of land use agreement (lease or other) if applicable
- 7. Current management/owner and landlord/public agency contact, if applicable

H. Development Plan

Describe the preliminary development concept ("Preliminary Development Concept") for the waterpark, including a conceptual plan for the site, construction schedule and budget. For purposes of consistency, assume that necessary utilities and roadway access will be delivered to the edge of the site by others.

The Preliminary Development Concept for the waterpark should include, at a minimum, the following:

- 1. Project budget including total estimated cost for construction and sufficient line item detail to determine estimated cost for:
 - a. Grading and earthwork
 - b. Site improvements, hardscape, and parking lots
 - c. Vertical construction
- 2. Site plan including:
 - a. The waterpark facility
 - b. Locker rooms and restrooms
 - c. Office space
 - d. Concessions
 - e. Parking
 - f. Slides and recreational equipment
 - g. Internal vehicular and pedestrian circulation and access
 - h. Pools and waterways
 - i. Green space/buffer space between adjacent use
- 3. Table with summary site plan information including best estimates for the following;
 - a. Total acreage for waterpark facility, broken down to show acreage for park and parking separately
 - b. Number of buildings and approximate square footage for each
 - c. Summary of slide and other proposed recreational equipment, including estimated total heights of structures
 - d. Summary of proposed pools and waterways including approximate dimensions
- 4. Summary of required infrastructure and utilities including all wet and dry utilities, demands, pipe sizes, and other identifiable infrastructure needs.

I. Management and Operations Plan

Include a Preliminary Management and Operations Plan describing respondent's plans for operating the waterpark on an on-going basis. At a minimum, the Management and Operations Plan should describe:

1. An estimate of the total visitor capacity and expected annual attendance
2. Describe any ancillary uses and events to be held at the waterpark
3. A general staffing and security plan for the waterpark
4. A description of the type of food and beverage services and other amenities, concessions, and services that would be offered at the waterpark
5. A general traffic and parking analysis describing the plan to manage incoming and outgoing traffic volume and guidance to parking areas, bus access, drop-off and pick up areas, parking for staff, and general back of house access for truck loading and parking.
6. Projected annual water and electricity use. Description of proposed water conservation and sustainability strategies.

J. Statement of Proposed Financial Terms and Assumptions

Describe the key financial components of the proposal related to use of City property. This should include rental terms, cost and revenue projections, and the respondent's financing strategy. At a minimum, the Statement of Proposed Financial Terms and Assumptions should include the following:

1. The respondent should describe the rent, including base rent, participation rent, proposed escalations, rent features, revenue sharing, and other significant features of the land use framework.
2. Identification of specific relationships (and contact information) with sources of debt and equity capital, with conditional approval of financing sufficient to design and construct the project outlined by the respondent
3. Development and Operating Pro Forma cash flow analysis showing projected expenses, revenue and financing cash flow for the period beginning with the inception of lease, through construction, and the first five years of operation. Pro forma should account for total cost of project construction in addition to all operating costs after opening and stabilization.

PROPOSAL EXECUTION

The proposal shall be signed by an official authorized to bind the respondent, and shall contain a statement to the effect that the proposal is valid for one-hundred and twenty (120) days.

The proposal must be signed in blue ink, with the address of the respondent's entity provided. Evidence of the legal status of the respondent's entity, whether individual, partnership, corporation, limited liability company or otherwise, shall also be provided.

PROPOSAL INITIAL DEPOSIT

An initial deposit in the form of a certified or cashier's check payable to the City of Irvine, in the amount of Fifty Thousand Dollars (\$50,000) must be submitted with each proposal. After a selection has been confirmed, the deposits of all unsuccessful respondents will be returned. The Fifty Thousand Dollars (\$50,000) deposit submitted by the selected Respondent will be held as a deposit to support staff assigned to the project, as set forth below. No interest on any initial deposit will be paid to any respondent.

The service of processing an application for development of property in the City is of primary benefit to the applicant. The cost of processing an application is charged according to the hours spent by staff in reviewing and analyzing the project, including checking plans, writing staff reports, preparing environmental analyses, notifying and responding to the public and attending public hearings. The applicant receiving benefit from the service shall pay the cost of these services. Total cost varies according to the size of the project and the complexity of the issues involved. At the City's sole discretion, a consultant may process the application. Pursuant to the City Council Resolution 07-76, for development applications, the applicant will pay all costs for consultant services inclusive of any applicable "in-house" administrative costs. In no instance will the administrative fee plus the consultant contract rates exceed the hourly rates charged by City staff. Project specific expenditures, such as City Attorney services, postage for mailing public notices, advertising, etc., have been excluded from the hourly rates. These project specific expenditures will be billed "at cost" on a project by project basis to the applicant.

The deposit creates an account to which processing time is charged. Case processing charges will automatically be drawn against the deposit funds until the minimum balance of \$2,500 is remaining. All charges for services beyond the deposit requirement will be invoiced to the applicant on a monthly basis. Accompanying the invoice will be a statement, which will include a description of services rendered during the billing period.

SELECTION PROCESS

Evaluation Criteria

All proposals will be evaluated by the Review Panel in accordance with the criteria and procedures identified below. Without limiting any of its rights described herein, the City reserves the right in its discretion to make a selection based directly on the proposals submitted or to negotiate further with one or more of the respondents. The respondent selected under this RFP will be chosen on the basis of its apparent ability to best meet the overall objectives of the City, as determined in the City's sole and absolute discretion.

Phase 1 Evaluation

Proposals will be evaluated by the Review Panel on a scale of up to 100 points. The

criteria described below will be employed in assessing the merits of each qualified proposal received by the Review Panel:

1. Experience and Qualifications of Respondent (50 Points)

- Experience and qualifications of respondent and key personnel related to quality management, maintenance, and operation of the type of project and uses proposed.
- Experience and qualifications of respondent and key personnel related to the construction of buildings consistent with the Preliminary Design Concept.
- Business capability of the respondent and/or key personnel of respondent as demonstrated by the success of other projects, and revenues achieved in other projects.
- Financial capacity of the respondent to cover capital expenditures and operating costs through construction, and the adequacy of working capital to maintain the waterpark, including the following: (i) ability to raise capital for the project, either through equity capital, unsubordinated debt financing, and/or other sources of funds; (ii) strength of current relationships with funding sources, including financial institutions; (iii) overall financial track record; and (iv) results of reference and credit checks.
- Understanding of the regulatory approval process and other issues affecting the site, as reflected in the project schedule and general project concept.
- Establishment of clear lines of responsibility within the respondent's organization upon which the City can rely during negotiation and implementation of the project.

2. Preliminary Development Concept and Management and Operations Plans (25 Points)

- The extent to which the proposal meets the City's objectives outlined in Section III, including the extent to which the proposal will effectively activate the Great Park and provide for public use and enjoyment of the waterpark and assimilation with and contribution to the surrounding areas.
- Quality, value and nature of respondent's plans for the development of the waterpark, including the manner in which the Preliminary Development Concept is consistent with the City's goals for design excellence and consistency with other park uses.
- Viability of and schedule for implementing the proposed Plans.
- Quantity and nature of event dates available for community events.

3. Statement of Financial Terms and Assumptions (25 Points)

- Amount of projected revenue to the City and respondent's underlying assumptions, including proposed terms of rent and revenue sharing. The market viability and likelihood of participation revenue will also be considered.
- Financial feasibility of respondent's proposal, including the extent to which respondent has access to financing resources for construction and operation

of the waterpark. Proposals with confirmed commitment of funding sources will be rated more favorably than those without.

Phase 2 for highest-rated firm(s):

- The City anticipates conducting interviews with the highest-rated firm or firms, for an addition of up to 50 points.

Phase 3 for highest-rated firm(s)

- The City will perform reference checks for similar projects completed or in operation within the last five years for the highest-rated firm(s), for an addition of up to 20 points.

Selection of one (1) respondent's proposal from among all respondents will be recommended for selection to the Orange County Great Park Board and City Council. The selection will be based on the experience and qualifications; development and operating plans; and Statement of Financial Terms and Assumptions, as set forth in the RFP response. The highest rated firm or firms will be contacted for an in-person interview.

Upon selection, the City will enter into an Exclusive Negotiating Agreement (ENA) with the selected respondent. During the ENA period, staff will work with the selected respondent to finalize the site plan and ground lease terms as well as any requisite environmental review per CEQA. This RFP does not indicate a commitment by the City to award a ground lease to any successful respondent.

General Terms and Conditions of RFP

1. This RFP is an invitation to submit proposals and does not commit the City in any way to enter into an agreement or to proceed with the RFP. The issuance of this RFP does not obligate the City to pay any costs whatsoever incurred by any respondent in connection with: (a) the preparation or presentation of a proposal; (b) preparation or participation in an oral interview; (c) any supplements or modifications of this RFP; or negotiations with the City or other party arising out of or relating to this RFP or the subject matter of this RFP. The determination by the Review Committee to select and recommend a particular respondent for approval of the City shall not imply acceptance of the respondent's business offer, which may be subject to further negotiation prior to approval of a Lease or other agreements with the City. The Lease will be subject to approval by the Orange County Great Park Board and City Council in their respective sole discretion.
2. The information presented in this RFP and in any report or other information provided to respondents is provided for the convenience of the interested parties. It is the sole responsibility of interested parties to assure themselves that the

information contained in this RFP or other documents are accurate and complete. No representations, assurances or warranties pertaining to the accuracy of such information are or will be provided by the City or its advisors or by the Review Panel.

3. The City expressly reserves the right at any time, and from time to time, for its own convenience, and in the City's sole discretion, to do any or all of the following:
 - a) waive or correct any defect or technical error as to form or content of this RFP or in any response, proposal, or proposal procedure, as part of this RFP or any subsequent negotiation process;
 - b) reject any and all proposals, without indicating any reason for such rejection;
 - c) reissue a Request for Proposals;
 - d) modify or suspend any and all aspects of the selection process, modify the scope of the project or the required responses, modify the components of the development concept, or modify the selection process and/or evaluation criteria indicated in this RFP;
 - e) request that respondents clarify, supplement or modify the information submitted;
 - f) extend deadlines for accepting responses, request amendments to responses after expiration of deadlines, or negotiate or approve final agreements;
 - g) except as specifically provided in any ENA to be executed by the City and the Selected Respondent, negotiate with any, all or none of the respondents to this RFP;
 - h) make a selection for the exclusive negotiations based solely on the proposal selection process, or negotiate further with one or more of the respondents;
 - i) during negotiation, expand or contract the scope of the waterpark, including adding or subtracting areas to or from the waterpark, committing or withholding public financing or otherwise altering the project concept from that which was initially proposed in order to respond to new information, community or environmental issues, or opportunities to improve the financial return to the City from the waterpark or enhance public amenities;
 - j) except as specifically provided in any ENA to be executed by the City and the successful respondent, if negotiations with the successful respondent fail to proceed to the reasonable satisfaction of the City, at the City's sole and absolute discretion, negotiate with and enter into a final agreement with another respondent, or begin the selection process anew, and/or
 - k) consider any information about any respondent that is not expressly contained in respondent's response.
4. Selection of a respondent and granting of an exclusive right to negotiate should not be construed as an approval of the proposed uses, configuration or design of

the waterpark. The City will not recommend or approve any Lease for the waterpark which would allow for its development until there has been compliance with the California Environmental Quality Act (CEQA). Review and approval by other agencies and the City may be required. No final approval will have occurred unless and until the Orange County Great Park Board, and the City Council has approved the Lease.

5. By submitting a proposal, the respondent certifies to the City that the respondent has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a lease or other agreement with the City related to the waterpark, to any City employee or official or to any contracting consultant hired by the City for purposes of the development of the waterpark.
6. Responses to all inquiries about this RFP shall be subject to the California Public Records Act. Information will be made available to the public upon written request after the Lease has been awarded. Proprietary financial information submitted in response to this RFP will not be disclosed until and unless that person or entity is awarded the Lease, except as set forth below. The City shall not be responsible under any circumstances for any damages or losses incurred by a respondent or any other person or entity because of the release of any financial or other information.

It is important for respondents to clearly identify in their proposals those financial records or other information that the respondent in good faith determines to be a trade secret or confidential propriety information protected from disclosure under applicable law. To the extent permitted by law, the City will attempt to reasonably maintain the confidentiality of such financial information, consistent with the City's general practices for maintaining the confidentiality of such information, and information so marked will be redacted from the copies presented to the public. However, generally, all documentation including financial information submitted by any respondent to the City are public records under state and local law, including the California Public Records Act and the City will not under any circumstances be responsible for any damages or losses incurred by a respondent or any other person or entity because of the release of such financial information.

7. The City will not return submittals or any information submitted in connection with a submittal.
8. The City intends, through exclusive negotiations, to identify the actions and activities that would be necessary to develop the waterpark and thereby facilitate meaningful environmental review. If the waterpark is found to cause significant adverse impacts that have not already been analyzed and/or have not been mitigated, the City retains the absolute discretion to require additional

environmental analysis, and to: (a) modify the waterpark to mitigate significant adverse environmental impacts; (b) select feasible alternatives which avoid significant adverse impacts of the proposed project; or (c) reject or proceed with the waterpark as proposed depending upon a finding of whether or not the economic and social benefits of the waterpark outweigh otherwise unavoidable significant adverse impacts of the waterpark.

9. The Selected Respondent shall be responsible for obtaining all regulatory and government approvals required for the waterpark, and will be expected to pay all permit and processing fees related to the development. In issuing this RFP, the City makes no representation or warranties that the necessary governmental approvals can be obtained which will allow for the development of the waterpark in accordance with the guidelines set forth above herein. Respondents should understand that the City is issuing this RFP in its capacity as a land manager with a proprietary interest in the waterpark, and not as a regulatory agency. The status of the City staff as local government employees shall in no way limit the obligation of the Developer to obtain approvals from relevant public agencies, departments, boards or commissions that have jurisdiction over the waterpark.
10. The City will not pay a Finder's or Broker's Fee in connection with this RFP. Respondents shall be solely responsible for the payment of all fees to any real estate brokers or any other parties with whom such respondents have contracted.
11. All facts and opinions stated in this document (including any attachments, appendices or exhibits) and in the additional reports and information are based upon available information, and no representation or warranty is made with respect thereto.
12. The above requirements will be incorporated as part of the Lease, and will apply to contractors, subcontractors, subtenants, etc. of the Developer.
13. Any protest to this RFP must be made within five (5) business days after the Review Panel submits in writing to the Orange County Great Park Board and City Council its recommendation regarding selection of a respondent under this RFP. Protests must be submitted in writing to the Purchasing Agent at purchasing@cityofirvine.org, within such time period to the Contact. Protests submitted after such date will be barred.

GENERAL INFORMATION

Any costs incurred in the preparation of a proposal, presentation to the City, travel in conjunction with such presentations, or samples of items shall be the responsibility of the respondent. The City assumes no responsibility and no liability for costs incurred by respondents prior to issuance of a contract or purchase order.

The proposer shall furnish the City with such additional information as the City may reasonably require. The City reserves the right to conduct pre-lease negotiations with any or all potential proposers.

Any questions or requests for clarification must be submitted in writing and sent via email to Steve Torelli at storelli@cityofirvine.org with a copy to Portia Mina, Sr. Buyer at pmina@cityofirvine.org. No questions will be accepted later than January 9, 2017 at 4:00 p.m.

All data, documents and other products used or developed during performance of the services will remain the property of the City upon completion of the services.

One (1) original and three (3) copies of the completed proposal must be enclosed in a sealed envelope and addressed as stated on the cover sheet. The original proposal must be unbound. Financial statements and the certified or cashier's check shall be submitted in a separate sealed envelope marked on the outside, "Confidential, RFP 17-1186, (company name)."

Sincerely,
Portia Mina, CPSM, CPPB
Sr. Buyer

Attachment: Scope of Services

ATTACHMENT I

SCOPE OF SERVICES

Design, Development, Lease, and Operation of a Recreational Waterpark at the Orange County Great Park

Executive Summary

Development Opportunity:	Design, construct, and operate a waterpark at the Orange County Great Park pursuant to a long-term ground lease that is approved by the City Council of the City of Irvine (“City”).
Location:	The Orange County Great Park (the “Great Park”) is located north of the 5 Freeway, east of Sand Canyon Road, South of Irvine Boulevard. The proposed waterpark site is likely to be located in the vicinity of the Cultural Terrace District area of the Great Park as more particularly shown on <u>Exhibit A</u> , attached hereto (the “site”). Two potential alternative sites within the Cultural Terrace area have also been included for demonstration purposes, shown on <u>Exhibit B</u> . Inclusion of these sites is not intended to indicate a final location but rather a demonstration as to how such a facility could be included within the Cultural Terrace area.
Financial Requirements:	Respondents should be prepared to fund 100% of the costs of designing, constructing, and operating the waterpark and to pay ground rent as set forth in Section III below.
Initial Deposit Required:	A deposit of \$50,000 in the form of a certified or cashier’s check is required along with the submittal of proposals and is refundable to respondents who are not selected.

I. Background, Opportunities and Constraints

History

In 2002, the voters of Orange County voted to transform a substantial portion of the former El Toro Marine Corps Air Station (the “**Base**”) into the Great Park. As part of the disposition of the Base, approximately four thousand acres were transferred through a bid process from the Department of the Navy to Heritage Fields El Toro LLC (“**Heritage**”).

Fields”), which then deeded approximately 1,375 acres of the Base to the City of Irvine for the Great Park. The rest of the Base is being developed for residential and commercial uses. The Great Park is in the City of Irvine and is owned and operated by the City of Irvine, under the oversight of the Orange County Great Park Board of Directors and the Irvine City Council.

Proposed Use & Site

The City is offering qualified organizations the opportunity to design, construct, and operate a waterpark at the Orange County Great Park. Through this Request for Proposals (“**RFP**”), and subject to City approval, the City will select an entity (“**Selected Respondent**”) to exclusively negotiate the terms of a long-term lease (“**Lease**”) governing the design, construction and operation of the waterpark. It is intended that the waterpark will be used for water-based recreational and educational activities to activate the Great Park, as further discussed in Section II.

The Orange County Great Park

The Orange County Great Park is in the geographic center of Orange County, California, a diverse metropolitan community of three million located halfway between Los Angeles and San Diego. The Great Park has direct freeway and rail access, making it easily accessible for more than 10,000,000 Southern California residents.

The Great Park today is home to significant arts and culture exhibition spaces, sports fields, agricultural fields, demonstration areas, open lawn and festival spaces. The iconic carousel is a popular draw for families and the Great Park Balloon rises like a beacon 400 feet above the park offering vistas across Orange County.

Today, hundreds of thousands of visitors from all over Southern California and beyond enjoy the Great Park’s existing array of recreational and educational opportunities and participate in shared experiences. Some of the major features include the Farm + Food Lab, a several acre demonstration garden; the Kids Rock Playground; the Palm Court Arts Complex, home to the Great Park Gallery and Artist Studios; the seven-acre North Lawn; Walkable Historical Timeline; and Historic Hangar 244. The Sports + Fitness Complex, includes four tournament quality, lighted soccer fields; two of which are natural turf and two of which are synthetic grass, a restroom and facility support building and a mile long Thrive path, an innovative health and fitness trail.

The future of the Great Park is bright. Currently under development, and anticipated to be phased into service over the next three years is an additional 688-acres of public park amenities. This includes 75 acres of trail and open space, an 18-hole golf course, and a 195 acre sports park which includes:

- Soccer: 13 fields and a championship stadium with capacity for up to 5,000 spectators
- Tennis: 25 courts with spectator center court
- Volleyball: 6 sand volleyball courts with spectator center court
- Baseball and Softball: 12 fields with dedicated stadiums for both baseball and softball including locker rooms and support facilities.

- **Flex Fields:** Open field space that can be used for five additional striped soccer fields or flex programming such as festivals and events.

Completion of the 688 acres is scheduled over the next three years with completion of much of the Sports Park in 2017 and 2018.

The Cultural Terrace, which is the likely home of the waterpark, is the final significant un-programmed space at the Great Park. It is a 250-acre area at the southeastern corner of the park adjacent to the Irvine Transportation Center. The Great Park Board has designated the Cultural Terrace for cultural and recreational amenities including museums, library, amphitheater, and a lake feature.

Infrastructure Considerations

As part of the City's existing development agreements with Heritage Fields, Heritage Fields is required to provide certain infrastructure improvements at the Great Park, including new roads, water, wastewater, electrical, and other facilities which will be necessary for the construction and delivery of the waterpark. Much of that infrastructure is currently under construction. The timing of the delivery of that infrastructure depends, in part, on Heritage Fields' plans for development phasing of the rest of the Base. Thus, the selected Developer will need to work closely with the City to coordinate design, phasing, and construction.

The purpose of issuing this RFP at this time is to bring the partner on early in the process to help facilitate integration of the waterpark into other planning elements of the Great Park, as well as the surrounding development plans of Heritage Fields. The waterpark that results from that integrated planning effort will be reviewed and evaluated under CEQA and will be subject to the separate approval of the City, as more specifically set forth below.

II. City of Irvine Goals

The City is seeking a Developer with demonstrated expertise, experience, and financial capacity to plan, design, construct, operate, and manage the waterpark in a manner that will achieve the following goals:

1. Activation of the Park. A primary goal of the City through this RFP is to generate proposals for a waterpark that will create a vibrant and active destination in or near the Great Park's Cultural Terrace District.
2. Design Excellence. The City seeks a waterpark that reflects design excellence consistent with the high planning and design standards set at the Great Park and across the City.
3. Revenue. The City expects responses to this RFP to give important consideration to revenue generation for the City. It is anticipated that proposals will include provisions for ground rent and revenue participation for the City in exchange for the long-term land use provided the developer/operator. The City

expects each respondent's lease terms to include no recourse to the City for construction, operating costs, maintenance or rehabilitation related to the waterpark.

4. Consistency with other Park Uses. The City seeks a development proposal that takes into account adjacent uses at the Great Park and proposes ways to mitigate traffic, noise, aesthetics and other potentially disruptive characteristics of a waterpark attraction; and to provide community and special events.

III. Required Terms & Conditions

In order to meet its goals, the City is prepared to enter into an Exclusive Negotiating Agreement ("ENA") with the Selected Respondent and, then, subject to approval by the Orange County Great Park Board and City Council after the completion of any required environmental review, a long-term ground lease. The ENA will encompass design of the waterpark and the negotiation of the key transaction documents leading up to final project approvals, including negotiating and preparing the Lease and completing environmental review under CEQA. The Lease will dictate development terms and conditions as well as the use and operation of the waterpark once construction is complete.

Key Terms

This section briefly describes Key Terms sought by the City in the ENA, and the Lease. In their submittals, respondents will be required to make a proposal that is reasonably consistent with these Key Terms. The actual terms of the Lease will be negotiated with the City and may change depending on the final design of the waterpark. The Lease is subject to final approval by the Orange County Great Park Board and the City Council.

Preliminary ENA Terms

1. Design. During the ENA term, the Selected Respondent will work with City staff to advance conceptual designs for the waterpark, within the context of both current and on-going planning related to the Cultural Terrace District of the Great Park and current and on-going planning related to the private development surrounding and supporting the Great Park. The level of design needs to be specific enough to support environmental review under CEQA and the drafting and negotiation of all of the relevant transaction documents. More detailed architectural and engineering work can occur under the Lease after it has been duly approved.
2. Negotiation. During the term of the ENA, the Developer will work with City to negotiate the transaction documents for the project, including the Ground Lease.
3. Regulatory Approvals; Environmental Review. The Selected Respondent will be solely responsible for obtaining all necessary regulatory approvals for the Project, including filing all necessary development applications, paying required application fees and providing sufficient information and support to allow all applications to be processed to completion, and background technical reports related to environmental topics, but shall coordinate such activities with the City. During the term of the ENA and prior to approval of the Lease by the City

Council, all applicable environmental review requirements under CEQA must be completed. At this time, there is no entitlement under the approved Master Plan for this facility. The Selected Respondent will be required to bear all costs of such environmental review and any other regulatory approvals required for the City to enter into the Lease or related to Selected Respondent's use of the premises, including, without limitation, any building permit, planning application or impact fees assessed.

Preliminary Lease Terms

1. General. The Lease will contain conditions, related to completing construction of the waterpark, which must be satisfied prior to commencement of the Lease term. Before Lease commencement, the Selected Respondent must have obtained all required permits and approvals for the construction of the project, and have produced, to the City's satisfaction, evidence of sufficient financing to build the approved project and evidence of tenant commitments. The Lease will also contain provisions covering construction, including provisions obligating the Selected Respondent to complete the project in accordance with a scope of development and a schedule of performance. The document will set forth a process and schedule for City staff to review and approve final design and construction documents prior to the commencement of construction.
2. Security Deposit, Performance Bond and Guarantee. The Developer will be required to provide various financial assurances to the City regarding implementation of the project including, without limitation, appropriate construction and/or completion bonds. Depending on the financial capacity of the entity entering into the Lease with the City, the City may also require a guaranty from the parent company or other security guaranteeing the successful completion of the project. The Lease will also contain time and performance benchmarks with clear termination provisions and financial penalties for non-performance. The Selected Respondent will also be required to have in place sufficient insurance to meet City standards, the specifics of which will be defined during the ENA period, which shall include:

2.0 Types of Required Coverages

Without limiting the indemnity provisions of the Contract, the Contractor shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

- (a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, with minimum limits of at least \$10,000,000

each occurrence, and if written with an aggregate, the aggregate shall be double the each occurrence limit. (Once project is completed, coverage shall not exclude sexual molestation.)

Products-Completed Operations: Contractor shall procure and submit to City evidence of insurance for a period of at least three (3) years from the time that all work under this Contract is completed.

- (b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$5,000,000 each accident.
- (c) Builder's Risk Insurance: Builder's Risk Insurance for any property constructed on behalf of the City, to cover "all risk" of physical loss providing coverage for loss or damage from collapse, including collapse resulting from builder's design error. The value insured shall cover 100% of the completed Contract cost and shall be maintained until full acceptance of the Work. Proceeds payable under the above insurance shall be fully payable to the City as Loss Payee.
- (d) Contractors Pollution Liability: Contractors Pollution Liability Insurance covering all of the contractor's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of \$5,000,000 each loss and \$10,000,000 in the aggregate.
- (e) Professional Liability: Professional Liability insurance with minimum limits of \$10,000,000 each claim. Covered Professional Services shall specifically include all work to be performed under the contract and delete any exclusions that may potentially affect the work to be performed.
- (f) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and

\$1,000,000 each employee for bodily injury by disease.

2.1 Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

- (a) The insurance coverages required by Section 2.0 (a) Commercial General Liability; (b) Automobile Liability Insurance; and (d) Contractors Pollution Liability shall contain the following provisions or be endorsed to provide the following:

- (1) Additional Insured: The City and the Orange County Great Park Corporation, their elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Contract.

Additional Insured Endorsements shall not:

- 1. Be limited to "Ongoing Operations"
 - 2. Exclude "Contractual Liability"
 - 3. Restrict coverage to the "Sole" liability of contractor
 - 4. Exclude "Third-Party-Over Actions"
 - 5. Contain any other exclusion contrary to the Contract)

- (2) Primary Insurance: This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

- (b) The policy or policies of insurance required by Section 2.0 (c) Builder's Risk; and (f) Workers' Compensation shall be endorsed, as follows:

- (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

2.2 Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

2.3 Waiver of Subrogation

Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and Policies shall contain or be endorsed to contain such a provision.

2.4 Evidence of Insurance

The Contractor, concurrently with the execution of the contract, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

2.5 Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

2.6 Contractual Liability

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this contract.

2.7 Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

2.8 Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A-:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

2.9 Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Contract with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Contract.

Upon expiration or termination of coverage of required insurance, Contractor shall procure and submit to City evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this contract is completed.

3. Premises. *The Developer will have exclusive use and occupancy of the waterpark Site.*
4. Term. Thirty (30) years, commencing upon the substantial completion of construction of the waterpark. Respondents may propose additional extension terms of not more than two (2) 10-year options to extend. At the end of the lease period, the Facility will revert to the City of Irvine.

5. As-Is, Triple Net Lease. The premises will be ground-leased to the Selected Respondent on a strictly "As-Is" basis, without representation or warranty by the City. All costs of maintaining the premises and developing the waterpark, including any necessary remediation work, equipment, capital improvement, regulatory approvals, possessory interest taxes and any other taxes and assessments, are to be borne by the Selected Respondent. The Selected Respondent will be responsible for all operating costs and expenses associated with the waterpark project before, during, and after the project's completion. All improvements to the Premises will remain the property of the City after the expiration of the Lease.
6. Subordination. The City's fee ownership in the property will not be subordinated. Commercially reasonable subordination of the Selected Respondent's leasehold interest will be permitted to facilitate construction financing. In making their proposals, respondents must demonstrate access to equity capital and financing to successfully undertake the proposed project.
7. Security Deposit, Performance Bond and Guarantee. In connection with the Lease, the Developer will be required to provide security in the form of a security deposit, a guaranty, or other evidence of on-going financial assurance such as an irrevocable letter of credit. Depending on the financial capacity of the entity entering into the Lease with the City, the City may also require a guaranty from the parent company.
8. Fair Market Value Appraisal of Lease Terms. The agreed upon rental structure in the Lease will be confirmed via an appraisal prior to execution of the Lease. The cost of the appraisal shall be borne by the Developer.

EXHIBIT A

ORANGE COUNTY GREAT PARK OVERALL LAYOUT



CULTURAL TERRACE DISTRICT



EXHIBIT B

SITE OPTION 1 – (Provided for illustrative purposes only, not a final location)

Water Park Concept 1 Location



Orange County Great Park
ATTACHMENT 1

AECOM

EXHIBIT B

SITE OPTION 2– (Provided for illustrative purposes only, not a final location)

Water Park Concept 2 Location



Orange County Great Park
ATTACHMENT 2

AECOM

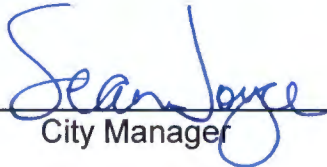
2.4



REQUEST FOR BOARD ACTION

MEETING DATE: APRIL 25, 2017

TITLE: AWARD OF CONTRACT AND BUDGET APPROPRIATION FOR WIRELESS AND TELECOMMUNICATIONS CONSULTING SERVICES AT THE ORANGE COUNTY GREAT PARK



City Manager

RECOMMENDED ACTION

1. Recommend the City Council authorize the Orange County Great Park Director to execute a contract for a not-to-exceed amount of \$97,500 with Connected Nation Exchange, for wireless and telecommunications consulting services at the Orange County Great Park.
2. Recommend the City Council approve a budget adjustment in the amount of \$97,500 from the Orange County Great Park Fund unallocated fund balance for wireless and telecommunications consulting services.

EXECUTIVE SUMMARY

The first portion of the 688-acre Great Park Improvement Area (Park) will open within the next six months, driving a significant increase in Park visitation. This will, in turn, drive an uptick in demand on cellular, voice, and data bandwidth and will strain the current Information and Communication Technology (ICT) system, which is largely insufficient to support this new demand.

To meet this new demand in the near term, staff is working with Verizon Wireless and other cellular carriers to develop solutions to ensure that reliable cellular coverage is available when the Park opens. To meet the long term telecommunications needs of the Park and the significant infrastructure investment that will be required, staff is recommending that a consultant with specific expertise in wireless telecommunications planning be engaged. The consultant would evaluate the needs of the Park within the context of rapidly advancing technology and evolving business models for delivery and maintenance of wireless service.

A Request for Proposals (RFP) was released in December 2016 for wireless telecommunications services. The scope of work, as laid out in the RFP, is based on three fundamental questions:

- What telecommunications infrastructure does the City currently have in place?
- What infrastructure does the City need to sufficiently accommodate visitors and staff in the newly expanded Park?
- What are the options for bridging the gap?

Eight firms responded to the RFP. Based on a review of proposals by a multi-disciplinary team of City staff, Connected Nation Exchange (CNX) is the highest rated firm. The proposed contract and corresponding budget adjustment is for an amount not-to-exceed \$97,500.

The RFP identified a need for consultant services at the Great Park and citywide based on the same scope. The consultant engagement is divided into two separate contracts: one serving the Great Park and another serving a Citywide need. These contracts were separated due to the distinct funding sources and approval processes for Great Park Fund and General Fund contracting based on the rules established by Measure V, the Great Park Fiscal Transparency and Reforms Act. The Great Park contract is being presented to the Great Park Board and City Council for consideration. The citywide contract was presented to the Finance Commission and will also be presented before the City Council for consideration. CNX, the recommended vendor for both the Great Park and citywide consulting engagements, has offered a 31 percent discount if both contracts are approved.

If the contract is approved by the Board and City Council, staff will work with the consultant to develop a recommended plan for implementation and long-term management of wireless infrastructure at the Great Park. Staff anticipates returning to the Board with a plan for consideration within the next four to six months.

COMMISSION/BOARD/COMMITTEE RECOMMENDATION

On April 17, 2017, the Finance Commission considered the award of contract for wireless and telecommunications consulting services for a citywide plan. The Finance Commission voted 4-0 (Allan Bartlett absent), to table staff recommended actions for discussion during the Strategic Technology Plan presentation. A summary of commissioner questions and staff responses is attached (Attachment 3).

At the Planning Commission meeting on April 20, 2017, representatives from Verizon Wireless gave a presentation about the rapidly evolving wireless telecommunications landscape and small cell technology. Following this presentation, Commissioners discussed the need to study the impacts of installing small cell antennas in the right-of-

way, the need to develop City-wide design standards, and the need to update the City's wireless ordinance. Commissioners were informed that the City is considering hiring a consultant to prepare a wireless master plan to address these issues, and they expressed support for this effort.

ANALYSIS

Background

The next 688 acres at the Orange County Great Park is being constructed over several phases, the first of which will be complete and open to the public within the next six months. As the new portions of the Park come online, the amount of programming at the Park will increase significantly, as will the number of Park visitors. Reliable cellular coverage will be important for the phone calls, text messages and data transmission that has become part of the standard visitor experience and an important factor for public safety. While limited coverage does exist in some of the new areas of the Park that are set to open, it will not be sufficient to handle the anticipated increase in visitors and Park activity.

To address coverage and reliability concerns in the short term, staff is working with Verizon Wireless and other carriers to ensure sufficient cellular coverage when the Park opens this summer. Sites have been identified for stationing interim cellular facilities and staff is working with the carriers to put agreements in place to establish coverage in the coming months, prior to opening the next phases of the Park. This approach will provide short-term coverage while preserving the City's flexibility with regard to establishing a permanent, long-term solution.

The implementation of facilities to provide long-term coverage at the Park will require significant additional investment. Further, due to the rapid pace of technological advancement and evolving business models related to provision of wireless service, there is more than one approach for the City to consider. Due to the significant investment and the dynamic wireless communications environment, staff sought the assistance of outside consulting expertise to evaluate the City's options. An RFP for telecommunications consulting services was released with a scope of work based on three fundamental questions, the answers to which are important for the prudent and comprehensive planning of the Park:

- What telecommunications infrastructure does the City currently have in place?
- What infrastructure does the City need to sufficiently accommodate visitors and staff in the newly expanded Park?
- What are the options for bridging that gap?

The scope of work in the RFP contained a Citywide component and a Great Park component, each with tasks focused on planning for wireless coverage, evaluation of

the current fiber-optic infrastructure, and the development of strategies for investment, ownership and monetization of wireless facilities. The RFP identified three specific tasks:

- Task 1: Develop a Park-wide cellular and Wi-Fi master plan
 - a. Evaluate carrier and visitor usage demands.
 - b. Provide guidance on infrastructure placement including location of cellular facilities.
 - c. Develop implementation plan for Wi-Fi coverage and opportunities for co-location with cellular facilities.
 - d. Provide alternatives for implementation and management of new Wi-Fi and cellular facilities including an evaluation of the unique costs and benefits of each model, and potential revenue opportunities.
- Task 2: Evaluate network infrastructure and develop a comprehensive infrastructure plan
 - a. Evaluate existing and planned fiber optic infrastructure, including cabling, distribution systems, and conduit and its capacity to serve future needs.
 - b. Recommend infrastructure design enhancements to support future needs and an implementation strategy to carry out infrastructure improvements.
- Task 3: Develop a strategy for investment in and management of ICT assets
 - a. Based on the future needs and current capacity identified in tasks 1 and 2, develop options for potential City investment and long-term management and maintenance of wireless telecommunications facilities at the Park.

Task 3 is particularly important in light of the evolving business landscape in the wireless telecommunications industry. Several business models have emerged in recent years that could shape the City's approach for provision of cellular coverage at the Great Park. A few of the most prominent models are summarized below.

- Carrier Model: An individual carrier owns land or leases land directly from a landlord (the City in the case of the Great Park) providing exclusive use of that site. Subject to regulatory approval, the carrier can install or expand a facility and potentially license or lease use to other carriers. These facilities are sometimes referred to as "macro-sites."
- Third-Party Operator Model: A business entity, other than a carrier, owns or leases a site and provides infrastructure, such as an electrical connection and fiber. This third party then leases or subleases the facility to carriers. This model places the cost and responsibility of installation and maintenance on the third party and allows numerous carriers to use a single location.

- Leasing Model: A property owner (such as the City in the case of the Great Park) directly leases property to carriers and retains responsibility for management and maintenance of all related infrastructure. In this model, costs are born by and revenues accrue to the property owner.
- Brokerage Model: A firm, acting as an agent or broker on the City's behalf, would manage various aspects of ICT infrastructure and sites in exchange for a fee or share of lease revenue. These arrangements can include complete management of related infrastructure and carrier lease agreements or a smaller subset of these activities. The fee or revenue share varies based on the management role and responsibilities of the broker/agent.

The work of the consultant would also incorporate any implications of the latest State legislation related to wireless telecommunications. Staff is monitoring potential legislation including Senate Bill 649 (SB 649 Hueso) as it moves through the legislative process. Legislative impacts to the City in its role as regulator or property owner will be included in the comprehensive plan to be developed with consultant assistance and brought back to the Board for policy direction.

The RFP identified a need for consultant services at the Great Park and Citywide based on the same scope. The consultant engagement is divided into two separate contracts: one serving the Great Park and another serving a Citywide need. These contracts were separated due to the distinct funding sources and approval processes for Great Park Fund and General Fund contracting based on the rules established by Measure V, the Great Park Fiscal Transparency and Reforms Act. The Great Park contract is being presented to the Great Park Board and City Council for consideration. The corresponding General Fund contract was presented and approved unanimously by the Finance Commission and will also be before the City Council for consideration.

A total of eight firms responded to the RFP. The proposals were reviewed by a multi-disciplinary rating team familiar with the scope of the RFP including staff from Public Works, Community Development, and Information Technology. Out of the eight proposals received, the top three firms were selected for an interview based on relevant and thorough qualifications, comprehensive methodology and experience and responsiveness to the scope and services requested in the RFP.

The top three firms, CNX, ATS Communications, and Magellan Advisors, each demonstrated an understanding of the individual tasks and how they related to one another. These firms responded with a detailed approach to each of the RFP tasks and presented highly relevant experience working with government agencies conducting similar work and provided examples of work performed for other agencies. The proposals demonstrated a systematic approach for clear and objective consulting services from a strong base of both technical and real estate expertise. Out of the top

three firms, CNX provided the best combination of experience, qualifications, and a comprehensive approach for accomplishing the tasks put forth in the RFP.

The remaining five firms either did not have sufficient relevant experience in the specific task areas outlined in the RFP, or did not provide a comprehensive response to each of the three required tasks. These firms did not demonstrate the required combination of expertise, including both the extensive real estate and management experience, and the requisite technical expertise related to the work scope. Additionally, two of these firms assumed that the City would pursue one of the specific business models outlined above that aligned with the services offered by that particular firm. In one response in particular, 5 Bars offered consulting services at no up-front cost by bundling them with a brokerage arrangement through which revenues would be shared among the firm and the City. This brokerage model would pay the consultant approximately \$110,000 (40% of \$275,000) per year under the City's present cell lease revenues; any new lease revenue would be shared 40 percent to 5 Bars and 60 percent to the City. A brokerage or agent type arrangement may ultimately be an approach the City adopts. If at the completion of the first phase it is determined that the brokerage model best serves the City, firms with expertise in this area would be able to compete for the City's business once policy direction is given by the City Council. That said, this RFP sought objective professional evaluation of all potential approaches for implementation of coverage and, therefore, staff is not recommending an award of a consulting contract tied to this type of bundled approach.

Based on the RFP review, interviews and reference checks, the top-rated firm is Connected Nation Exchange (CNX). The cost of the proposed contract at \$97,500, while not the lowest, is deemed fair and reasonable based on the highly technical and specialized nature of the work, the proposer's expansive and relevant experience, qualifications, and proposed methodology. CNX brings extensive experience directly related to the City's needs and a strong understanding of both the business and technical challenges. CNX, the recommended vendor for both the Great Park and citywide consulting engagements, has offered a 31 percent discount if both contracts are approved.

Should the Board and City Council approve the contract, staff will work with the consultant to develop a recommended plan for implementation and long-term management of wireless infrastructure at the Great Park. Staff anticipates returning to the Board with a plan for consideration within the next four to six months. Staff would then pursue the implementation of the plan for permanent coverage and management of facilities in line with Board direction. Depending on the business model selected for implementation, firms would have the opportunity to propose their services within a brokerage, leasing, third-party, or carrier model framework. In the near term, staff will continue to work with carriers to deploy interim coverage solutions, ensuring sufficient coverage for the opening of the Park.

ALTERNATIVES CONSIDERED

The Board could recommend that the City Council direct staff to negotiate directly with individual carriers as applications for facilities at the Great Park are submitted. This is a more traditional approach to establishing cellular service, and would likely be the most rapid means of establishing coverage. As noted previously, staff is working directly with carriers to address short-term coverage needs now while a comprehensive plan is established and implemented.

The Board could also recommend that the City Council direct staff to pursue a third-party operator, leasing, or brokerage model as identified above. This alternative would provide more immediate resources for assistance with leasing and management of cellular facilities, but it would bypass the opportunity for a comprehensive long-term plan to be developed and with a full evaluation of all of the City's options for establishing cellular and Wi-Fi coverage.

Implementation of new wireless telecommunications infrastructure across the 1,300-acre Great Park presents unique challenges and opportunities that are new to the City. Pursuing any one particular approach to establishing coverage without also performing a systematic evaluation of current facilities and strategic options may not provide the desired long-term consistency of coverage, or breadth of services (including both cellular and Wi-Fi), and may not maximize the City's potential financial return.

FINANCIAL IMPACT

The total cost for the recommended contract is in an amount not-to-exceed \$97,500. Staff is recommending the cost of the contract be appropriated from the Great Park Fund unallocated fund balance to the City Manager's Office Great Park Section 020 budget for consulting services. CNX, the recommended vendor for both the Great Park and citywide consulting engagements, has offered a 31 percent discount if both contracts are approved. The Great Park Fund unallocated fund balance is approximately \$44.9 million.

A comprehensive plan, which would come back to the Board later this year, will include specific recommendations for future investment in ICT systems. This investment, likely by the City, carriers, and other partners, will present potential for a financial return to the City through lease payments and other potential revenue agreements. A projection of this financial impact will be included with the comprehensive plan when it comes back for Board consideration.

Ensuring reliable wireless coverage at the Great Park is likely to have broad indirect financial impacts as well. Good, reliable coverage will provide for a more convenient and safer visitor experience, positively influencing Park visitation, facility usage and programming.

REPORT PREPARED BY Steve Torelli, Management Analyst I

ATTACHMENTS:

1. Request for Proposals for Wireless and Infrastructure Consulting Services
2. Contract between the City of Irvine and Connected Nation Exchange
3. Summary of Questions & Answers from April 17 Finance Committee Meeting



December 7, 2016

REQUEST FOR PROPOSALS for

WIRELESS AND TELECOMMUNICATIONS CONSULTING SERVICES

Thank you for considering the attached Request for Proposals (RFP). If you are interested in submitting a Proposal, please follow these instructions for submissions:

Only RFP Documents downloaded from the City's website (cityofirvine.org/purchasing) shall be considered official, as the City must track RFP holders in case an addendum is issued. Proposers are responsible for acknowledging any and all addenda issued.

Due Date and Time:

No Later than January 4, 2017 at 4:00:00 pm

NO LATE PROPOSALS WILL BE ACCEPTED.

RFP Number:

17-1194

This RFP number must be referenced in the proposal document, which must be submitted electronically via the City's website.

Only firms who have registered and downloaded the RFP document from the City's website (BidsOnline system) may submit a proposal.

Proposal Submittal: Proposals must be submitted electronically via the City's BidsOnline system as set forth in this RFP document. (Proposals submitted by any other method such as hard copy or email will be disqualified.) Please refer to the Submittal Instructions section of this RFP for details.

Any requests for clarification or other questions concerning this RFP must be submitted in writing and sent via email to Steve Torelli with a copy to Portia Mina (as shown below) no later than December 19, 2016 at 4:00:00 p.m.

Steve Torelli, Management Analyst I
Email: storelli@cityofirvine.org

Portia Mina, Senior Buyer
Email: pmina@cityofirvine.org

The City of Irvine reserves the right to reject any or all Proposals, to waive any informality in any Proposal, and to select the Proposal that best meets the City's needs.

REQUEST FOR PROPOSALS FOR WIRELESS AND TELECOMMUNICATIONS CONSULTING SERVICES

Dear Proposers:

The City of Irvine (hereinafter referred to as the “City”) is requesting proposals to establish a contract for Wireless and Telecommunications Consulting Services for Development citywide as well as at the Orange County Great Park, with work to commence on or about February 1, 2017 and be completed by June 30, 2018. The City reserves the right to extend the contract for up to four (4) additional one (1) year periods.

Proposals must be submitted electronically no later than the date and time stated on this RFP cover sheet. Proposals shall be reviewed and rated as set forth in the Selection Process section of this RFP. The City will then determine which proposal(s) best meets the City’s requirements.

LATE PROPOSALS WILL NOT BE ACCEPTED

The City reserves the right to reject any or all proposals, to waive any informality in any proposal and to select the proposal that best meets the City’s needs.

MINIMUM QUALIFICATIONS REQUIRED FOR PROPOSAL SUBMITTAL

Firms who fail to meet the minimum qualifications set forth below should not submit a proposal; any such proposal shall be deemed non-responsive and not be considered.

- 1) Minimum three (3) most recent years of experience performing similar services as those detailed in one or more of the six tasks discussed in the Scope of Services section of this RFP.

OVERVIEW AND SCOPE OF WORK

This Request for Proposals is for the position of “Wireless and Telecommunications Consultant” as set forth in **Attachment I** to this RFP.

TERMS AND CONDITIONS

The City’s standard Agreement for Contract Services is included as **Attachment II** to this RFP. Upon award of the contract, it is expected that the successful proposer will accept the Agreement terms and conditions “as is” without modification. (Please refer to Part III Special Provisions of Attachment II for special requirements relating to these services.)

At the discretion of the City, any or all parts of the respondent's proposal shall be made a binding part of the selected firm's contract. The City reserves the right to reject in whole or in part any of the proposals.

Additionally, the City reserves the right to select zero or more of respondent's proposal if needed to address the six distinct tasks discussed in the attached Scope of Services (Attachment I).

Time frame for submittal of insurance documents: At the time the contract is awarded, the firm must be able to provide all required insurance documentation to the City's insurance certificate tracking company as set forth in Attachment II. If these requirements are not met, the City reserves the right to select the next best qualified firm.

ORGANIZATION OF PROPOSAL

If your proposal does not include all of the items below, it may be deemed non-responsive. The proposal will be evaluated by the City and shall include, at a minimum, the following information:

- **BUSINESS INFORMATION**

State the full legal name of your firm, including the state of incorporation if applicable. Include your address, phone number, fax number and email address. State the number of years your firm has been doing business, and more specifically, how long your firm has been performing the services requested in this RFP. List the names of principals or officers authorized to bind your firm, including position titles.

- **EXPERIENCE / QUALIFICATIONS INFORMATION**

Provide information concerning your firm's experience and qualifications directly related to the services set forth herein. Define the experience of the proposed Project Manager, and other key personnel (sub-consultants, if applicable) who would be assigned to perform the services. (The designated Project Manager shall be the primary contact with the City during the contract period, however, it is expected that the identified key personnel will not be altered throughout the contract period.) Provide resumes for the Project Manager, other key personnel, and sub-consultants if applicable.

- **PROJECT APPROACH / METHODOLOGY**

Provide a detailed description of your proposed methodology/project-approach based on your understanding of the Scope of Services (Attachment 1). In addition, provide examples of communities that have developed effective municipal wireless networks and how these networks are used today to enhance the delivery of municipal services and provide access to the general public.

- **REFERENCES**

Provide a minimum of three (3) references, preferably municipalities, on projects of similar scope and magnitude as described in this RFP for work that your firm has provided within the last three (3) years with emphasis on specific experience related to each Task. Include a detailed description of the services, the agency or firm names, contact names and phone numbers, and dates of services performed (ATTACHMENT III).

- **PRICING PROPOSAL**

The City shall not provide reimbursement for business or travel-related expenses; therefore, such costs must be absorbed in the hourly or lump sum fee structure. Provide a fee schedule/pricing information for the project. Provide hourly rates for each category of employee or sub-consultant required to perform the services as set forth in Attachment I, Scope of Services.

Pricing shall remain firm for the entire first term of the Agreement. Thereafter, any proposed pricing adjustment for any follow-on renewal periods shall be submitted to the City Representative in writing at least ninety (90) days prior to the new Agreement term. City reserves the right to negotiate any pricing adjustment not to exceed the Bureau of Labor Statistics Consumer Price Index (CPI) data as follows: Los Angeles-Riverside-Orange County, CA; All Items; Not Seasonally Adjusted; annualized change comparing the most recent month's reported data to the same month of the prior year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.)

- **SIGNATURE**

The proposal shall be signed by an official authorized to bind the firm, including his or her printed name and title, and shall contain a statement to the effect that the proposal is valid for ninety (90) days.

SELECTION PROCESS

The contract award will be made after selection of one (1) or more of the respondent's proposals from among all respondents for each task listed below, with implementation of services to follow. However, this RFP does not indicate a commitment by the City to award a contract to any successful respondent. An award of contract is estimated to occur within approximately sixty (60) days after receipt of proposals. The City intends to evaluate the proposed services based upon the data presented in response to the RFP. The following general selection criteria will be used to evaluate each consultant firm:

Phase 1

1. Experience and qualifications of firm and designated project management staff, other key personnel, and sub-consultants, if applicable. (40%)

2. Methodology/Project Approach provided. (30%)
3. Proposal Pricing. (20%)
4. Responsiveness to the Request for Proposals. (10%)

Phase 2 for highest-rated firm(s):

- The City reserves the right to conduct interviews with the highest-rated firm or firms. In the event the City does perform an interview process, the additive weighting shall be 50%.

Phase 3 for highest-rated firm(s)

- The City will perform reference checks for similar work completed within the last three years for the highest-rated firm(s), with an additive weighting of 20%.

The City reserves the right to conduct interviews with the highest rated firms, and to negotiate final pricing with the most qualified proposer.

The City reserves the right to reject any or all Proposals, to waive any informality in any Proposal, and to select the Proposal or Proposals that best meet the City's needs.

Submittal Instructions

To download the RFP document or check for addenda, please visit the City's website at: ***cityofirvine.org/purchasing***

Click on the "Supplier Registration and Bid Opportunities" link, and then click on the "BidsOnline" link. Next, click on "Bid Opportunities" to locate and view the RFP document. (If you haven't already done so, you will be required to register as a City of Irvine vendor before downloading the RFP document.)

Proposals must be submitted as follows:

Proposals must be submitted electronically by visiting the City's website at www.cityofirvine.org/purchasing. Click on the "Supplier Registration and Bid Opportunities" link. Next, click the BidsOnline link and then click "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the RFP. Click on "Place eBid" and follow the instructions.

The deadline for proposal submissions is:

January 4, 2017 at 4:00:00 p.m. However, submittals may be submitted at any time prior to the deadline. (Submitted proposals may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

Late proposals will not be accepted.

- **Proposals must be submitted via the City's BidsOnline system as a single zip folder.**
- **No other form of submission will be accepted.**
- **Large files may take time to upload so plan the timing of your submittal accordingly.**
- **Failure to completely upload your documents by the deadline shall result in disqualification.**

Proposal Submittal

- Name your file "companyname" (*i.e.* your firm's name) but do NOT exceed 20 characters or your file will not upload. Do not use symbols (*i.e.* "%" or "&") as your file may not load correctly. If your name is too long, then abbreviate. Failure to upload document shall result in disqualification.
- If the proposal contains more than one file, you should create a zip folder, containing the various PDF proposal documents.
- Name the zip folder "companyname."

To create a zip folder:

- Right click on your desktop
- Select "New," and then "Compressed Zip Folder"
- Name the folder "companyname"
- Drag your various proposal PDF documents into the Folder

Mac users

- Create a folder for your files and name it "companyname"
- Drag your various proposal PDF documents into the folder
- Right-click the folder and select "create archive"

Technical Support

In the event you encounter technical difficulties during the uploading process, please contact the Planet Bids, BidsOnline system team as shown below (M-F from 8 am to 5 pm):

support@planetbids.com or call (818) 992-1771 ext. 0

GENERAL INFORMATION

In the event the City awards the contract to any particular respondent or respondents, the City will make payments monthly on approved invoices, with payment terms of net 30 days upon receipt of invoice. Payment for additional work, if any, will be negotiated as required. Final payment will be made after approval and acceptance of the work.

Any costs incurred in the preparation of a proposal, presentation to the City, travel in conjunction with such presentations, or samples of items shall be the responsibility of the respondent. The City assumes no responsibility and no liability for costs incurred by respondents prior to issuance of a contract or purchase order.

The proposer shall furnish the City with such additional information as the City may reasonably require.

Any questions or requests for clarification must be submitted in writing and sent via email as set forth on the cover sheet of this RFP.

All data, documents and other products used or developed during performance of the services will remain the property of the City upon completion of the services.

Sincerely,

Portia Mina
Senior Buyer

Attachments

ATTACHMENT I

SCOPE OF SERVICES

Individual or team of Consultant(s)/Contractor(s) shall perform the services as set forth below.

I. Background, Opportunities and Constraints

Proposed Need

The City is soliciting Consultant(s)/Contractor(s) to provide, on the City's behalf, expertise related to wireless and telecommunications development, deployment, coverage, and lease opportunities both citywide and at the Orange County Great Park. The City is looking for a Consultant(s)/Contractor(s) with expertise evaluating coverage needs, wireless provider lease practices, lease negotiation, and execution, demand use needs to ensure end-to-end coverage for wireless communications, a robust technical plan to meet the needs of the growing City population and expanding Orange County Great Park development, as well as the vision to integrate Information and Communication Technology (ICT) and Internet of Things (IoT) solutions, with proper security protocols; in order to efficiently and effectively manage City assets and best provide City services.

The City of Irvine

The City of Irvine is located 40 miles southeast of Los Angeles and six miles from the ocean in Orange County, California. Irvine encompasses more than 66 square miles and has a current residential population of more than 255,000. Incorporated in 1971, Irvine is recognized as one of America's safest and most successful master-planned urban communities. Top-rated educational institutions, an enterprising business atmosphere, state-of-the-art transportation programs and systems, sound environmental stewardship, and respect for diversity all contribute to Irvine's enviable quality of life. The City is ideally located adjacent to John Wayne/Orange County Airport and close to many of Southern California's largest tourist attractions, numerous resorts, and some of the state's finest beaches.

Irvine has also been recognized as one of "America's Best Cities to Live," according to Money Magazine in 2014. The City of Irvine also has the distinction of being one of the safest cities in the United States with a population of more than 100,000, based upon FBI statistics on violent crime.

The Orange County Great Park

The Orange County Great Park is in the geographic center of Orange County, California, a diverse metropolitan community of three million located halfway between Los Angeles and San Diego. The Great Park has direct freeway and rail access, making it easily accessible for more than 10,000,000 Southern California residents.

The City Current Network Infrastructure

The City connected traffic signals and some facilities to the City managed data centers utilizing its underground fiber optic network. The existing infrastructure may be leveraged to support the development of a comprehensive telecommunications and wireless infrastructure. The City may consider additional investments to support expansion.

II. Scope of Work

The work contemplated under this RFP includes cellular communications, data coverage, Wi-Fi opportunities, network design and infrastructure, and related technologies (collectively referred to as “Networks”). Proposals should include plans to document a detailed scope for each Task and the process to achieve the desired results. Work and associated costs performed for the Orange County Great Park must be identified separately from the work performed for the City. The Scope is separated into six tasks. A Consultant/Contractor may submit for one or more of the following six tasks:

Tasks for the Orange County Great Park (Park)

Task 1: Develop Master Plan and Evaluate Cellular and Wi-Fi Opportunities at the Park

1. Evaluate current and future wireless infrastructure requirements to support cellular communications, Wi-Fi communications, and future technologies
2. Develop wireless security and reliability criteria
3. Evaluate and identify opportunities for future wireless needs
4. Review available City-owned assets and infrastructure to support Networks
5. Develop proposed aesthetic threshold levels for equipment that would be used in the proposed strategy
6. Provide guidelines for reviewing carrier and network proposals for equipment placement
7. Recommend a process to handle third party operator site leasing and locating
8. Analyze the advantages and disadvantages of the various business models used to deploy and manage wireless infrastructure and make a recommendation. Potential business options should include the City-owned and managed, privately-owned and managed, and City-private partnership (hybrid) models
9. Develop an implementation strategy with cost estimates to maintain and expend capabilities
10. Propose alternative technologies/options and highlight strengths and weaknesses
11. Develop a master plan for Cellular and Wi-Fi

Task 2: Evaluate Network Infrastructure at the Park

1. Evaluate current and future network infrastructure requirements
2. Evaluate existing infrastructure and recommend design enhancements based on future needs and new technologies
3. Develop network security and reliability criteria
4. Develop an implementation strategy with cost estimates to maintain and expend capabilities
5. Evaluate and recommend network hardware and software

6. Assess the existing fiber infrastructure and recommend enhancements based current requirements and future growth
7. Develop a master plan for Network Infrastructure

Task 3: Develop a Strategy, Market, and Manage Leases for the Park

1. Provide a proposal to demonstrate how a third-party would act in the City's interest in marketing, negotiating, and managing Wireless Network infrastructure leasing opportunities
2. Market, negotiate, and manage new leases
3. Develop a strategy to operate and maintain related wireless network infrastructure

Tasks for the City of Irvine, excluding the Orange County Great Park

Task 4: Develop Master Plan and Evaluate Cellular and Wi-Fi Opportunities Citywide

1. Evaluate current and future wireless infrastructure requirements to support cellular communications, Wi-Fi communications, and future technologies
2. Identify operational, security, and infrastructure deficiencies within the existing wireless infrastructure and recommend solutions to overcome those deficiencies
3. Develop wireless security and reliability criteria
4. Evaluate and identify opportunities for future wireless needs
5. Review available City-owned assets and infrastructure to support Networks
6. Develop proposed aesthetic threshold levels for equipment that would be used in the proposed strategy
7. Provide guidelines for reviewing carrier and network proposals for equipment placement
8. Recommend a process to handle third party operator site leasing and locating
9. Analyze the advantages and disadvantages of the various business models used to deploy and manage wireless infrastructure and make a recommendation. Potential business options should include the City-owned and managed, privately-owned and managed, and City-private partnership (hybrid) models
10. Develop an implementation strategy with cost estimates to maintain and expend capabilities
11. Propose alternative options and highlight strengths and weaknesses
12. Develop a master plan for Cellular and Wi-Fi

Task 5: Develop Master Plan and Evaluate Network Infrastructure Citywide

1. Evaluate current and future network infrastructure requirements
2. Evaluate existing infrastructure and recommend design enhancements based on future needs and new technologies
3. Develop network security and reliability criteria
4. Develop an implementation strategy with cost estimates to maintain and expend capabilities
5. Evaluate and recommend network hardware and software
6. Assess the existing fiber infrastructure and recommend enhancements based current requirements and future growth

7. Develop a master plan for Network Infrastructure

Task 6: Develop a Strategy, Market, and Manage Leases Citywide

1. Provide a proposal to demonstrate how a third-party would act in the City's interest in marketing, negotiating, and managing Wireless Network infrastructure leasing opportunities
2. Market, negotiate, and manage new and existing leases
3. Develop a strategy to operate and maintain related wireless network infrastructure

ATTACHMENT II

AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into as of _____ 2017, by and between the CITY OF IRVINE, a municipal corporation ("City"), and _____, a (insert legal entity such as "a sole proprietorship" or "a California corporation") ("Contractor"). (The term Contractor includes professionals performing in a consulting capacity.)

PART I

FUNDAMENTAL TERMS

A. Location of Project: The City of Irvine location(s) as set forth in PART IV, Scope of Services, included herein.

B. Description of Services/Goods to be Provided: Wireless and Telecommunications Consulting Services in accordance with PART IV, Scope of Services, included herein (reference RFP 17-1194).

C. Term: Unless terminated earlier as set forth in this Agreement, the services shall commence on February 1, 2017 ("Commencement Date") and shall continue through June 30, 2018. The City reserves the right to extend this Agreement for up to four (4) additional one (1) year periods. Such extension shall only be valid if effectuated in writing by the City.

D. Party Representatives:

D.1. The City designates the following person/officer to act on City's behalf:
Chris Koster, email: ckoster@cityofirvine.org

D.2. The Contractor designates the following person to act on Contractor's behalf:
_____, email: _____

E. Notices: Contractor shall deliver all notices and other writings required to be delivered under this Agreement to City at the address set forth in Part II ("General Provisions"). The City shall deliver all notices and other writings required to be delivered to Contractor at the address set forth following Contractor's signature below.

F. Attachments: This Agreement incorporates by reference the following Attachments to this Agreement:

- | | | |
|------|-----------|--------------------|
| F.1. | Part I: | Fundamental Terms |
| F.2. | Part II: | General Provisions |
| F.3. | Part III: | Special Provisions |
| F.4. | Part IV: | Scope of Services |
| F.5. | Part V: | Budget |

G. Integration: This Agreement represents the entire understanding of City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and

cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

CITY OF IRVINE

CONTRACTOR'S NAME

By: _____
Pete Carmichael
Its: Director, Orange County Great
Park

By: _____
Its: _____

By: _____
Sean Joyce
Its: City Manager

By: _____
Its: _____

Attest:

By: _____
Molly McLaughlin
City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Jeffrey Melching

Contractor Information
Address for Notices and Payments:

Attn:
Telephone:
Email:

PART II
GENERAL PROVISIONS

SECTION ONE: SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide the goods and/or services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

1.2 Changes and Additions to Scope of Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Contractor, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. City approval and/or payment for work claimed by Contractor as changed or additional shall not act to prevent City at any time to claim such work is covered by the Scope of Work and should be performed by Contractor without additional consideration due. It is expressly understood by Contractor that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.3 Standard of Performance. Contractor agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.4 Performance to Satisfaction of City. Notwithstanding any other provision herein, Contractor agrees to perform all work to the satisfaction of City within the time specified. If City reasonably determines that the work is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (i) meeting with Contractor to review the quality of the work and resolve matters of concern; (ii) requiring Contractor to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Contractor for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

1.5 Instructions from City. In the performance of this Agreement, Contractor shall report to and receive instructions from the City's Representative designated in Paragraph D.1 of Part I ("Fundamental Terms") of this Agreement. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the City's Representative.

1.6 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties, and restrictions attending performance of the services under the Agreement. If

the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact in writing and shall not proceed except at Contractor's risk until written instructions are received from the City's Representative.

1.7 Identity of Persons Performing Work.

(A) Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. Any personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law.

(B) Contractor represents that the tasks and services required hereunder will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. Contractor will exclusively determine the means, methods and details of performing the services subject to the requirements of this Agreement.

(C) This Agreement contemplates the personal services of Contractor and Contractor's employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Contractor. Neither this Agreement nor any interest therein may be assigned by Contractor, except upon written consent of City.

1.8 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any unapproved transfer, including any bankruptcy proceeding, City may void the Agreement at City's option in its sole and absolute discretion. No approved transfer shall release any surety of Contractor of any liability hereunder without the express written consent of City.

SECTION TWO: INSURANCE AND INDEMNIFICATION

2.1 Insurance. Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subcontractors. In the event that Contractor subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the contractor is required to maintain pursuant to this Section 2.1.

2.1.1 Insurance Coverage Required. The policies and amounts of insurance required hereunder shall be as follows:

A. Comprehensive General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

(1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

B. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

(1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

C. Workers' Compensation Insurance in accordance with the Labor Code of California and covering all employees of the Contractor providing any service in the performance of this agreement. Such insurance shall be endorsed to:

(1) Waive the insurer's right of Subrogation against the City and City Personnel.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

Contractor's completion of the form attached hereto as Exhibit 1 shall be a condition precedent to Contractor's rights under this Agreement. Should Contractor certify, pursuant to Exhibit 1, that, in the performance of the work under this Agreement, it

shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, Contractor shall nonetheless maintain responsibility for requiring that any subcontractors performing work under this Agreement have and maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the work performed under this Agreement.

D. Professional Liability Insurance with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

E. Evidence of Insurance: Contractor shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

The City project title or description MUST be included in the "Description of Operations" box on the certificate.

The City's insurance certificate tracking services provider, Exigis, LLC, will send Contractor an email message providing instructions for submitting insurance certificates and endorsements.

Certificate Holder:

City of Irvine, California
c/o: Exigis LLC
PO Box 4668 ECM #35050
New York, NY 10168-4668

F. Endorsements: A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of Contractor
4. Contain any other exclusion contrary to the Agreement.

G. Any Deductible in Excess of \$50,000 and/or Self-Insured Retentions must be approved in writing by the City.

H. Acceptability of Insurers. Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

I. Insurance of Subcontractors. Contractor shall be responsible for causing Subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subcontractor's policies.

2.2 Indemnification. Contractor shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Contractor, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

2.2.1 Contractor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

2.2.2 Contractor shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

2.2.3 In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Contractor shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES

3.1 Compliance with Laws. Contractor shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Contractor. When applicable, Contractor shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

3.2 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

3.3 Covenant against Discrimination. Contractor covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, religious creed, color, national origin, ancestry, physical

disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, in the performance of this Agreement. Contractor further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

3.4 Independent Contractor. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Contractor. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Contractor nor any of Contractor's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the City; and neither Contractor nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Contractor's compensation. Neither Contractor nor any of Contractor's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

3.5 Covenant against Contingent Fees. Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

3.6 Use of Patented Materials. Contractor shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Contractor under this Agreement. Contractor shall indemnify, defend, and save the City harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials consistent with Section 2.2 herein.

3.7 Proprietary Information. All proprietary information developed specifically for City by Contractor in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Contractor's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Contractor agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Contractor's services under this Agreement. Contractor further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Contractor under this Agreement shall be made to City, and that Contractor shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

3.8 Confidentiality Statement. Firms may be required to sign a confidentiality statement before reviewing information that include but is not limited to maps, infrastructure plans, and assets that, for security and safety reasons, is not publicly available.

3.8 Retention of Funds. Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and all amounts for which City may be liable to third parties, by reason of Contractor's negligent acts, errors, or omissions, or willful misconduct, in performing or failing to perform Contractor's obligations under this Agreement. City in its sole and absolute discretion, may withhold from any payment due Contractor, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Contractor's obligation to pay City any sums Contractor owes City.

3.9 Termination by City. City reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Contractor. Upon receipt of any notice of termination from City, Contractor shall immediately cease all services hereunder except such as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to receipt of City's notice of termination and for any services authorized in writing by City thereafter. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by City in retaining a replacement contractor and similar expenses, exceeds the Budget.

3.10 Right to Stop Work; Termination by Contractor. Contractor shall have the right to stop work and terminate only if City fails to timely make a payment required under the terms of the Budget. Contractor shall provide City thirty (30) day prior written notice of such claimed payment owed and City shall have an opportunity to remedy any such claimed breach during such time with no legal consequence to City. Contractor shall immediately cease all services hereunder following the thirty (30) day notice, except such services as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to termination and for any services authorized in writing by City thereafter. If Contractor terminates this Agreement because of an error, omission, or a fault of Contractor, or Contractor's willful misconduct, the terms of Section 3.9 relating to City's right to take over and finish the work and Contractor's liability shall apply.

3.11 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party with respect to any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act. A waiver by either party of any default must be in writing.

3.12 Legal Actions. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Contractor agrees to submit to the personal jurisdiction of such court.

3.13 Rights and Remedies are Cumulative. Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in

equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

3.14 Attorneys' Fees. In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

3.15 Force Majeure. The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Contractor, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Contractor is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused. Contractor's sole remedy shall be extension of this Agreement pursuant to this Section 3.15.

3.16 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

3.17 Conflicts of Interest.

A. No officer, official, employee, agent, representative or volunteer of City shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any federal, state or city statute, ordinance or regulation. Contractor shall not employ any such person while this Agreement is in effect.

B. Contractor represents, warrants and covenants that he, she or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.

C. Contractor acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), City may determine Contractor to be a "Consultant" as that term is defined by the Act. In the event City makes such a determination, Contractor agrees to complete and file a "Statement of Economic Interest" with the

City Clerk to disclose such financial interests as required by City. In such event, Contractor further agrees to require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

3.18 Contractor Ethics. Contractor represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of City to obtain City's approval of this Agreement. Contractor shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to Contractor as set forth in this Agreement. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) Contractor shall not possess or maintain any business relationship with the applicant or any other person or entity which Contractor knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to City in accordance with this Agreement Contractor shall not advocate either for or against said project and/or application, and (iii) Contractor shall immediately notify City in the event Contractor determines that Contractor has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section shall be applicable to all of Contractor's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

3.19 Compliance with California Unemployment Insurance Code Section 1088.8. If Contractor is a Sole Proprietor, then prior to signing the Agreement, Contractor shall provide to the City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Contractor understands that pursuant to California Unemployment Insurance Code Section 1088.8, the City will report the information from Form W-9 to the State of California Employment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

3.20 CalPERS Annuitants. If Contractor is a California Public Employees' Retirement System ("CalPERS") annuitant, Contractor must provide the City with written notification of such fact a minimum of 14 calendar days prior to commencement of services under this Agreement. Failure to provide such notification may result in termination of the Agreement, and any penalties or other costs relating thereto shall be borne by Contractor. If this Agreement remains in place, Contractor shall execute any amendment(s) to this Agreement requested by the City in order to comply with all laws and regulations applicable to CalPERS annuitants.

SECTION FOUR: MISCELLANEOUS PROVISIONS

4.1 Records and Reports. The City Manager of the City of Irvine or his/her designee reserves the right to perform such audits, performance reviews, and other evaluations (collectively 'audit') that relate to or concern this Agreement at any time. Contractor agrees to participate and cooperate in up to five (5) hours of meetings and interviews (at no additional cost to City), if the same are requested by the City in connection with such an audit. Further, provided that the City pays Contractor's commercially reasonable hourly rate for services, Contractor agrees to participate and cooperate in such additional meetings and interviews (in excess of five (5) hours), if the same are requested by the City in connection with such an audit. Upon request by City, Contractor shall prepare and submit to City any reports concerning Contractor's performance of the services rendered under this Agreement. City shall have access, with 72 hours advance written

notice delivered to Contractor, to the books and records of Contractor related to Contractor's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Contractor in the performance of this Agreement (i) shall be the property of City and shall be delivered at no cost to City upon request of City or upon the termination of this Agreement, and (ii) shall not be made available to any individual or entity without prior written approval of City. The obligations of this Section 4.1 shall survive the expiration (or earlier termination) of this Agreement for a period of three (3) years. During said three (3) year period, Contractor shall keep and maintain all records and reports related to this Agreement, and City shall have access to such records in the event any audit is required.

4.2 Notices. Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the City shall be delivered to the following address, to the attention of the City Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

<u>To City:</u>	City of Irvine One Civic Center Plaza (92606) (Hand Deliveries) P. O. Box 19575 Irvine, CA 92623-9575
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Notices to Contractor shall be delivered to the address set forth below Contractor's signature on Part I of this Agreement, to the attention of Contractor's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

4.3 Construction and Amendment. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

4.4 Severability. Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

4.5 Authority. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

4.6 Special Provisions. Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

4.7 Precedence. In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget") of this Agreement, the order of precedence shall be as follows.

Part III

Part II

Part IV

Part V

Part I

PART III

SPECIAL PROVISIONS

- 1) **Business License Requirement.** Contractors who provide services for the City of Irvine within the city limits of Irvine shall obtain, within five (5) days of executing this Agreement and prior to commencing any work herein, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.

PART IV

SCOPE OF SERVICES

Services shall be performed as set forth below and in accordance with ATTACHMENT I.

PART V

BUDGET

Pricing shall be as set forth below and in accordance with ATTACHMENT II.

Included in the Budget are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with City representatives, and incidental costs incurred in performing under this Agreement. The total compensation for the Scope of Services set forth herein shall not exceed \$_____ for City services; and \$_____ for Great Park services; with the total Agreement amount not to exceed \$_____, including all amounts payable to Contractor for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement.

No work shall be performed in connection with this Agreement until the receipt of a signed City of Irvine Purchase Order; and no work shall be performed with a value in excess of the Purchase Order amount as the City has not authorized nor is it obligated to pay Contractor any such excess amount.

In the event Contractor anticipates the potential need to perform services beyond those set forth herein where additional funding may be needed, Contractor shall notify City in writing allowing sufficient time for City to consider further action.

Payment for services will be made monthly on invoices deemed satisfactory to the City, with payment terms of net 30 days upon receipt of invoice. Contractor shall submit invoices within fifteen (15) days from the end of each month in which services have been provided. Contractor shall provide invoices with sufficient detail to ensure compliance with pricing as set forth in this Agreement. The information required may include: date(s) of work, hours of work, hourly rate(s), and material costs.

The Purchase Order number must be included on all invoices, along with the City Representative's name. Failure to include this information on the invoice shall result in the return of the unpaid invoice.

Contractors should submit invoices electronically to:

invoicesubmittal@cityofirvine.org

Payment by City under this Agreement shall not be deemed as a waiver of the City's right to claim at a later point that such payment was not due under the terms of this Agreement.

Pricing shall remain firm for the entire first term of the Agreement. Thereafter, any proposed pricing adjustment for follow-on renewal periods shall be submitted to the City Representative in writing at least ninety (90) days prior to the new Agreement term. The City reserves the right to negotiate any proposed pricing adjustment not to exceed the Bureau of Labor Statistics Consumer Price Index (CPI) data as follows: Los Angeles-Riverside-Orange County, CA; All Items; Not Seasonally Adjusted; annualized change comparing the most recent month's reported data to the same month of the prior year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.)

Exhibit 1

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Contract Services Description: _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(CHECK ONE APPLICABLE BOX BELOW)

☐ **I have and will maintain workers' compensation insurance**, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this Agreement and shall submit insurance certificates evidencing such coverage as set forth herein.

☐ I certify that, in the performance of the work under this Agreement, **I shall not employ any person** in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, **if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions and immediately furnish insurance certificates** evidencing such coverage as set forth herein.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated:	
Contracting Firm:	
Signature:	
Title:	
Address:	

ATTACHMENT III

COMPANY REFERENCES/CLIENT PROFILE INFORMATION

Submit a completed client profile information sheet for each reference. Provide a minimum of 3 references.

- (1) Client Name:
- (2) Address:
- (3) City, State, Zip Code:
- (4) Project Manager:
- (5) Telephone Number:
- (6) E-mail:
- (7) Project Scope of Services/Goals:

- (8) Contract Award Date:
- (9) Initial Contract Amount: \$
- (10) What was the cost/financing structure of the contract?
- Completion Date:
- Final Contract Amount: \$

- (11) Describe how the client's goals were met. Attach final work product, if applicable.

- (12) Did the client implement your recommendations?

AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (the "Agreement") is made and entered into as of April 26, 2017, by and between the CITY OF IRVINE, a municipal corporation ("City"), and 1020 DIGITAL, LLC, a Delaware limited liability company, dba CONNECTED NATION EXCHANGE ("Contractor"). (The term Contractor includes professionals performing in a consulting capacity.)

PART I

FUNDAMENTAL TERMS

A. Location of Project: The City of Irvine location(s) as set forth in PART IV, Scope of Services, included herein.

B. Description of Services/Goods to be Provided: Wireless and Telecommunications Consulting Services at the Orange County Great Park in accordance with PART IV, Scope of Services, included herein (reference RFP 17-1194).

C. Term: Unless terminated earlier as set forth in this Agreement, the services shall commence on May 5, 2017 ("Commencement Date") and shall continue through June 30, 2018.

D. Party Representatives:

D.1. The City designates the following person/officer to act on City's behalf:
Chris Koster, email: ckoster@cityofirvine.org

D.2. The Contractor designates the following person to act on Contractor's behalf:
Sean Broderick, email: smb@cnx.io

E. Notices: Contractor shall deliver all notices and other writings required to be delivered under this Agreement to City at the address set forth in Part II ("General Provisions"). The City shall deliver all notices and other writings required to be delivered to Contractor at the address set forth following Contractor's signature below.

F. Attachments: This Agreement incorporates by reference the following Attachments to this Agreement:

F.1.	Part I:	Fundamental Terms
F.2.	Part II:	General Provisions
F.3.	Part III:	Special Provisions
F.4.	Part IV:	Scope of Services
F.5.	Part V:	Budget

G. Integration: This Agreement represents the entire understanding of City and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

ATTACHMENT 2

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first set forth above.

CITY OF IRVINE

**1020 DIGITAL, LLC dba CONNECTED
NATION EXCHANGE**

By: _____
Pete Carmichael
Its: Director, Orange County Great
Park

By: _____
Its: Member

Attest:

By: _____
Molly McLaughlin
City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

Jeffrey Melching

Contractor Information
Address for Notices and Payments:

1900 Three Springs Road
Bowling Green, KY 42101

Attn: Brian Medford
Telephone: 202-215-0427
Email: brm@cnx.io

PART II
GENERAL PROVISIONS

SECTION ONE: SERVICES OF CONTRACTOR

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Contractor shall provide the goods and/or services shown on Part IV hereto ("Scope of Services"), which may be referred to herein as the "services" or the "work." If this Agreement is for the provision of goods, supplies, equipment or personal property, the terms "services" and "work" shall include the provision (and, if designated in the Scope of Services, the installation) of such goods, supplies, equipment or personal property.

1.2 Changes and Additions to Scope of Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said work. No such work shall be undertaken unless a written order is first given by City to Contractor, incorporating therein any adjustment in (i) the Budget, and/or (ii) the time to perform this Agreement, which adjustments are subject to the written approval of the Contractor. City approval and/or payment for work claimed by Contractor as changed or additional shall not act to prevent City at any time to claim such work is covered by the Scope of Work and should be performed by Contractor without additional consideration due. It is expressly understood by Contractor that the provisions of this Section 1.2 shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.3 Standard of Performance. Contractor agrees that all services shall be performed in a competent, professional, and satisfactory manner in accordance with the standards prevalent in the industry, and that all goods, materials, equipment or personal property included within the services herein shall be of good quality, fit for the purpose intended.

1.4 Performance to Satisfaction of City. Notwithstanding any other provision herein, Contractor agrees to perform all work to the satisfaction of City within the time specified. If City reasonably determines that the work is not satisfactory, City shall have the right to take appropriate action, including but not limited to: (i) meeting with Contractor to review the quality of the work and resolve matters of concern; (ii) requiring Contractor to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to Contractor for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

1.5 Instructions from City. In the performance of this Agreement, Contractor shall report to and receive instructions from the City's Representative designated in Paragraph D.1 of Part I ("Fundamental Terms") of this Agreement. Tasks or services other than those specifically described in the Scope of Services shall not be performed without the prior written approval of the City's Representative.

1.6 Familiarity with Work. By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the

facilities, difficulties, and restrictions attending performance of the services under the Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any conditions, including any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact in writing and shall not proceed except at Contractor's risk until written instructions are received from the City's Representative.

1.7 Identity of Persons Performing Work.

(A) Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. Any personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law.

(B) Contractor represents that the tasks and services required hereunder will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. Contractor will exclusively determine the means, methods and details of performing the services subject to the requirements of this Agreement.

(C) This Agreement contemplates the personal services of Contractor and Contractor's employees, and it is recognized by the parties hereto that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Contractor. Neither this Agreement nor any interest therein may be assigned by Contractor, except upon written consent of City.

1.8 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any unapproved transfer, including any bankruptcy proceeding, City may void the Agreement at City's option in its sole and absolute discretion. No approved transfer shall release any surety of Contractor of any liability hereunder without the express written consent of City.

SECTION TWO: INSURANCE AND INDEMNIFICATION

2.1 Insurance. Without limiting Contractor's indemnification obligations, Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, employees, and/or subcontractors. In the event that Contractor subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the contractor is required to maintain pursuant to this Section 2.1.

2.1.1 Insurance Coverage Required. The policies and amounts of insurance required hereunder shall be as follows:

A. Comprehensive General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of Contractor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

(1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

B. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

(1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement.

(2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

C. Workers' Compensation Insurance in accordance with the Labor Code of California and covering all employees of the Contractor providing any service in the performance of this agreement. Such insurance shall be endorsed to:

(1) Waive the insurer's right of Subrogation against the City and City Personnel.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

Contractor's completion of the form attached hereto as Exhibit 1 shall be a condition precedent to Contractor's rights under this Agreement. Should Contractor certify, pursuant to Exhibit 1, that, in the performance of the work under this Agreement, it shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, Contractor shall nonetheless maintain responsibility for requiring that any subcontractors performing work under this Agreement have and maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the work performed under this Agreement.

D. Professional Liability Insurance with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

E. Evidence of Insurance: Contractor shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided.

The City project title or description MUST be included in the "Description of Operations" box on the certificate.

The City's insurance certificate tracking services provider, Exigis, LLC, will send Contractor an email message providing instructions for submitting insurance certificates and endorsements.

Certificate Holder:

City of Irvine, California
c/o: Exigis LLC
PO Box 4668 ECM #35050
New York, NY 10168-4668

F. Endorsements: A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of Contractor
4. Contain any other exclusion contrary to the Agreement.

G. Any Deductible in Excess of \$50,000 and/or Self-Insured Retentions must be approved in writing by the City.

H. Acceptability of Insurers. Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

I. Insurance of Subcontractors. Contractor shall be responsible for causing Subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subcontractor's policies.

2.2 Indemnification. Contractor shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Contractor, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

2.2.1 Contractor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.

2.2.2 Contractor shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.

2.2.3 In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Contractor shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

SECTION THREE: LEGAL RELATIONS AND RESPONSIBILITIES

3.1 Compliance with Laws. Contractor shall keep itself fully informed of all existing and future state and federal laws and all county and city ordinances and regulations which in any manner affect those employed by it or in any way affect the performance of services pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations and shall be responsible for the compliance of all work and services performed by or on behalf of Contractor. When applicable, Contractor shall not pay less than the prevailing wage, which rate is determined by the Director of Industrial Relations of the State of California.

3.2 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for Contractor's performance of the services required by this Agreement,

and shall indemnify, defend, and hold harmless City against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against City thereunder.

3.3 Covenant against Discrimination. Contractor covenants for itself, its heirs, executors, assigns, and all persons claiming under or through it, that there shall be no discrimination against any person on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, in the performance of this Agreement. Contractor further covenants and agrees to comply with the terms of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) as the same may be amended from time to time.

3.4 Independent Contractor. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Contractor. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. Neither Contractor nor any of Contractor's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement, or other fringe benefits from the City; and neither Contractor nor any of its employees shall be paid by City time and one-half for working in excess of forty (40) hours in any one week. City is under no obligation to withhold State and Federal tax deductions from Contractor's compensation. Neither Contractor nor any of Contractor's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

3.5 Covenant against Contingent Fees. Contractor warrants that it has not employed or retained any company or person other than a bona fide employee working for Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

3.6 Use of Patented Materials. Contractor shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by Contractor under this Agreement. Contractor shall indemnify, defend, and save the City harmless from any and all suits, actions or proceedings of every nature for or on account of the use of any patented or copyrighted materials consistent with Section 2.2 herein.

3.7 Proprietary Information. All proprietary information developed specifically for City by Contractor in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material, or software programs, but not including Contractor's underlying materials, software, or know-how, shall be the sole and exclusive property of City, and are confidential and shall not be made available to any person or entity without the prior written approval of City. Contractor agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of Contractor's services under this Agreement. Contractor further understands and agrees that full

disclosure of all proprietary information developed in connection with, or resulting from, the performance of services by Contractor under this Agreement shall be made to City, and that Contractor shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by City.

3.8 Confidentiality Statement. Firms may be required to sign a confidentiality statement before reviewing information that include but is not limited to maps, infrastructure plans, and assets that, for security and safety reasons, is not publicly available.

3.8 Retention of Funds. Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether arising out of this Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and all amounts for which City may be liable to third parties, by reason of Contractor's negligent acts, errors, or omissions, or willful misconduct, in performing or failing to perform Contractor's obligations under this Agreement. City in its sole and absolute discretion, may withhold from any payment due Contractor, without liability for interest, an amount sufficient to cover such claim or any resulting lien. The failure of City to exercise such right to deduct or withhold shall not act as a waiver of Contractor's obligation to pay City any sums Contractor owes City.

3.9 Termination by City. City reserves the right to terminate this Agreement at any time, with or without cause, upon written notice to Contractor. Upon receipt of any notice of termination from City, Contractor shall immediately cease all services hereunder except such as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to receipt of City's notice of termination and for any services authorized in writing by City thereafter. If termination is due to the failure of Contractor to fulfill its obligations under this Agreement, City may take over the work and prosecute the same to completion by contract or otherwise, and Contractor shall be liable to the extent that the total cost for completion of the services required hereunder, including costs incurred by City in retaining a replacement contractor and similar expenses, exceeds the Budget.

3.10 Right to Stop Work; Termination by Contractor. Contractor shall have the right to stop work and terminate only if City fails to timely make a payment required under the terms of the Budget. Contractor shall provide City thirty (30) day prior written notice of such claimed payment owed and City shall have an opportunity to remedy any such claimed breach during such time with no legal consequence to City. Contractor shall immediately cease all services hereunder following the thirty (30) day notice, except such services as may be specifically approved in writing by City. Contractor shall be entitled to compensation for all services rendered prior to termination and for any services authorized in writing by City thereafter. If Contractor terminates this Agreement because of an error, omission, or a fault of Contractor, or Contractor's willful misconduct, the terms of Section 3.9 relating to City's right to take over and finish the work and Contractor's liability shall apply.

3.11 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party with respect to any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act. A waiver by either party of any default must be in writing.

3.12 Legal Actions. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Courts of the State

of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and Contractor agrees to submit to the personal jurisdiction of such court.

3.13 Rights and Remedies are Cumulative. Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

3.14 Attorneys' Fees. In any action between the parties hereto seeking enforcement of any of the terms or provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorney's fees, expert witness fees, and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorney's fees and costs from the other party to this Agreement.

3.15 Force Majeure. The time period specified in this Agreement for performance of services shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of City or Contractor, including, but not restricted to, acts of nature or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including City, if the delaying party shall within ten (10) days of the commencement of such delay notify the other party in writing of the causes of the delay. If Contractor is the delaying party, City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of City such delay is justified. City's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against City for any delay in the performance of this Agreement, however caused. Contractor's sole remedy shall be extension of this Agreement pursuant to this Section 3.15.

3.16 Non-liability of City Officers and Employees. No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by City, or for any amount which may become due to Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

3.17 Conflicts of Interest.

A. No officer, official, employee, agent, representative or volunteer of City shall have any financial interest, direct or indirect, in this Agreement, or participate in any decision relating to this Agreement that affects his or her financial interest or the financial interest of any corporation, partnership, association or other entity in which he or she is interested, in violation of any federal, state or city statute, ordinance or regulation. Contractor shall not employ any such person while this Agreement is in effect.

B. Contractor represents, warrants and covenants that he, she or it presently has no interest, direct or indirect, which would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement. Contractor further agrees that while this Agreement is in effect, Contractor shall not acquire or otherwise

obtain any interest, direct or indirect, that would interfere with or impair in any manner or degree the performance of Contractor's obligations and responsibilities under this Agreement.

C. Contractor acknowledges that pursuant to the provisions of the Political Reform Act (Government Code section 87100 *et seq.*), City may determine Contractor to be a "Consultant" as that term is defined by the Act. In the event City makes such a determination, Contractor agrees to complete and file a "Statement of Economic Interest" with the City Clerk to disclose such financial interests as required by City. In such event, Contractor further agrees to require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" to disclose such other person's financial interests as required by City.

3.18 Contractor Ethics. Contractor represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of City to obtain City's approval of this Agreement. Contractor shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to Contractor as set forth in this Agreement. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) Contractor shall not possess or maintain any business relationship with the applicant or any other person or entity which Contractor knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to City in accordance with this Agreement Contractor shall not advocate either for or against said project and/or application, and (iii) Contractor shall immediately notify City in the event Contractor determines that Contractor has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section shall be applicable to all of Contractor's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

3.19 Compliance with California Unemployment Insurance Code Section 1088.8. If Contractor is a Sole Proprietor, then prior to signing the Agreement, Contractor shall provide to the City a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. Contractor understands that pursuant to California Unemployment Insurance Code Section 1088.8, the City will report the information from Form W-9 to the State of California Employment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

3.20 CalPERS Annuity. If Contractor is a California Public Employees' Retirement System ("CalPERS") annuitant, Contractor must provide the City with written notification of such fact a minimum of 14 calendar days prior to commencement of services under this Agreement. Failure to provide such notification may result in termination of the Agreement, and any penalties or other costs relating thereto shall be borne by Contractor. If this Agreement remains in place, Contractor shall execute any amendment(s) to this Agreement requested by the City in order to comply with all laws and regulations applicable to CalPERS annuitants.

SECTION FOUR: MISCELLANEOUS PROVISIONS

4.1 Records and Reports. The City Manager of the City of Irvine or his/her designee reserves the right to perform such audits, performance reviews, and other evaluations (collectively

'audit') that relate to or concern this Agreement at any time. Contractor agrees to participate and cooperate in up to five (5) hours of meetings and interviews (at no additional cost to City), if the same are requested by the City in connection with such an audit. Further, provided that the City pays Contractor's commercially reasonable hourly rate for services, Contractor agrees to participate and cooperate in such additional meetings and interviews (in excess of five (5) hours), if the same are requested by the City in connection with such an audit. Upon request by City, Contractor shall prepare and submit to City any reports concerning Contractor's performance of the services rendered under this Agreement. City shall have access, with 72 hours **advance written notice delivered to Contractor**, to the books and records of Contractor related to Contractor's performance of this Agreement in the event any audit is required. All drawings, documents, and other materials prepared by Contractor in the performance of this Agreement (i) shall be the property of City and shall be delivered at no cost to City upon request of City or upon the termination of this Agreement, and (ii) shall not be made available to any individual or entity without prior written approval of City. The obligations of this Section 4.1 shall survive the expiration (or earlier termination) of this Agreement for a period of three (3) years. During said three (3) year period, Contractor shall keep and maintain all records and reports related to this Agreement, and City shall have access to such records in the event any audit is required.

4.2 Notices. Unless otherwise provided herein, all notices required to be delivered under this Agreement or under applicable law shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a document delivery service shall be effective upon receipt. Notices delivered by mail shall be effective at 5:00 p.m. on the second calendar day following dispatch. Notices to the City shall be delivered to the following address, to the attention of the City Representative set forth in Paragraph D.1 of the Fundamental Terms of this Agreement:

<u>To City:</u>	City of Irvine
	One Civic Center Plaza (92606) (Hand Deliveries)
	P. O. Box 19575
	Irvine, CA 92623-9575

Notices to Contractor shall be delivered to the address set forth below Contractor's signature on Part I of this Agreement, to the attention of Contractor's Representative set forth in Paragraph D.2 of the Fundamental Terms of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.2.

4.3 Construction and Amendment. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

4.4 Severability. Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, the remainder of this Agreement shall continue in full force.

4.5 Authority. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and

deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

4.6 Special Provisions. Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

4.7 Precedence. In the event of any discrepancy between Part I ("Fundamental Terms"), Part II ("General Provisions"), Part III ("Special Provisions"), Part IV ("Scope of Services"), and/or Part V ("Budget") of this Agreement, the order of precedence shall be as follows.

Part III

Part II

Part IV

Part V

Part I

PART III

SPECIAL PROVISIONS

- 1) **Business License Requirement.** Contractors who provide services for the City of Irvine within the city limits of Irvine shall obtain, within five (5) days of executing this Agreement and prior to commencing any work herein, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.
- 2) **Additional Insurance Requirements.** **Insurance. PART II, GENERAL PROVISIONS, Section 2.1.1 – Insurance Coverage Required** is modified as follows:
 - A. **Comprehensive General Liability Insurance**, item (1) is replaced with the following:
 - (1) Name the City of Irvine and the Orange County Great Park Corporation and its employees, representatives, officers and agents as additional insured for claims
 - B. **Automobile Liability Insurance**, item (1) is replaced with the following:
 - (1) Name the City of Irvine and the Orange County Great Park Corporation and its employees, representatives, officers and agents as additional insured for claims arising out of Contractor's performance of this Agreement.
 - C. **Workers' Compensation Insurance**, item (1) is replaced with the following:
 - (1) Waive the insurer's right of Subrogation against the City, Orange County Great Park Corporation and City Personnel.
 - D. **Professional Liability Insurance**, is deleted in its entirety.
 - J. **Technology Errors and Omissions** is added as follows:

Contractor shall procure and maintain, at its sole cost and for the duration of this Agreement, a Technology Errors and Omissions policy, including cyber and privacy coverage with minimum limits of \$5,000,000 each claim. Covered services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.
- 3) **Contractor Background Check Requirements.** Prior to commencing services, Contractor's workers are required to successfully pass a California Department of Justice Live Scan Fingerprinting background check ("Live Scan") performed by the City of Irvine Police Department. The Contractor shall be responsible for obtaining the Live Scan for its workers prior to performing work and shall bear the cost thereof. The City's Human Resources staff will coordinate the scheduling of the Live Scan. On the day of the Live Scan, the worker must obtain an application form from the City of Irvine Human Resources Division (located on the third floor of the Civic Center). Upon completion of the application form, the worker will be directed to the Police Department, where the Live Scan will be performed. The worker must possess a photo ID such as a Drivers License at the time of

the Live Scan. Also at the time of the Live Scan, payment must be made to the Police Department via cash or check made payable to "The City of Irvine." The cost of the Live Scan is approximately \$51. Credit cards are not accepted. The Police Department will provide the City's Human Resources Division with the results of the Live Scan. Human Resources staff will then notify the Contractor and City Representative of the results.

PART IV
SCOPE OF SERVICES

Services for the Orange County Great Park (Great Park) shall be performed as set forth below and in accordance with ATTACHMENT I.

Service performance timelines are identified by Phases (1-3) as listed in **ATTACHMENT I**. The required timelines are as follows:

- Phase 1: completion within 90 days from contract commencement
- Phase 2: completion within 180 days from contract commencement
- Phase 3: completion by end of contract term

Contractor shall perform the following tasks:

Task 1: Develop Master Plan and Evaluate Cellular and Wi-Fi Opportunities at the Great Park

1. Evaluate current and future wireless infrastructure requirements to support cellular communications, Wi-Fi communications, and future technologies
2. Develop wireless security and reliability criteria
3. Evaluate and identify opportunities for future wireless needs
4. Review available City-owned assets and infrastructure to support Networks
5. Develop proposed aesthetic threshold levels for equipment that would be used in the proposed strategy
6. Provide guidelines for reviewing carrier and network proposals for equipment placement
7. Recommend a process to handle third party operator site leasing and locating
8. Analyze the advantages and disadvantages of the various business models used to deploy and manage wireless infrastructure and make a recommendation. Potential business options should include the City-owned and managed, privately-owned and managed, and City-private partnership (hybrid) models
9. Develop an implementation strategy with cost estimates to maintain and expend capabilities
10. Propose alternative technologies/options and highlight strengths and weaknesses
11. Develop a master plan for Cellular and Wi-Fi

Task 2: Evaluate Network Infrastructure at the Great Park

1. Evaluate current and future network infrastructure requirements
2. Evaluate existing infrastructure and recommend design enhancements based on future needs and new technologies
3. Develop network security and reliability criteria
4. Develop an implementation strategy with cost estimates to maintain and expend capabilities

5. Evaluate and recommend network hardware and software
6. Assess the existing fiber infrastructure and recommend enhancements based current requirements and future growth
7. Develop a master plan for Network Infrastructure

Task 3: Develop a Strategy to Market, and Manage Leases for the Great Park

1. Provide a variety of options and alternatives for managing leases and infrastructure, including but not limited to: city self-management; third party arrangements; and other business enterprise models, and provide a cost benefit analysis and pros and cons for each
2. Develop a strategy to operate and maintain related wireless network infrastructure

PART V

BUDGET

Pricing shall be as set forth below and in accordance with ATTACHMENT I.

Included in the Budget are all ordinary and overhead expenses incurred by Contractor and its agents and employees, including meetings with City representatives, and incidental costs incurred in performing under this Agreement. The total compensation for the Scope of Services set forth herein shall not exceed **\$97,500** including all amounts payable to Contractor for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement.

No work shall be performed in connection with this Agreement until the receipt of a signed City of Irvine Purchase Order; and no work shall be performed with a value in excess of the Purchase Order amount as the City has not authorized nor is it obligated to pay Contractor any such excess amount.

In the event Contractor anticipates the potential need to perform services beyond those set forth herein where additional funding may be needed, Contractor shall notify City in writing allowing sufficient time for City to consider further action.

Payment for services will be made monthly on invoices deemed satisfactory to the City, with payment terms of net 30 days upon receipt of invoice. Contractor shall submit invoices within fifteen (15) days from the end of each month in which services have been provided. Contractor shall provide invoices with sufficient detail to ensure compliance with pricing as set forth in this Agreement. The information required may include: date(s) of work, hours of work, hourly rate(s), and material costs.

The Purchase Order number must be included on all invoices, along with the City Representative's name. Failure to include this information on the invoice shall result in the return of the unpaid invoice.

Contractors should submit invoices electronically to:

invoicesubmittal@cityofirvine.org

Payment by City under this Agreement shall not be deemed as a waiver of the City's right to claim at a later point that such payment was not due under the terms of this Agreement.

Pricing shall remain firm for the entire one (1) year Agreement term. Thereafter, any proposed pricing adjustment for follow-on renewal periods shall be submitted to the City Representative in writing at least ninety (90) days prior to the new Agreement term. The City reserves the right to negotiate any proposed pricing adjustment not to exceed the Bureau of Labor Statistics Consumer Price Index (CPI) data as follows: Los Angeles-Riverside-Orange County, CA; All Items; Not Seasonally Adjusted; annualized change comparing the most recent month's reported data to the same month of the prior year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.)

Exhibit 1

WORKERS' COMPENSATION INSURANCE CERTIFICATION

Contract Services Description: _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

(CHECK ONE APPLICABLE BOX BELOW)

☐

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this Agreement and shall submit insurance certificates evidencing such coverage as set forth herein.

☐

I certify that, in the performance of the work under this Agreement, **I shall not employ any person** in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, **if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions and immediately furnish insurance certificates** evidencing such coverage as set forth herein.

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

Dated:	
Contracting Firm:	
Signature:	
Title:	
Address:	

ATTACHMENT I

Task 1: Develop Master Plan at the Great Park

No.	Requested Proposal Item	Bidder Response Instructions: <i>Task 1 - Develop Master Plan and Evaluate Cellular and Wi-Fi Opportunities at the Park</i>
1.	<i>Evaluate current and future wireless infrastructure requirements to support cellular communications, Wi-Fi communications, and future technologies</i>	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase I of the engagement:</p> <ul style="list-style-type: none"> • Integration of assets into CNX Platform (wireless) • Cost Benefit Analysis & Market Survey from Integrated Platform Data (“IPD”) • Survey of wireless carriers and drive testing • Review of potential backhaul assets owned by City • Rights of Way utilization & management strategies • Coordinate department approval hierarchy • Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed <p>Work Material:</p>
2.	<i>Develop wireless security and reliability criteria</i>	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase II of the engagement:</p> <ul style="list-style-type: none"> • Review current security policies • Conduct survey of department heads to define needs • Creation & Facilitation of City security protocols with FCC “CIA” (confidentiality, integrity and availability) principals of security practices used by networks, service providers and equipment developers. • Review Legal documentation with City staff • Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed

		Work Product: <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Security Study</td><td>20</td><td>\$162.50</td><td>\$3,250.00</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Security Study	20	\$162.50	\$3,250.00
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Security Study	20	\$162.50	\$3,250.00							
3.	Evaluate and identify opportunities for future wireless needs	Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/> Scope of services: As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase I of the engagement: <ul style="list-style-type: none">• Integration of assets into CNX Platform (wireless)• Cost Benefit Analysis & Market Survey from Integrated Platform Data (“IPD”)• Conduct carrier needs assessment• Rights of Way utilization & management strategies• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed Work Material: <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Wireless Carrier Survey and Market Study</td><td>40</td><td>\$162.50</td><td>\$6,500.00</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Wireless Carrier Survey and Market Study	40	\$162.50	\$6,500.00
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Wireless Carrier Survey and Market Study	40	\$162.50	\$6,500.00							
4.	Review available City-owned assets and infrastructure to support Networks	Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/> Scope of services: As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase I of the engagement: <ul style="list-style-type: none">• Integration of assets into CNX Platform (wireless)• Cost Benefit Analysis & Market Survey from Integrated Platform Data (“IPD”)• Consult with wireless carriers• Rights of Way utilization & management strategies• Coordinate department approval hierarchy• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed Work Material: <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Asset Study</td><td>25</td><td>\$162.50</td><td>\$4,062.50</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Asset Study	25	\$162.50	\$4,062.50
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Asset Study	25	\$162.50	\$4,062.50							

5.	Develop proposed aesthetic threshold levels for equipment that would be used in the proposed strategy	Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/>											
		Scope of services:											
		As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase II of the engagement:											
		<ul style="list-style-type: none">• Creation & facilitation telecom aesthetic guidelines• Review Aesthetic design standards with City staff and wireless carriers• Legal documentation review with City staff• Integrate ordinance approvals into online System Logic and TAP• Integration of MNO Marketing Plan, TAP intake, Aesthetic Guidelines, Approval Hierarchy and SLAs into Permitting module• Integration of information into Telecom Master Plan copy• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed											
		Work Material:											
		<table><tr><th>Deliverable(s)</th><th>Labor Hrs</th><th>Blended Labor Cost</th><th>Total</th></tr><tr><td>Aesthetic Design Standards</td><td>20</td><td>\$162.50</td><td>\$3,250.00</td></tr></table>				Deliverable(s)	Labor Hrs	Blended Labor Cost	Total	Aesthetic Design Standards	20	\$162.50	\$3,250.00
Deliverable(s)	Labor Hrs	Blended Labor Cost	Total										
Aesthetic Design Standards	20	\$162.50	\$3,250.00										
6.	Provide guidelines for reviewing carrier and network proposals for equipment placement	Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/>											
		Scope of services:											
		As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase II of the engagement:											
		<ul style="list-style-type: none">• Integrate Rights of Way management strategies with City staff• Implement asset marketing & leasing Plans from IPD• Implement telecom ordinance requirements with City staff• Creation of Master SLAs with equipment placement guidelines• Review needed lateral fiber placement and funding programs• Creation of billing structure for non-city customers• Assign SME to task• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed											
		Work Material:											
		<table><tr><th>Deliverable(s)</th><th>Labor Hrs</th><th>Blended Labor Cost</th><th>Total</th></tr><tr><td>Equipment Study</td><td>30</td><td>\$162.50</td><td>\$4,875.00</td></tr></table>				Deliverable(s)	Labor Hrs	Blended Labor Cost	Total	Equipment Study	30	\$162.50	\$4,875.00
Deliverable(s)	Labor Hrs	Blended Labor Cost	Total										
Equipment Study	30	\$162.50	\$4,875.00										

7.	Recommend a process to handle third party operator site leasing and locating	<div>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></div> <div>Scope of services:</div> <div>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase I of the engagement:</div> <div><ul style="list-style-type: none">Cost benefit analysis & market survey from Integrated Platform Data (“IPD”)Rights of Way utilization & management strategiesCoordinate department approval hierarchyCoordinate review of telecom ordinances with CityCoordinate review of site license agreements (“SLAs”) with CityAttend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed</div> <div>Work Material:</div> <table><tr><th>Deliverable(s)</th><th>Labor Hrs</th><th>Blended Labor Cost</th><th>Total</th></tr><tr><td>Leasing Analysis Report</td><td>30</td><td>\$162.50</td><td>\$4,875.00</td></tr><tr><td></td><td></td><td></td><td></td></tr></table>	Deliverable(s)	Labor Hrs	Blended Labor Cost	Total	Leasing Analysis Report	30	\$162.50	\$4,875.00				
Deliverable(s)	Labor Hrs	Blended Labor Cost	Total											
Leasing Analysis Report	30	\$162.50	\$4,875.00											
8.	Analyze the advantages and disadvantages of the various business models used to deploy and manage wireless infrastructure and make a recommendation. Potential business options should include the City-owned and managed, privately-owned and managed, and City-private partnership (hybrid) models	<div>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></div> <div>Scope of services:</div> <div>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase II of the engagement:</div> <div><ul style="list-style-type: none">Review of IPD for reportCost benefit analysis of business model optionsReview of telecom ordinance changes with industry goalsReview needed lateral fiber placement and funding programsCreation of billing structure for non-city customersAssign SME to taskAttend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed</div> <div>Work Material:</div> <table><tr><th>Deliverable(s)</th><th>Labor Hrs</th><th>Blended Labor Cost</th><th>Total</th></tr><tr><td>Business Model Study</td><td>20</td><td>\$162.50</td><td>\$3,250.00</td></tr><tr><td></td><td></td><td></td><td></td></tr></table>	Deliverable(s)	Labor Hrs	Blended Labor Cost	Total	Business Model Study	20	\$162.50	\$3,250.00				
Deliverable(s)	Labor Hrs	Blended Labor Cost	Total											
Business Model Study	20	\$162.50	\$3,250.00											

9.	Develop an implementation strategy with cost estimates to maintain and expand capabilities	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase III of the engagement:</p> <ul style="list-style-type: none">• Review of Platform asset data• Review MNO Marketing Plan, TAP intake, Aesthetic Guidelines, Approval Hierarchy Ordinance and SLAs Permitting module data• Review Master SLA documentation• Review Security, Equipment and Infrastructure Study data• Rights of Way utilization & management data• Create, integrate & facilitate workflow in cost benefit analysis report• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed <p>Work Material:</p> <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Cost Benefit Analysis Report</td><td>50</td><td>\$162.50</td><td>\$8,125.00</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Cost Benefit Analysis Report	50	\$162.50	\$8,125.00
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Cost Benefit Analysis Report	50	\$162.50	\$8,125.00							
10.	Propose alternative technologies/options and highlight strengths and weaknesses	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase II of the engagement:</p> <ul style="list-style-type: none">• Cost benefit analysis & market survey from IPD• Creation of asset marketing & sales plans• Creation & facilitation of SLAs• Negotiation of SLAs for carrier-neutral Smart City Kiosks• Creation of billing structure for non-city customers• Creation & facilitation of telecom inspection process• Assign SME to task• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed <p>Work Material:</p> <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Smart City Applications Study</td><td>30</td><td>\$162.50</td><td>\$4,875.00</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Smart City Applications Study	30	\$162.50	\$4,875.00
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Smart City Applications Study	30	\$162.50	\$4,875.00							

11.	Develop a master plan for Cellular and Wi-Fi	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase III of the engagement:</p> <ul style="list-style-type: none">• Engagements with key community stakeholder groups• Review of Platform asset data• Review MNO Marketing Plan, TAP intake, Aesthetic Guidelines, Approval Hierarchy Ordinance and SLAs Permitting module data• Review Master SLA documentation• Review wireless carrier survey results• Review security, equipment and infrastructure study data• Review of RF propagation studies• Rights of Way utilization & management data• Create, integrate & facilitate workflow in Wi-Fi Master Plan• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed <p>Work Material:</p> <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Wi-Fi Master Plan</td><td>60</td><td>\$162.50</td><td>\$9,750.00</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Wi-Fi Master Plan	60	\$162.50	\$9,750.00
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Wi-Fi Master Plan	60	\$162.50	\$9,750.00							

Task 2: Evaluate Great Park Network Infrastructure

No.	Requested Proposal Item	Bidder Response Instructions: <i>Task 2 - Evaluate Network Infrastructure at the Park</i>
1.	<i>Evaluate current and future network infrastructure requirements</i>	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase I of the engagement:</p> <ul style="list-style-type: none"> • Integration of assets into CNX Platform (wireless) • Cost benefit analysis & market survey from Integrated Platform Data ("IPD") • Rights of Way utilization & management strategies • Coordinate department approval hierarchy • Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed

		Work Material: <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>See Item 1.1</td><td>Included</td><td>Included</td><td>included</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	See Item 1.1	Included	Included	included
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
See Item 1.1	Included	Included	included							
2.	Evaluate existing infrastructure and recommend design enhancements based on future needs and new technologies	Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/> Scope of services: As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase II of the engagement: <ul style="list-style-type: none">• Integrate Rights of Way management strategies with City staff• Implement telecom ordinance requirements with City staff• Review needed lateral fiber placement and funding programs• Review aesthetic design standards with City staff• Legal documentation review with City staff• Integrate Ordinance approvals into online system logic and TAP• Integration of MNO Marketing Plan, TAP intake, Aesthetic Guidelines, Approval Hierarchy and SLAs into Permitting module• Assign SME to task• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed Work Material: <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>See Item 2.6</td><td>included</td><td>included</td><td>included</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	See Item 2.6	included	included	included
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
See Item 2.6	included	included	included							
3.	Develop network security and reliability criteria	Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/> Scope of services: As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase II of the engagement: <ul style="list-style-type: none">• Review of current policies• Creation & facilitation of City security protocols with FCC “CIA” (confidentiality, integrity and availability) principals of security practices used by networks, service providers and equipment developers.• Review legal documentation with City staff• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed Work Material:								

		<table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>See Item 1.2</td><td>included</td><td>included</td><td>included</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	See Item 1.2	included	included	included
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
See Item 1.2	included	included	included							
4.	<i>Develop an implementation strategy with cost estimates to maintain and expand capabilities</i>	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase III of the engagement:</p> <ul style="list-style-type: none">• Review of Platform asset data• Review MNO Marketing Plan, TAP intake, Aesthetic Guidelines, Approval Hierarchy Ordinance and SLAs Permitting module data• Review Master SLA documentation• Review security, equipment and infrastructure study data• Rights of Way utilization & management data• Create, integrate & facilitate workflow in cost benefit analysis report• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed <p>Work Material:</p> <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>See Item 1.9</td><td>included</td><td>included</td><td>included</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	See Item 1.9	included	included	included
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
See Item 1.9	included	included	included							
5.	<i>Evaluate and recommend network hardware and software</i>	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase I of the engagement:</p> <ul style="list-style-type: none">• Cost benefit analysis & market survey from Integrated Platform Data (“IPD”)• Review Current Hardware, Software, Policies, Processes and Develop Gap Analysis• Integrate ordinance flow into online system logic• Streamline Telecom Application Process (“TAP”)• Coordinate department approval hierarchy• Rights of Way utilization & management Strategies• Coordinate review of telecom ordinances with City• Coordinate review of Site License Agreements (“SLAs”) with City• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed								

		Work Material: <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Permit Module Integration</td><td>40</td><td>\$162.50</td><td>\$6,500.00</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Permit Module Integration	40	\$162.50	\$6,500.00
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Permit Module Integration	40	\$162.50	\$6,500.00							
6.	<i>Assess the existing fiber infrastructure and recommend enhancements based current requirements and future growth</i>	Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/> Scope of services: As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase I of the engagement: <ul style="list-style-type: none">• Conduct inventory of current fiber infrastructure assets• Integration of assets into CNX Platform (fiber)• Cost benefit analysis & market survey from Integrated Platform Data (“IPD”)• Rights of Way utilization & management strategies• Creation & facilitation of Master SLAs• Engage with community stakeholder groups to develop needs assessment• Negotiation of SLAs for carrier-neutral fiber infrastructure and data center services• Review of fiber funding program needs (lateral)• Review of current billing structure for non-city customers• Assign SME to task• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed Work Material: <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Fiber Infrastructure Study</td><td>40</td><td>\$162.50</td><td>\$6,500.00</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Fiber Infrastructure Study	40	\$162.50	\$6,500.00
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Fiber Infrastructure Study	40	\$162.50	\$6,500.00							
7.	<i>Develop a master plan for Network Infrastructure</i>	Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/> Scope of services: As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase III of the engagement: <ul style="list-style-type: none">• Review of Platform asset data• Review MNO Marketing Plan, TAP intake, Aesthetic Guidelines, Approval Hierarchy Ordinance and SLAs Permitting module data• Review Master SLA documentation• Review security, equipment and infrastructure study data• Review Rights of Way utilization & management data								

	<ul style="list-style-type: none">Review fiber & infrastructure analysisCreate, integrate & facilitate workflow into Infrastructure Master PlanAttend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed <p>Work Material:</p> <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Infrastructure Master Plan</td><td>50</td><td>\$162.50</td><td>\$8,125.00</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Infrastructure Master Plan	50	\$162.50	\$8,125.00
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>						
Infrastructure Master Plan	50	\$162.50	\$8,125.00						

Task 3: Develop Lease Strategy for the Great Park

No.	Requested Proposal Item	Bidder Response Instructions: Task 3 - Develop a Strategy, Market, and Manage Leases for the Park								
1.	Provide a proposal to demonstrate how a third-party would act in the City's interest in marketing, negotiating, and managing Wireless Network infrastructure leasing opportunities	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase I of the engagement:</p> <ul style="list-style-type: none">• Cost benefit analysis & market survey from Integrated Platform Data ("IPD")• Rights of Way utilization & management strategies• Coordinate department approval hierarchy• Coordinate review of telecom ordinances with City• Coordinate review of Site License Agreements ("SLAs") with City• Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed <p>Work Material:</p> <table><tr><th><i>Deliverable(s)</i></th><th><i>Labor Hrs</i></th><th><i>Blended Labor Cost</i></th><th><i>Total</i></th></tr><tr><td>Network Study</td><td>25</td><td>\$162.50</td><td>\$4,062.50</td></tr></table>	<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>	Network Study	25	\$162.50	\$4,062.50
<i>Deliverable(s)</i>	<i>Labor Hrs</i>	<i>Blended Labor Cost</i>	<i>Total</i>							
Network Study	25	\$162.50	\$4,062.50							

2.	<i>Develop a strategy to operate and maintain related wireless network infrastructure</i>	<p>Include this item with task: Yes <input checked="" type="checkbox"/> or No <input type="checkbox"/></p> <p>Scope of services:</p> <p>As City consultant, CNX will perform the following processes for the proposal item in conjunction with Phase III of the engagement:</p> <ul style="list-style-type: none"> • Review of Platform asset data • Review MNO Marketing Plan, TAP intake, Aesthetic Guidelines, Approval Hierarchy Ordinance and SLAs Permitting module data • Review Master SLA documentation • Review security, equipment and infrastructure Study data • Rights of Way utilization & management data • Create, integrate & facilitate workflow in Operations Plan • Attend and facilitate project management meetings with all involved parties and provide documentation, correspondence, scheduling, and coordination on deliverables. Prepare and distribute meeting documentation as needed <p>Work Material:</p>
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Wireless and Telecommunications Consulting Services Q&A

Q. What's the urgency for bringing this Contract now, one month before presenting the IT budget and Strategic Plan?

The development of this RFP began in the fall of 2016, and was brought to the Finance Commission at the completion of the evaluation process. The confluence of several events galvanized the need for these services. In the past several months we have received 100 applications for new cellular facilities, an unprecedented increase in the number of requests for new cell sites in the City right-of-way. Carriers have also expressed interest in 80 additional sites, which would nearly double the number of permitted sites in the City. Additionally, the first portion of the 688-acre Great Park Improvement Area will open within the next six months, driving a significant increase in park visitation. This will, in turn, increase demand for cellular, voice and data bandwidth and strain the current information and communication technology systems.

This rapid increase has presented numerous challenges and opportunities. These new sites are requested in the City right-of-way versus private property where most current sites are located. Use of the City right-of-way poses aesthetic as well implementation concerns. For instance, if all 100 sites were permitted one by one, 100 separate construction projects, including cutting into and digging underneath roadways to add underground infrastructure may be necessary. This would lead to significant traffic disruptions, deteriorate roadway integrity, increase the cost of future road maintenance and, complicate an already complex infrastructure system.

Through the use of consulting services to develop a comprehensive wireless infrastructure plan, the City has an opportunity to minimize the impact by understanding the carriers' future needs and implementing a plan to coordinate activities among carriers and build an infrastructure that provides reliable and extensive coverage to Irvine residents and businesses.

Q. Since only 9 of the current 200 antennas are located in City property, the City does not currently provide infrastructure. Private companies compete against each other in the market. Why should the City get involved in this line of business?

This is correct, based on historical business and delivery models used to this point. The current trend is to develop smaller sites at closer intervals using existing structures, such as street light poles and traffic light poles in the City right-of-way. This is entirely different than the previous model, in that it requires use of public property. While the City has not sought to involve itself in the business of the carriers, their current deployments rely on City and other utility assets. The City has a duty to protect its assets and minimize its liability while supporting the deployment of new sites to provide better service to the Irvine resident, visitor and business community.

Q. The Commission should evaluate this project as it related to the IT strategic plan. Why didn't staff present this as part of the IT Strategic Plan?

The IT Strategic Plan is part of the fiscal year budgetary process. While this contract is related to technology, it is distinct from the City's strategic technology plan, and the technical outcome of the wireless plan will be fully integrated into the IT Plan. The urgency of this project was identified last year and staff worked diligently to bring this contract for approval in a timely manner.

Q. Why do we need a plan? We made it thus far without a plan.

While the City has managed to date without a wireless master plan, a number of factors have led staff to the conclusion that a plan is necessary. The increased demand for wireless bandwidth and recent changes in technology created new business models for delivering cell services.

The Current Process/Technology

In the past, cellular companies improved their coverage by installing macro cell towers in targeted areas. The macro sites that located large antennas in a few locations throughout the City, usually on private property where they can hide the antennas behind large structures or other screening. The City approved approximately 200 macro towers over the last 10 years.

The New Process/Technology

The delivery models used by cellular carriers have changed significantly. To meet the rapid demand for faster wireless connections and higher bandwidth, carriers are deploying new technology (smaller micro cell antennas in high density areas) to supplement existing macro cell towers. Telephone poles and lampposts located in the public right-of-way are highly desired by carries for these antennas. In recent months, the City has received 100 permit requests for micro antennas and staff are aware of an additional 80 requests to follow.

The Challenge and Opportunity

Increased requests for micro antennas, expected to reach the thousands in the near future, will create a shortage of available assets to mount the antennas. This could potentially lead to conflicts between carriers seeking to provide citywide coverage for their customers. Hiding or disguising thousands of antennas in the public right-of-way will require design standards, which do not currently exist. Additionally, cutting into and digging underneath roadways to add underground infrastructure may be necessary to

support each micro installation. With hundreds of these construction projects, the impact on traffic and roadway integrity will create challenges for residents and businesses. The City has an opportunity to coordinate activities, develop new standards, and share its assets with carriers to minimize impact on the infrastructure and streamline processes. In addition, the City can create new revenue sources to offset the maintenance cost by leasing the shared assets. Many local cities are faced with similar challenges and have recently hired consulting firms to prepare similar wireless and/or telecommunications master plans.

In particular, a wireless master plan will address the following immediate concerns:

- 1) The delivery models used by cellular carriers have changed significantly. The exponential increase of the number of sites requires planned infrastructure, including conduit, electricity and fiber, which must be run under existing roadways and rights of way. Without a plan there will be no coordination to make sure infrastructure is designed and built in an intelligent way to minimize negative impacts on infrastructure and minimize street level construction activities. A plan will help guide the City and carriers to the best deployment options for the mutual benefit of all parties.
- 2) Pending legislation seeks to change the status of wireless carriers to public utilities. There are a number of unknowns with such a designation change as it relates to their use of City assets including the right-of-way. This plan will provide the City with objective options accounting for pending legislation and its impact on the City and the City's relationship with the carriers.
- 3) Recently enacted legislation now limits the City's ability to review permit applications by carriers to only 90 days. The City's wireless ordinance must be updated to include processes that accommodate this new requirement, particularly given the number of permit applications being requested by the carriers.

Q. Is wireless consulting services part of the current General Plan update?

The General Plan involves land use concerns and does not have a component for wireless or wireless infrastructure planning. It is important to note that presently cellular carriers are not considered utilities for purpose of regulatory processes.

Q. Where is the scoring chart with prices?

The scoring chart used for evaluation compilation does not contain individual firm pricing, as this is a professional services contract versus a public works contract. Pricing for professional services contracts is rated on scale using the lowest responsive bid

amount earning the highest score with higher priced firms given a relative score based on the percentage increase over the lowest amount. Any bidder with a price more than 100% higher than the lowest bid is rated at zero for this category. The scoring chart is attached.

Q. Should the City be doing this?

The City has an interest in planning for the orderly deployment of privately owned and operated equipment on its infrastructure and assets. The City also has an interest in ensuring carriers are able to provide reliable coverage, and develop an expedited process to ensure permit applications are processed within State mandated timeframes. Additionally, proposed legislation makes it prudent for the City to create a reasoned approach in light of new technology and emerging laws.

Q. Why are we doing this?

The evolution of new business and delivery models of the carriers has led to a significant increase in cellular facility applications. This increase has implications beyond simple antenna placement, as each site requires infrastructure, such as conduit, fiber and power. In a vacuum, this can appear insignificant. In the context of multiple carriers, each needing their own individual sites, an uncoordinated process will lead to duplicative construction, detrimental impacts to City infrastructure, entitlement processing challenges, and noticeable aesthetic changes throughout the City.

Staff, being keenly aware of the City's guiding principles, seeks to address these challenges and develop a plan whereby carriers are able to expeditiously deploy new resources and the City is able to address its need for the regulatory and permitting process. Additionally, there is the opportunity to improve City infrastructure and IT systems and realize cost-recovery while assisting carriers in these deployments.

Q. What's holding up the current 100 permit applications?

The City has a robust existing regulatory process. The 100 requests are in different phases of review. These applications are being processed and reviewed in accordance with City policy, and State and Federal law. None are ready for final approval. The City has identified that this process can be improved, and needs to adapt to the evolving technology and carrier needs. Part of the consultant scope of work is to identify and recommend process and procedure improvements for handling future applications.

Current State and Federal regulations require cell site applications to be processed within 90 days. If the City fails to meet this deadline, its discretionary permitting rights are forfeited and the applications are deemed approved. The current City process is based on the historical, macro-site system with few applications coming through over a period of time. This allowed for a thorough review of each application by staff and the Planning Commission. The trend is towards much higher application volume. This requires a more streamlined process that may include identification of approved sites

and design standards so that applications can be processed within the 90-day mandated timeframe.

Q. Who are the audience, customers we are serving with this plan? Who will benefit from it?

Ultimately the residents of Irvine are the beneficiaries of this plan due to improved cellular coverage, reduced number of construction projects and traffic interruptions, ability to utilize future technologies, and improved services from mobile City staff. The creation and deployment of this plan will benefit the community at large, the City, local businesses and the carriers. This comprehensive plan will allow carriers better flexibility to deploy facilities and will help ensure coverage is reliable throughout the City. Additionally, City staff will benefit from wireless and fiber connectivity to the myriad of City facilities and City IT systems will run more efficiently across the City.

Q. Did one of the bids include \$0 cost for the study?

No. One bid did include a zero up-front cost to the City. However, this bid was structured on a predetermined business model with a significant revenue share for all City cell leases. This revenue share, based on the City's current cell lease revenue and projected site values would yield that firm \$360,000 per year under their proposed terms. This bid estimated the fair value of their services to be \$1,312,500, which makes this the most expensive bid received. For all eight bids received, the range of prices was \$50,000 to \$1,375,800, with four proposals at more than \$500,000.

Procurement for professional services contracts, such as this, take into account pricing. However, the evaluation process also considers each bidder's experience, qualifications, methodology and project approach. This is necessary to procure the best possible product at the best overall cost to the City. While CNX was not the least expensive option, none of the other firms provided comparable experience, qualifications, methodology or project approach. Because of this, the value of the proposal, in relation to all others received, was deemed fair and reasonable.

Q. Can we use other vendors who can perform planning as part of their overall proposal for service?

There are certainly many vendors who can complete components of these services. However, the City seeks unbiased, objective advice and information to make educated and well-reasoned decisions. This provider has performed the same services for other similar and larger cities. Those clients have reported they are extremely satisfied with the provider and have received positive carrier feedback from the implementation of the associated wireless and infrastructure masterplans.

Q. Are we looking to become a competitor to the current providers?

No. The City does not seek to be a competitor to the providers, but rather a better partner. The implications of the cellular industry's new business and delivery models require us to work in concert. The City has significant existing resources and facilities that may allow for more efficient provision of services for the providers. For instance, conduit already in the ground throughout the City may support additional uses, such as fiber for cell antennas in the right-of-way. If this is found to be a feasible option, carriers would be able to more quickly deploy their services, and the City may be able to realize cost-recovery for its deployment of this infrastructure.

Q. How would the City's improved infrastructure help cellular carriers expand their coverage?

City infrastructure may assist in reducing duplicative conduit, fiber and power deployments. While the carriers are well versed at identifying the areas where they need coverage, this improved infrastructure allows a mechanism to support these deployments, increasing Citywide connectivity and minimizing duplicative construction. For example, a road is often built with sewer and storm drains paved and completed. Several months later the new road is dug up to lay gas line and repaved only to be reopened to add electricity. Proper planning for the installation of conduit, fiber and power for cell facilities in the right-of-way will reduce further impacts on these roads.

Q. Does the City currently own fiber optics?

The City has fiber optics connecting some City facilities, traffic lights and traffic cameras. Fiber extends throughout the City, but does not currently exist Citywide.

Q. Does the City provide Wi-Fi access today?

City Hall, many community centers and the Orange County Great Park have some Wi-Fi coverage. The consultant's scope of work includes an analysis of expanding Wi-Fi coverage at additional City facilities.

Q. Can IT security improve with this contract?

Yes. The consultant's scope of work includes an analysis of options to secure City owned connections and wireless access. Security, in this context, relates to security protocols for wireless and infrastructure systems. As data travels off-site, or on non-city owned networks, additional security is necessary to protect data.

Q. Who manages IT security and how does the City update its security?

The City outsourced its IT services including IT security to DXC (formally HPE). This contract will address specific security planning outside the scope of the general IT service contract, such as new security devices and protocol development specifically related to fiber and wireless data transmission.

Q. What are our neighboring cities doing about this?

Many local cities, including Huntington Beach, Mission Viejo, Lake Forest and Tustin have recently hired consulting firms to prepare similar wireless and/or telecommunications master plans.

Q. Has an advisory board been included as part of this process?

Part of the process of plan development will include stakeholder outreach, including carrier representatives, members of the Irvine technology community, and other community partners, such as the Irvine Unified School District and Irvine Ranch Water District. Bringing these stakeholders together will help guide the consultant's effort in preparing a comprehensive plan for the City.

Q. Are there advantages or disadvantages of considering the needs of the Irvine School Districts and IRWD in this Contract? Should we have their representatives in the evaluation?

IUSD and IRWD are valued partners with City. There are certainly challenges and opportunities in considering their needs and input into this process. The City will include them as stakeholders and seek ways to include them on whatever implementation plans are developed. This will allow cost-benefit sharing of resources of mutual interest. However, they were not brought on board in development and consideration of this RFP due to the specific nature of the desired scope of work as it relates to City infrastructure planning and streamlining its entitlement process.

Q. We have been planning land for a long time but we have not been planning technology for a long time. Our IT track record has been to spend a lot of money and hire other people. Why don't we hire experts within our community to give advice? Why isn't there input from the beginning?

When we hire experts, we seek to hire the best qualified person or firm for the job. The community has a number of people interested in and possessing varying levels of

technological expertise. The services the City is seeking in this contract are detailed, specific and require a firm with experience and a successful track record in providing these services. The RFP was distributed to over 400 vendors, with 60 entities downloading the bid information. Additionally, several local firms were directly notified of the RFP and encouraged to participate. The results were eight proposals, which were evaluated objectively based on the tasks requested in the RFP. Staff reviewed the proposals and identified the best qualified firm to complete the work.

Scoring Chart – RFP 17-1194 Wireless and Telecommunications Consulting Services

Methodology, Project Approach, Experience and Qualifications:

Rank	Firm	Score (out of 10)
1	CNX	7.37
2	ATS	6.87
3	Magellan	6.17
4	Mobilenet	5.2
5	Smartwave	4.3
6	5 BARS	3.7
7	Mobilitie	2.7
8	Ritter Real Estate	1.87

Once the evaluation ratings were tabulated, the pricing rating was computed. 5 BARS provided only a revenue share formula, so they were given a 10 rating (the highest) for pricing at 20% weighting, giving them 2 points. The scoring with pricing:

Rank	Firm	Score (out of 10)
1	CNX	7.37
2	ATS	6.87
3	Magellan	6.17
4	5 BARS	5.7
5	Mobilenet	5.2
6	Smartwave	4.3
7	Mobilitie	2.7
8	Ritter Real Estate	1.87

The top three rated firms were interviewed by the ratings team, the scoring after the interviews:

Rank	Firm	Score (out of 15)
1	CNX	11.87
2	ATS	10.53
3	Magellan	7.17

SCORING CHART

EXHIBIT C

DIRECTIONS TO ORANGE COUNTY GREAT PARK OPERATIONS TRAILER


Orange County Great Park

Operations Office
Map and Directions

Directions to Operations Office at the Orange County Great Park

Important Note:
There is currently no physical address assigned to the Orange County Great Park. Please do not rely on GPS or online maps. Park Entrance is located off the 5 Freeway at Sand Canyon & Marine Way.

Contact Numbers:
Operations: **949.724.7416**
Corporate Office: **949.724.7425**



5 North
Exit Sand Canyon and turn right
Turn left on Marine Way
Turn left after guard booth at C Street
Follow curve of the road through the park
Traveling past the Palm Court and around the road barrier which reads, "Only Authorized Staff and Visitors Beyond This Point."
Offices are located on the right

405 North
Exit Shady Canyon/Sand Canyon and turn right
Turn right on Marine Way
Turn left after guard booth at C Street
Follow curve of the road through the park
Traveling past the Palm Court and around the road barrier which reads, "Only Authorized Staff and Visitors Beyond This Point."
Offices are located on the right

Route 133 North
Exit Shady Canyon/Sand Canyon and turn left
Turn left on Marine Way
Turn left after guard booth at C Street
Follow curve of the road through the park
Traveling past the Palm Court and around the road barrier which reads, "Only Authorized Staff and Visitors Beyond This Point."
Offices are located on the right

5 South
Exit Sand Canyon and turn left
Turn right on Marine Way
Turn left after guard booth at C Street
Follow curve of the road through the park
Traveling past the Palm Court and around the road barrier which reads, "Only Authorized Staff and Visitors Beyond This Point."
Offices are located on the right

405 South
Exit Shady Canyon/Sand Canyon and turn left
Turn right on Marine Way
Turn left after guard booth at C Street
Follow curve of the road through the park
Traveling past the Palm Court and around the road barrier which reads, "Only Authorized Staff and Visitors Beyond This Point."
Offices are located on the right

Route 133 South
Exit Irvine Blvd and turn right
Turn left on Sand Canyon
Turn left on Marine Way
Turn left after guard booth at C Street
Follow curve of the road through the park
Traveling past the Palm Court and around the road barrier which reads, "Only Authorized Staff and Visitors Beyond This Point."
Offices are located on the right

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