Written materials relating to an item on this agenda that are distributed to the legislative bodies within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at the Library, 251 South "A" Street and the City Clerk's Office, 305 West Third Street during customary business hours. The agenda reports are on the City of Oxnard web site at www.ci.oxnard.ca.us.

CITY OF OXNARD CALIFORNIA

AGENDA

OXNARD CITY COUNCIL
*OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY
*OXNARD FINANCING AUTHORITY
*OXNARD HOUSING AUTHORITY

Regular Meetings
City Council Chambers, 305 West Third Street, Oxnard
October 15, 2013

A. ROLL CALL/POSTING OF AGENDA

*** The Oxnard Community Development Commission Successor Agency, the Oxnard Financing Authority and the Oxnard Housing Authority will not meet because there are no items requiring consideration on this date.**

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

At this time, a person may address the legislative body only on matters appearing on the closed session agenda. The presiding officer shall limit public comments to three minutes.

C. CLOSED SESSION

D. OPENING CEREMONIES – 6:00 P.M.

Pledge of allegiance to the flag of the United States.

E. CEREMONIAL CALENDAR

1. SUBJECT: Presentation by Food Share to the City of Oxnard Wastewater Division.

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA (30 Minutes)

At this time, the legislative body will consider public comments for a maximum of thirty minutes. A person may address the legislative body only on matters not appearing on the agenda and within the subject matter jurisdiction of the legislative body. A person not able to address the legislative body at this time because the thirty minutes expires may do so just prior to adjournment of the meeting. The legislative body cannot enter into a detailed discussion or take any action on any items presented during public comments at this time. Such items may only be referred to the City Manager/ Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion. Persons wishing to speak on public hearing items should do so at the time of the hearing. The presiding officer shall limit public comments to three minutes.

G. TRANSMITTAL OF INFORMATION ONLY ITEMS

H. INFORMATION/CONSENT PUBLIC HEARINGS

I. PUBLIC HEARINGS

J. APPOINTMENT ITEMS – 6:30 P.M.

Public Works Department

1. SUBJECT: Agreements for Waste Disposal at the Simi Valley Landfill between the City of Oxnard and Waste Management of California, Incorporated. (001)
   RECOMMENDATION: 1) Approve and authorize the Mayor to execute an Agreement with Waste Management of California, Incorporated for Closure of Terms and Conditions of Previous Landfill Agreement for a total amount not-to-exceed $1,700,000 (A-7622); and 2) Approve and authorize the Mayor to execute an Agreement for Waste Disposal at the Simi Valley Landfill with Waste Management of California, Incorporated for an estimated annual amount of $4,696,900 based on 130,000 tons disposed per year (A-7618).
   Legislative Body: CC Contact: Rob Roshanian Phone: 385-7682

K. REPORTS

Development Services Department

1. SUBJECT: Parking Ordinance and Hourly Fee for Electric Vehicle Charging. (041)
   RECOMMENDATION: 1) Approve the first reading by title only and subsequent adoption of an ordinance establishing parking regulations for electric vehicle charging on city-owned and operated parking facilities; and 2) Provide direction to staff about changing the hourly rate for electric vehicle charging on city-owned property.
   Legislative Body: CC Contact: Cynthia Daniels Phone: 385-7871

Public Works Department

2. SUBJECT: Verbal Report on the Materials Recycling Facility and Approval of a Resolution Amending Resolution Number 14,427, Authorizing Full-Time Positions in the City Service. (049)
   RECOMMENDATION: Receive a verbal report on the Materials Recycling Facility and approve a Resolution amending Resolution Number 14,427, authorizing regular full-time positions and the creation of new full-time positions in the City service.
   Legislative Body: CC Contact: Rob Roshanian Phone: 385-7682

L. PUBLIC COMMENTS ON REPORTS

At this time, a person may address the legislative body only on matters appearing on the reports. The presiding officer shall permit a person to address the legislative body after the staff presentation on the report and before the consideration of the report by the legislative body. The presiding officer shall limit public comments to three minutes.

M. REPORT OF CITY MANAGER/EXECUTIVE DIRECTOR/SECRETARY

The City Manager/Executive Director/Secretary shall report on items of interest to the legislative body occurring since the last meeting. The legislative body cannot enter into detailed discussion or take action on any item presented during this report. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion.

N. CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY/FINANCING AUTHORITY BUSINESS/COMMITTEE REPORTS

1. SUBJECT: Oxnard College Application for a National Science, Technology, Engineering and Mathematics (STEM) Grant.
   RECOMMENDATION: Receive a verbal report and consider sending a letter of support signed by each Councilmember for Oxnard College's application for a national Science, Technology, Engineering and Mathematics (STEM) grant.
   Legislative Body: CC Contact: Bryan MacDonald Phone: 385-7430

2. SUBJECT: Upcoming Ethics Training Sessions and discussion of times and dates of Workshops
   RECOMMENDATION: Discuss the upcoming ethics training session and the times and dates of the workshops.
   Legislative Body: CC Contact: Tim Flynn Phone: 385-7430

3. SUBJECT: City Attorney Recruitment. (053)
   RECOMMENDATION: 1) Name an interim City Attorney and provide appropriate temporary upgrade pay; and 2) Work with Human Resources to either establish a recruitment protocol for a new City Attorney or Council appoint a new City Attorney.
   Legislative Body: CC Contact: Michelle Tellez Phone: 385-7596

O. STUDY SESSION

P. PUBLIC COMMENTS ON STUDY SESSION

At this time, a person may address the legislative body only on matters appearing on the study session agenda. The presiding officer shall permit a person to address the legislative body after the staff presentation on the item and before the consideration of the item by the legislative body. The presiding officer shall limit public comments to three minutes.

Q. REVIEW OF INFORMATION/CONSENT AGENDA

The members of the legislative body will consider whether to remove Information/Consent Agenda items for discussion later during the meeting.

R. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

At this time, a person may address the legislative body only on matters appearing on the information/consent agenda. The presiding officer shall limit public comments to three minutes.

S. INFORMATION/CONSENT AGENDA

City Clerk Department

1. SUBJECT: Minutes of the Regular Meetings of the Oxnard City Council for September 24, 2013; and October 1, 2013. (055)
   RECOMMENDATION: Approve.
   Legislative Body: CC Contact: Daniel Martinez Phone: 385-7803

City Manager Department

2. SUBJECT: Agreements for City Council Review. (067)
   RECOMMENDATION: Pursuant to Ordinance 2835 and Resolution 13,932, approve and authorize the Interim City Manager, to execute the attached agreements/contracts and change orders/amendments in amounts more than $25,000 but less than $250,000.
   Legislative Body: CC Contact: Karen Burnham Phone: 385-7430

3. SUBJECT: Second Amendment to Agreement with Genuine Parts Company for On-Site Fleet Parts Program. (069)
   RECOMMENDATION: Approve and authorize the Mayor to execute the Second Amendment to the Agreement with Genuine Parts Company dba NAPA Auto Parts (6212-13-CM) from November 1, 2013, to June 30, 2016, for vendor to provide on-site repair parts and tires to City for an estimated amount of $5,370,000, for a total contract amount of $6,000,000 for the three-year contract period from July 1, 2013, to June 30, 2016.
   Legislative Body: CC Contact: Bill Birch Phone: 385-8080

Development Services Department

4. SUBJECT: Change Order No. 8 with Sully-Miller Contracting Co. for Project Specification No. DS12-01, Intelligent Transportation System (ITS) Construction Integration. (073)
   RECOMMENDATION: 1) Approve and authorize the Mayor to execute Change Order No. 8 for Project Specification No. DS12-01 with Sully-Miller Contracting Co. (A-7475) to increase the contract amount by $349,167.91 to a total of $3,532,202.03, and extend the expiration date to October 30, 2013 for the ITS Construction Integration Project; and 2) Approve a special budget appropriation in the amount of $174,584 from the Wastewater Operating Fund.
   Legislative Body: CC Contact: Jason M. Samonte Phone: 385-7872

5. SUBJECT: Project Specification No. DS14-04 for Ventura Boulevard Park & Ride Lot, Pedestrian Facilities. (077)
   RECOMMENDATION: Adopt plans, specifications, and working details for Project Specification No. DS14-04 to construct a park and ride lot and pedestrian crossing at Ventura Boulevard between Santa Clara Avenue and Nyeland Avenue.
   Legislative Body: CC Contact: Cynthia Daniels Phone: 385-7871

6. SUBJECT: Authorization to Appropriate Revenue from the Public Art Fund. (079)
RECOMMENDATION: Approve the appropriation of $20,000 from the Public Art Fund Balance to hire a Cultural Arts Assistant.
Legislative Body: CC Contact: Matthew Winegar Phone: 385-7877

Police Department

7. SUBJECT: Lease for Police Storefront in the Collections Shopping Center. (081)
RECOMMENDATION: Authorize the Interim City Manager to execute a lease for the establishment of a Police storefront in the Collections shopping center in RiverPark.
Legislative Body: CC Contact: Jason Benites Phone: 385-7624

Public Works Department

8. SUBJECT: Purchase Order No. 4195 with Aqua-Metric Sales Company. (121)
RECOMMENDATION: Approve and authorize the Mayor to increase the purchase order with Aqua-Metric Sales Company in the amount of $800,000 for Fiscal Year 2013-14 and $800,000 for Fiscal Year 2014-15 for the purchase of water meters and related parts (Purchase Order No. 4195) to cover the costs of the second and third year of the agreement.
Legislative Body: CC Contact: Anthony Emmert Phone: 385-8308

9. SUBJECT: Second Amendment to Agreement for Trade Services with Ecology Auto Parts, Inc. for Supplemental Waste Transfer Hauling Services. (127)
RECOMMENDATION: 1) Approve and authorize the Mayor to execute the Second Amendment to the Agreement with Ecology Auto Parts, Incorporated (A-7380) to increase the amount by $1,300,000 from an agreement value of $1,650,000 to $2,950,000 and to extend the expiration date from February 15, 2014 to February 15, 2015, for supplemental waste transfer hauling services; and 2) Approve a Special Budget Appropriation of $300,000 from the Solid Waste Operating Fund Balance to provide sufficient funding in 2013-14 for supplemental waste transfer hauling service.
Legislative Body: CC Contact: Todd Housley Phone: 385-7957

T. ADJOURNMENT

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/2013

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing
☐ Other ______	■ Other Appointment Item

Prepared By: Grant Dunne, Management Analyst III GD Agenda Item No. J-1

Reviewed By: City Manager City Attorney SMF Finance Public Works

DATE: October 3, 2013

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director
Public Works Department

SUBJECT: **Agreements for Waste Disposal at the Simi Valley Landfill between the City of Oxnard and Waste Management of California, Incorporated (Agreement No. A-7618 and Agreement No. A-7622)**

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute an Agreement with Waste Management of California, Incorporated for Closure of Terms and Conditions of Previous Landfill Agreement for a total amount not-to-exceed $1,700,000 (Agreement No. A-7622).
2. Approve and authorize the Mayor to execute an Agreement for Waste Disposal at the Simi Valley Landfill with Waste Management of California, Incorporated for an estimated annual amount of $4,696,900 based on 130,000 tons disposed per year (Agreement No. A-7618).

DISCUSSION

The Simi Valley Landfill is owned and operated by Waste Management of California, Inc. (WMC) and is located at 2801 Madera Road in Simi Valley. The Simi Valley Landfill has been in operation since 1970. In 1972, the site began operations under the Ventura Regional County Sanitation District (now Ventura Regional Sanitation District -VRSD). In 1981, WMC purchased the landfill and received approval to expand the permitted operating life of the facility. The landfill is permitted for the daily waste capacity of 3,000 tons and is permitted to operate through 2054.

Since November of 1997, the Del Norte Regional Recycling and Transfer Station (Del Norte Facility) has used the Simi Valley Landfill as its primary landfill for solid waste disposal service. Approximately 205,000 refuse tons are hauled from the Del Norte Facility to the Simi Valley Landfill each year.

The previous agreement with WMC for waste disposal at the Simi Valley Landfill expired on January 31, 2013. Staff negotiated with WMC and VRSD and agreed upon an equitable disposal fee and waste flow commitment between the two landfills while maintaining status quo disposal cost to Oxnard refuse utility rate payers. During negotiations from February to October of 2013, WMC honored the terms and conditions of the expired agreement including the disposal fee of $27.07 per ton.

Agreement No. A-7622 provides closure to all terms and conditions including remaining payments not-to-exceed $1,700,00 for disposal services rendered during the period of negotiations.

The proposed Agreement A-7618 with WMC consist of the City paying a disposal fee based on the percentage of the City waste delivered to the Simi Valley Landfill through the term of November 14, 2020. The following table depicts the relationship between the percentage of waste delivered and the disposal fee as specified in Section 5.1 in the Agreement:

Percent of Solid Waste Delivered by City to Simi Valley Landfill	Disposal Fee (per ton)
< 40%	$30.88
40 – 49%	$29.58
50 – 59%	$28.82
60 – 69%	$27.93
70 – 85%	$27.07
86 – 99%	$26.93
100%	$26.03

On October 1, 2013 the City Council approved the First Amendment to the Agreement for the City to deliver 48% or approximately 120,000 tons per year of its waste to the Toland Road Landfill for disposal cost of $28.50 per ton. The Simi Valley Landfill is the only other landfill operated within Ventura County. The remaining 52% or approximately 130,000 tons per year of the City's waste will be delivered to the Simi Valley Landfill at a disposal cost of $28.82 as the rate table indicates in this report.

Agreement A-7618 allows for the disposal fee to be adjusted on a percentage of an annual Consumer Price Index. The Agreement also allows for fee adjustments in the event of new or increased regulatory taxes, fees and charges and changes in law. There are no "put-or-pay" provisions in this Agreement.

Section 3.2 of Agreement A-7618 specifies that in the event that either the Simi Valley Landfill or the Toland Road Landfill is closed or becomes unavailable to the City for waste disposal service, that City shall deliver its waste to the remaining disposal site (Simi Valley or Toland Road) to the extent that capacity is available at that site. Under this Section, the City may only utilize another disposal site if both the Simi Valley and Toland Road landfills are collectively insufficient to handle waste capacity from the City.

At the October 1, 2013 meeting, Council expressed concern with the language in Section 3.2. At the request of Council, staff met with WMC to discuss this language. WMC requested to retain the language in the agreement due to the City's right to terminate language in Section 2.3 of the Agreement.

Section 2.3 of Agreement A-7618 allows the City or WMC to unilaterally 'terminate for convenience' the Agreement. The option to "terminate for convenience" ensures the City's protection against becoming too dependent on the Simi Valley Landfill for its waste disposal service if the Toland Road Landfill is unable to accept waste from the City. The 'termination for convenience' clause, if invoked, allows the City to enter into landfill agreements with sites such as the Chiquita Canyon Landfill, located off Highway 126 east of Fillmore.

The Chiquita Canyon Landfill is the closest landfill to Oxnard that can accept solid waste from the City if in the event that both the Simi Valley and Toland Road landfills are closed. The Chiquita Canyon Landfill is 92 miles roundtrip from the Del Norte Facility as compared to 46 miles and 52 miles to the Toland Road Landfill and Simi Valley Landfill respectively. Through an audit of actual loads by the Environmental Resources Division to determine travel time and mileage, the City's waste transport cost per ton is $6.52 to the Toland Road Landfill, $7.31 to the Simi Valley Landfill and $10.85 to the Chiquita Canyon Landfill. The Chiquita Canyon Landfill option significantly increases the City's expense of waste transport and carbon footprint on the environment. Through VRSD the City received a disposal rate of $25.50 per ton from the Chiquita Canyon Landfill. The probable cost per ton to transport and dispose at Chiquita is $36.35 depending on fuel costs. The full cost to transport and dispose at Simi is $36.13, about $.22 per ton less than the full cost at Chiquita. Because the Simi Valley and Toland Road landfills are much closer in proximity, provide sufficient capacity, competitive disposal rates, and service staff does not recommend delivering solid waste to the Chiquita Canyon Landfill at this time but will meet with the landfill operator to explore a contingency in the event that both the Simi Valley and Toland Road landfills are closed.

A circumstance that would allow WMC to invoke Section 3.2 of Agreement A-7618 is unlikely during the term of the contract. Should it occur, staff believes that the City remains sufficiently protected through the language in Section 2.3 of Agreement A-7618 and through the development of a contingency plan with Chiquita.

Over the last several months staff has been negotiating with WMC and VRSD. Throughout negotiations, staff's primary goal was to maintain the cost of disposal fees between the two landfills so that a disposal pass-through rate adjustment to Oxnard utility rate payers would not be necessary. The following tables provide the current landfill disposal and haul cost compared to the proposals being recommended:

CURRENT DISPOSAL AND HAUL COST

Landfill	Delivered Tonnage	Disposal Rate Per Ton	Haul Cost Per Ton	Total Disposal and Haul Cost
Simi Valley	205,000 (82%)	$27.07	$7.31 (82%)	$7,047,900
Toland Road	45,000 (18%)	$34.10 (*Oct. 1)	$6.52 (18%)	$1,827,900
	250,000 (100%)	$28.34 (Avg.)	$7.17 (Avg.)	**$8,875,800**

* VRSD alternate rate effective October 1, 2013 if First Amendment is not approved by City.

PROPOSED DISPOSAL AND HAUL COST

Landfill	Delivered Tonnage	Disposal Rate Per Ton	Haul Cost Per Ton	Total Disposal and Haul Cost
Simi Valley	130,000 (52%)	$28.82	$7.31 (52%)	$4,696,900
Toland Road	120,000 (48%)	$28.50	$6.52 (48%)	$4,202,400
	250,000 (100%)	$28.67 (Avg.)	$6.93 (Avg.)	**$8,900,000**

Staff's analysis indicates a cost increase of approximately $25,000 when comparing the current and proposed disposal arrangements with both landfills. This is a nominal operational cost increase with no immediate impact to Oxnard utility rate payers.

In calendar year 2012, the average public posted rate for non-contractual waste tons in the combined counties for Santa Barbara, Ventura and Los Angeles for landfill tipping fees of similar waste was $54.47 per ton. The Overall terms and conditions of the Agreement provide a competitive fee and long-term disposal security for Oxnard utility rate payers.

FINANCIAL IMPACT

The value of Agreement A-7622 is not-to-exceed $1,700,000. The first year annual value of Agreement A-7618 is $4,696,900 based on 130,000 tons at a disposal fee of $28.82 and haul cost of $7.31 per ton. There are sufficient funds appropriated in the Processing and Disposal function of the Solid Waste Enterprise Fund 631-6304 for the transport and disposal costs at the Simi Valley Landfill for services provided by Agreement No. A-7618 and Agreement No. A-7622.

Attachment No. 1 – Agreement No. A-7622
Attachment No. 2 – Agreement No. A-7618

INTERIM AGREEMENT FOR SOLID WASTE DISPOSAL SERVICES
BETWEEN
THE CITY OF OXNARD AND
WASTE MANAGEMENT OF CALIFORNIA, INC.

THIS AGREEMENT (Agreement) is made this 1st day of October, 2013 by and between the City of Oxnard, a California municipal corporation ("City") and Waste Management of California, Inc., a California corporation ("Owner").

RECITALS

WHEREAS, the Agreement No. A-5997 between the Owner and City expired on January 31, 2013 for solid waste disposal services at the Simi Valley Landfill operated by Owner (the "Facility"); and

WHEREAS, Owner agreed to honor the terms and conditions of the expired Agreement No. A-5997 including the disposal fee of $27.07 per ton of solid waste delivered by the City to the Facility until such time as a new agreement could be reached; and

WHEREAS, in accordance with the terms and conditions of the expired Agreement No. A-5997, the City has paid Owner for all solid waste disposal services provided through June 30, 2013; and

WHEREAS, the parties have negotiated a new agreement to replace the expired Agreement No. A-5997 (the "Agreement No. A-7618"), which, if approved by the parties, is expected to take effect on October 1, 2013.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the parties agree as follows.

1. Compensation for Services Provided

Owner and City agree that City shall pay all outstanding costs, in an amount not-to-exceed $1,700,000, that have been invoiced by the Owner to City for solid waste disposal services rendered between the period of July 1, 2013 through October 1, 2013 or the effective date of the new Agreement No. A-7618, whichever occurs later. Owner shall invoice all such costs in accordance with the terms and conditions of the expired Agreement No. A-5997, which are incorporated herein by this reference.

2. Term

The term of this Agreement is effective upon execution by both parties and shall terminate upon payment from City to Owner for solid waste disposal services rendered between the period of July 1, 2013 through October 1, 2013, or the effective date of the new Agreement No. A-7618, whichever occurs later.

IN WITNESS WHEREOF, Owner and City have executed this Agreement as of the date and year first above written.

CITY OF OXNARD

Tim Flynn, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, Acting City Attorney

APPROVED AS TO CONTENT:

Rob Roshanian, Interim Public Works Director

Todd Housley, Environmental Resources Superintendent

WASTE MANAGEMENT OF CALIFORNIA, INC.

Mike Smith, Vice President, Market Area General Manager

APPROVED AS TO INSURANCE

James Cameron, Chief Financial Officer

APPROVED AS TO AMOUNT:

FOR

Karen R. Burnham, Interim City Manager

Agreement No. A-7618

AMENDED AND RESTATED
AGREEMENT FOR SOLID WASTE DISPOSAL SERVICES
BETWEEN
THE CITY OF OXNARD AND
WASTE MANAGEMENT OF CALIFORNIA, INC.

THIS AGREEMENT is made this 1st day of October , 2013 by and between the City of Oxnard, a California municipal corporation ("City") and Waste Management of California, Inc., a California corporation ("Owner"). This Agreement amends and restates in its entirety the "Agreement For Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California, dated September 25, 2001 ("Prior Agreement"), the "First Amendment to Agreement For Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California," dated September 25, 2006 ("First Amendment"), the "Second Amendment to Agreement For Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California," dated September 20, 2011 ("Second Amendment"), and the "Third Amendment to Agreement For Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California," dated February 7, 2012 ("Third Amendment").

RECITALS

WHEREAS, Owner is the owner and operator of the Simi Valley Landfill and Recycling Center (the "Facility") and City desires to dispose of Residual Solid Waste and Municipal Solid Waste at the Facility on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, City may desire to deliver ADC material and Biosolids to the Facility; and

WHEREAS, Owner agrees to grant such right to dispose of Residual Solid Waste, Municipal Solid Waste, ADC material or Biosolids at the Facility on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the parties agree as follows.

1. DEFINITION OF TERMS

1.1. Agreement. "Agreement" means this "Amended and Restated Agreement for Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California, Inc." dated as of the Effective Date (as defined herein), including all exhibits and attachments, and any amendments hereto.

1.2. ADC Fee. "ADC Fee" means the amount to be charged by Owner for acceptance of ADC Material at the Facility, which shall include all federal, state and local fees imposed on the Facility as of the Effective Date, but shall exclude the County Integrated Waste Management Planning Disposal Fee.

1.3. Alternative Daily Cover Material. "Alternative Daily Cover Material" or "ADC Material" means processed Yard Waste or Construction Debris that is suitable for use as alternative daily cover at the Facility in accordance with the requirements of 27 CCR §20690. In order to qualify as ADC Material, processed Yard Waste must be delivered to the Facility within forty-eight (48) hours of its receipt by the City.

1.4. Biosolids. "Biosolids" means residual solids and semi solids from the treatment of water or wastewater, from which free liquid has been evaporated or otherwise removed, or organic and inorganic non-hazardous grit and screenings captured by mechanical or hydraulic methods, from City's publicly-owned wastewater and water treatment plants, and which is acceptable for disposal at the Facility.

1.5. City. "City" means the City of Oxnard, a California municipal corporation.

1.6. Bulky Waste. "Bulky Waste" means large appliances, furniture, pipes, poles, large concrete sections, tree stumps and other similar waste materials with weights or volumes that would require additional handling at the landfill.

1.7. CalRecycle. "CalRecycle" means the California Department of Resources, Recycling and Recovery, or any successor state agency.

1.8. CPI. "CPI" means the Consumer Price Index, All Urban Consumers for the Los Angeles, Riverside, Orange County Metropolitan Area, 1982-1984 = 100, published by the U.S. Department of Labor, Bureau of Labor Statistics.

1.9. Change in Law. "Change in Law" means the occurrence of any change in law applicable to the performance of this Agreement as follows:

1.9.1.1. The adoption, promulgation, modification, or change in law, regulation, or judicial or administrative interpretation occurring after the Effective Date which adoption, promulgation, codification, or change affects the performance of this Agreement, other than laws with respect to taxes based on or measured solely by net income, or any unincorporated business, payroll, or employment taxes; or

1.9.1.2. Any action, resolution, order or judgment of any federal, state or local court, administrative agency or governmental body issued after the Effective Date if:

1.9.1.2.1. such action, resolution, order or judgment is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon or of any third party for whom the party relying thereon is directly responsible; and

1.9.1.2.2. the party relying thereon, unless excused in writing from so doing by the other party, shall make or have made, or shall cause or have caused to be made reasonable efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as a willful misconduct or negligent action of such party); or

1.9.1.3. Any action, resolution, order or judgment made by a governmental authority or agency having authority over the Facility that imposes new or different material conditions in connection with the issuance, renewal, or modification of any permit or related agreement required for the development or operation of the Facility.

1.10. Construction Debris. "Construction Debris" means waste building materials resulting from construction, remodeling, repair or demolition operations.

1.11. Del Norte Facility. "Del Norte Facility" means the solid waste handling facility owned by City that separates some portion of incoming commingled Municipal Solid Waste into marketable recyclables, or separates mixed recyclables.

1.12. Designated Waste. "Designated Waste" shall have the meaning set forth in Section 13173 of the California Water Code. California Water Code section 13173 provides:

"Designated waste" means either of the following:(a) Hazardous waste that has been granted a variance from hazardous waste management requirements pursuant to Section 25143 of the Health and Safety Code or (b) Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan.

1.13. Disposal. "Disposal" means the final disposition of Residual Solid Waste hereunder at the Facility or other duly permitted disposal facility

1.14. Disposal Fee. "Disposal Fee" means the amount to be charged by Owner for disposal of Residual Solid Waste, Municipal Solid Waste or Biosolids at the Facility, which shall include all federal, state and local fees imposed on the Facility as of the Effective Date, but shall exclude the County Integrated Waste Management Planning Disposal Fee.

1.15. Effective Date. "Effective Date" is September 24, 2013.

1.16. Environmental Laws. "Environmental Laws" means all federal and state statutes, county and City ordinances concerning public health, safety and the environment including, by way of example and not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Emergency Planning and Community Right to Know Act, 42 U. S. C. Section 1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the California Hazardous Waste Control Act, California Health & Safety Code Section 25100 et seq.; the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.; the Porter-Cologne Water Quality Control

Act, California Water Code Section 13000 et seq.; the Safe. Drinking Water and Toxic Enforcement Act, California Health and Safety Code Section 25249.5 et seq.; and the California Clean Air Act, Health and Safety Code Sections 39000 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.17. Facility. "Facility" means the Simi Valley Landfill and Recycling Center in Ventura County, California.

1.18. Garbage. "Garbage" means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any product thereof, resulting from the preparation, storage, handling or consumption of such substances.

1.19. Generator(s). "Generator(s)" means any person(s) whose act or process initially produces Municipal Solid Waste, Designated Waste, Hazardous Waste, Medical Waste or any other waste product which becomes part of the waste stream.

1.20. Hazardous Waste. "Hazardous Waste" means:

1.20.1.1. All substances defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act (42 U.S.C. Section 3251 et seq.), as amended, including the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) and all further amendments thereto or regulations promulgated thereunder; and

1.20.1.2. All substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Health and Safety Code Sections 25110.02, 25115, and 25117, and future amendments to recodifications of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521; and, 1.20.1.3. Radioactive wastes.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "Hazardous Waste", for purposes of processing and disposal to land, the broader, more encompassing definitions shall be employed for purposes of this Agreement.

1.21. Medical Waste. "Medical Waste" means those materials defined in Health and Safety Code Section 117690 and does not include waste identified as not being medical wastes in Section 117700.

1.22. Municipal Solid Waste. "Municipal Solid Waste" means all putrescible and non-putrescible solid and semi-solid waste material, including but not limited to Garbage, Construction Debris and Rubbish, that is authorized for disposal at the Facility pursuant to the Environmental Laws, the permits or other approvals issued to the Facility, or any contracts between the Owner and any governmental entity having authority over the Facility relating to the operation of the Facility. Municipal Solid Waste does not include Bulky Waste, waste tires, Hazardous Waste, Designated Waste, liquid waste, asbestos, Medical Waste, sewage, sewage sludge, abandoned automobiles, or Yard Waste.

1.23. Non-Conforming Waste. "Non-Conforming Waste" means Bulky Waste, waste tires, Hazardous Waste, Designated Waste, liquid waste, asbestos, Medical Waste, sewage, sewage sludge, abandoned automobiles or Yard Waste; any waste materials not authorized for disposal at the Facility pursuant to (i) the Environmental Laws, (ii) the permits or other approvals issued to the Facility, or (iii) any contracts between the Owner and any governmental entity having authority over the Facility relating to the operation of the Facility; and any waste materials not constituting Municipal Solid Waste as defined herein.

1.24. Owner. "Owner" means Waste Management of California, Inc., which owns and operates the Facility.

1.25. Person. "Person" includes an individual, firm, association, organization, partnership, corporation, joint venture, the United States, the State of California, municipality, political subdivision, governmental agency, or any other entity whatsoever.

1.26. Recycling Facility. "Recycling Facility" means a facility owned or operated by the City located within the City that is a "Recycling Center" as set forth in Title 14, California Code of Regulations, Section 17402.5(d).

1.27. Residual Solid Waste. "Residual Solid Waste" means Municipal Solid Waste remaining for disposal after processing at the Del Norte Facility or at another Recycling Facility.

1.28. Rubbish. "Rubbish" means all waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes from residential burning, floor sweepings, and glass.

1.29. Sustainability Fee. "Sustainability Fee" means the fee imposed on the Facility under Article 3 of that certain agreement entitled "Addendum Agreement for a Sustainability Fee at the Simi Valley Landfill and Recycling Center" between Owner and the County of Ventura, dated July 19, 2011, assessed on materials received at the Facility originating from any point outside the geographic boundaries of Ventura County but within the State of California.

1.30. Term. "Term" means the Term of this Agreement, including both the Initial Term and any Successive Term.

1.31. Ton. "Ton" means a short ton of 2,000 pounds avoirdupois.

1.32. Yard Waste. "Yard Waste" means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees, and similar organic materials, scrap lumber, wood crating, pellets, wood chips, and similar materials.

2. TERM OF AGREEMENT

2.1. Term. The initial Term of this Agreement shall begin as of the Effective Date and shall continue until the close of business on November 14, 2020 (the "Initial Term"). Thereafter, this Agreement may be extended beyond the Initial Term for one or more additional terms (the "Successive Term"), for a time period to be determined by the parties, upon mutual written agreement of the parties made not less than sixty (60) days prior to the end of the Initial Term or any Successive Term.

2.2. Effect of Prior Agreement and Amendments. Commencing on the Effective Date, the parties shall have no further rights or obligations under the Prior Agreement or the First Amendment, Second Amendment, or Third Amendment, except that any indemnity obligations based on claims arising during the effective period of the Prior Agreement and First Amendment shall survive their expiration.

2.3. Termination for Convenience. Notwithstanding any provision to the contrary, both the City and Owner may terminate this Agreement for convenience, without cause or penalty, upon one hundred eighty (180) days written notice to the other. Owner is obligated to carry out all obligations under this Agreement up to and including the date of termination for convenience and the City is obligated to pay Owner for amounts due and owing under this Agreement up to and including the date of termination for convenience. Nothing herein is intended to and nothing herein shall be construed to restrict the parties' rights in the event of a default. In the event of a default, the parties' rights shall be determined by applicable law, applied to the terms and provisions of this Agreement.

2.4. Regular Meetings. During the Term, Owner and City shall upon request by either, meet to discuss issues of service at the Facility, as well as any other issues that may arise under this Agreement.

3. RIGHTS AND OBLIGATIONS OF CITY

3.1. Residual Solid Waste; Municipal Solid Waste.

3.1.1. City has the right, but not the obligation, to deliver or cause to be delivered Residual Solid Waste from the Del Norte facility or another Recycling Facility, up to and including the entire amount of Residual Solid Waste Generated at such facilities. City may also deliver other Municipal Solid Waste generated within the City and collected by the City and transported directly to the Facility for Disposal.

3.1.2. As of the date of this Agreement, City estimates the amount of Resiual Solid Waste and Municipal Solid Waste to be delivered to the Facility is approximately _350____ per operating day and _10,600________ tons per calendar month. This is a non-binding estimate used solely for the purpose of assisting Owner's operation of the Facility. City will use commercially reasonable efforts to deliver Residual Solid Waste and Municipal Solid Waste on a reasonably uniform basis, and further agrees to provide Owner with reasonable notice if it anticipates an increase or decrease of fifty percent

(50%) or more by weight in the amount of Residual Solid Waste or Municipal Solid Waste to be delivered on a daily basis.

3.1.3. Deliveries by City will be made by means of (i) transfer trailers originating at the Del Norte Facility, or (ii), solely with respect to Municipal Solid Waste generated within the corporate limits of City, roll-off containers, including double box roll-off containers originating at a location certified as a Recycling Center by CalRecycle, unless the parties agree in writing to other types of transport vehicles or other points of origin.

3.2. Limitation of City's Use of Disposal Facilities. Owner's commitment to accept Residual Solid Waste and Municipal Solid Waste without any delivery commitment, and at the rates set forth in Section 5.1, is expressly predicated and conditioned upon the City's commitment to not utilize any other site for the disposal of these materials other than the Facility or the Toland Road Landfill, owned and operate by the Ventura Regional Sanitation District. This commitment from City is considered as an essential part of the consideration for Owner entering into this Agreement under the terms and conditions set forth herein. During the Initial Term or any Successive Term, City shall not, directly or indirectly, dispose or cause the disposal of any Residual Solid Waste or Municipal Solid Waste at a disposal site other than the Facility or the Toland Road Landfill. In the event that either of these sites is closed or otherwise become unavailable to City, City shall direct Residual Solid Waste and Municipal Solid waste to the remaining disposal site, to the extent that capacity is available at the remaining disposal site. City may only utilize another disposal site in the event that the Facility and Toland Road Landfill, collectively, have insufficient capacity to receive Residual Solid Waste or Municipal Solid Waste generated by the City.

3.3. Alterntive Daily Cover Material. City may deliver and Owner may accept deliveries of ADC Material. Prior to initiating deliveries, City shall notify Owner in writing or by telephone of its desire to deliver ADC Material, and the estimated daily and monthly amounts to be delivered on a daily and monthly basis. Thereafter, the parties agree to undertake good faith negotiation as to the amount of ADC Material that can be delivered and accepted, and the ADC Fee.

3.4. Biosolids.

3.4.1. City's Right to Deliver Biosolids. The City has the right, but not the obligation, to deliver Biosolids to the Facility. Owner's acceptance of Biosolids is subject to City completing and abiding by the terms of a waste profile for the material, demonstrating that the material may be accepted for disposal at the Facility in accordance with applicable law.

3.4.2. The City shall provide Owner with an estimate of Biosolids to be delivered to the Facility on a daily and monthly basis, and, in addition, shall provide Owner with at least three (3) business days notice if it anticipates a substantial increase (i.e., fifty percent (50%) or more) in the amount of Biosolids to be delivered by City on a daily or monthly basis.

4. OBLIGATIONS OF OWNER

4.1. Residual Solid Waste, Municipal Solid Waste and Biosolids. Owner is obligated to receive the Residual Solid Waste, Municipal Solid Waste and Biosolids delivered to the Facility by City for disposal on each operating day the Facility is open, subject to and in accordance with the terms of this Agreement. Owner shall immediately advise City by telephone or facsimile of any situation, event or circumstance that results in a partial of complete inability to perform Owner's obligation to accept Residual Solid Waste, Municipal Solid Waste or Biosolids delivered to the Facility in accordance with the terms of this Agreement. Owner shall use its best efforts to resume normal operations at the Facility as soon as possible.

4.2. Alternative Daily Cover Material. Owner shall use reasonable efforts to ensure that all ADC Material delivered by the City is utilized as alternative daily cover, and that the City receives diversion credit, consistent with its operational needs for such material.

4.3. Monthly Report. Owner shall provide City with a monthly report regarding the amount of Residual Solid Waste, Municipal Solid Waste, ADC Material and Biosolids delivered to the Facility by City for each month.

4.4. Measurement. Owner shall maintain a scale system at the Facility. Owner shall make available to City the following information with respect to each delivery of Residual Solid Waste, Municipal Solid Waste, ADC Material and Biosolids: (1) calendar date; (2) time of day; (3) vehicle identification; and (4) total number of tons of Residual Solid Waste, Municipal Solid Waste, ADC Material and Biosolids delivered to the Facility and accepted by Owner. All scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability specified in the California Code of Regulations. The tonnage used to calculate the Disposal Fee and ADC Fee shall be based on the weight of each loaded truck measured at the weight scales described below minus the certified tare weight for each truck. City shall establish the tare weight of each truck, subject to verification by Owner using the Facility scale system. City shall allow Owner to provide a number or device to be inserted in or on each truck that will identify the truck to the scale attendant, or an automated scanner, or to provide such other device or means necessary to identify trucks using an unattended, automated system.

4.5. Disposition of Non-Conforming Waste. City and Owner shall implement procedures to identify, prevent the delivery of, or reject Non-Conforming Waste delivered to the Facility. If Owner discovers Non-Conforming Waste delivered to the Facility, Owner shall immediately notify City. Notwithstanding the provisions of Section 9.5, such notice may be given either verbally or by facsimile to the office of City's Solid Waste Superintendent. Except as emergency conditions require, or except as required by the Facility's permits or the Environmental Laws, City shall have the first opportunity to immediately remove such refused or rejected materials. If said Non-Conforming Waste is not removed from the Facility within one business day from the date of Owner's initial notice to City (or, in the event removal within one business day is not possible despite diligent efforts by City, an additional reasonable period of time for City to diligently pursue such removal), Owner may arrange for transportation and disposal of the Non-Conforming Waste, with the reasonable costs thereof to be borne by City. In addition, Owner shall recover from City all other reasonable costs, fines and penalties incurred as the result of the delivery of Non-Conforming Waste to the Facility.

4.6. Title and Ownership. Title, ownership and responsibility for Residual Solid Waste, Municiple Solid Waste, Biosolids, and ADC Material shall pass from City to Owner at the time of unloading and acceptance of the material at the Facility; provided that title, ownership and responsibility for Non-Conforming Waste shall remain with City at all times.

4.7. Days and Hours of Operation. Subject to its permit and Ventura County contractual limits on daily tonnage, Owner shall operate the Facility for the receipt and disposal of Residual Solid Waste in accordance with the following schedule:

4.7.1. Monday through Saturday, from 7:00 a.m. to 4:00 p.m., and Sundays as mutually agreed upon. Closed on the following holidays: New Year's Day, Thanksgiving Day, Christmas, Memorial Day, Fourth of July, Labor Day. Notwithstanding the above, the Facility will be opened for one-half day on Memorial Day, Fourth of July and Labor Day at no additional cost to City upon seven days' advance written notice from City, provided, however, that City delivers not less than 400 tons of Residual Solid Waste to the Facility. In the event City does not deliver 400 tons of Residual Solid Waste, City shall reimburse Owner the additional cost of such extended operating hours, as determined by Owner in its reasonable judgment.

4.7.2. Subject to conditions in its permits restricting operating hours, and other legal constraints, Owner shall reasonably cooperate with City to receive deliveries at other times, and in particular when necessary because of natural disasters or other special circumstances. The additional cost of such extended operating hours shall be borne by City. Such additional cost shall be mutually agreed upon by both parties in advance.

5. COMPENSATION TO OWNER

5.1. Disposal Fee.

5.1.1. Residual Solid Waste and Municipal Solid Waste. For Residual Solid Waste and Municipal Solid Waste delivered to the Facility and accepted by Owner, City shall pay a Disposal Fee based on the percentage of Residual Solid Waste delivered to the Facility compared with the total combined amount of Residual Solid Waste directly or indirectly transported for disposal from the Del Norte Facility. The initial Disposal Fee as of the Effective Date is as follows:

Percent of Total Combined Amount of Residual Solid Waste Under City Control Delivered to Facility	Disposal Fee (per ton)
<40%	$30.88
40-49%	$29.58
50-59%	$28.82
60-69%	$27.93
70-85%	$27.07
85-99%	$26.93
100%	$26.03

On or before the 10th of each month, City will provide Owner with a report identifying the amount of Residual Solid Waste delivered to the Facility, and the combined amount of Residual Solid Waste directly or indirectly transported for disposal from the Del Norte Facility during the prior calendar month. In the event that a report is not received for a calendar month by the 10th day of the following month, Owner may prepare its invoice for that month based on the percentages from the prior calendar month. Thereafter, if needed, the parties will reconcile the billing based on actual data for that calendar month.

The Disposal Fee includes all fees and charges in effect as of the Effective Date, except for the Countywide Integrated Waste Management Plan disposal fee ("CIWMP Fee"). City shall in addition to the amounts set forth above, as adjusted, pay Owner the applicable CIWMP disposal fee, to the extent such fee is or becomes imposed on or payable by the Facility.

5.1.2. Biosolids. For Biosolids delivered to the Facility and accepted by Owner, City shall pay the Disposal Fee set forth in Section 5.1.1, as adjusted, plus a surcharge of $20.32 per ton for special handling, as adjusted. The Disposal Fee includes all fees and charges in effect as of the Effective Date, except for the Countywide Integrated Waste Management Plan disposal fee ("CIWMP Fee"). City shall in addition to the amounts set forth above, as adjusted, pay Owner the applicable CIWMP disposal fee, to the extent such fee is applicable or becomes imposed on or payable by the Facility.

5.1.3. Residual Solid Waste, Municipal Solid Waste and Biosolids Originating Outside Ventura County but Within the State of California. For Residual Solid Waste, Municipal Solid Waste and Biosolids delivered to the Facility and accepted by Owner originating from outside Ventura County but within the State of California, City shall pay the Disposal Fee set forth in Sections 5.1.1 or 5.1.2 (as adjusted), as the case may be, any CIWMP Fee, and in addition the Sustainability Fee. Currently, the Sustainability Fee is four dollars ($4.00) per ton. The Sustainability Fee will be charged based on the disposal reporting information submitted by City to Owner and The County of Ventura, which is due no later than 75 days following the end of the previous quarter, as required by 14 CCR sections 18809.1-11. Owner will invoice City for any Sustainability Fee amounts within 15 days from receipt of report, with payment in accordance with Section 5.7.

5.2. <u>ADC Fee</u>.

5.2.1. For ADC Material delivered to the Facility and accepted by Owner, City shall pay an ADC Fee in the amount agreed to by the parties in accordance with Section 3.3, which shall include all fees and charges in effect as of the date of this Agreement except for the CIWMP disposal fee. City shall in addition pay Owner the applicable CIWMP disposal fee and Sustainability Fee, to the extent such fees are applicable and are or become imposed on or payable by the Facility.

5.2.2. The ADC Fee includes all fees and charges in effect as of the Effective Date, except for the CIWMP Fee. City shall in addition to the amounts set forth above, as adjusted, pay Owner the applicable CIWMP disposal fee, to the extent such fee is or becomes imposed on or payable by the Facility.

5.2.3. For ADC Material delivered to the Facility and accepted by Owner originating from outside Ventura County, City shall pay the ADC Fee (as adjsuted), any CIWMP disposal fee, and in addition the Sustainability Fee, to the extent applicable. Currently, the Sustainability Fee is eight percent (8%) of the ADC Fee. The Sustainability Fee will be charged based on the disposal reporting information submitted by City to Owner and The County of Ventura, which is due no later than 75 days following the end of the previous quarter, as required by 14 CCR sections 18809.1-11. Owner will invoice City for any Sustainability Fee amounts within 15 days from receipt of report, with payment in accordance with Section 5.7.

5.3. Fee for Other Wastes. Notwithstanding any other provision of this Agreement, City and Owner may make separate agreements as to service and fees relating to waste materials other than Residual Solid Waste, Municipal Solid Waste, Biosolids or ADC Material, including, but not limited to, Construction Debris, Bulky Waste, Designated Waste, or Yard Waste.

5.4. New or Increased Taxes, Fees and Charges. The Disposal Fee or ADC Fee shall be adjusted from time to time to allow Owner to recover City's pro rata share of any new or increased fees to the extent they become imposed on or payable by the Facility), assessments or taxes (not including income taxes and ad valorem property or possessory interest taxes, which are the responsibility of Owner), imposed directly on landfill solid waste disposal or use of alternative daily cover by any State, Local or Federal governments after the Effective Date (collectively, the "Additional Fees"), upon thirty day's advance written notice from Owner and a statement of basis for the adjustment. Notwithstanding the above, if any new or increased fees results in a Disposal Fee increase greater than 10%, City shall have the right within thirty (30) days of receipt of Owner's written notice to request that Owner negotiate in good faith regarding changes in services, or other terms and conditions, to mitigate the impact of the proposed increase. If negotiations are not successfully concluded within sixty (60) days following Owner's receipt of the City's written request, City shall have the right to give a one hundred and eighty (180) day notice of termination and terminate this Agreement. In the event City elects to terminate this Agreement there shall be no Disposal Fee increase for the then-remaining term of the Agreement.

5.5. Change in Law. The Disposal Fee or ADC Fee shall be adjusted from time to time to allow Owner to recover City's pro rata share of any increased costs of operation of the Facility arising from a Change in Law, upon (30) thirty day's advance written notice from Owner and a statement of basis for the adjustment. Notwithstanding the above, if a change in law results in a Disposal Fee increase greater than 10%, City shall have the right within thirty (30) days of receipt of Owner's written notice to request that Owner negotiate in good faith regarding changes in services, or other terms and conditions, to mitigate the impact of the proposed increase. If negotiations are not successfully concluded within sixty (60) days following Owner's receipt of the City's written request, City shall have the right to give a one hundred and eighty (180) day notice of termination and terminate this Agreement. In the event City elects to terminate this Agreement there shall be no Disposal Fee or ADC Fee increase for the then-remaining term of the Agreement.

5.6. Annual Adjustment. The annual price adjustment for the Disposal Fee and shall be based on the CPI and shall first be effective July 1, 2014 and on July 1 of each subsequent year during the term of this Agreement. The Disposal Fee and ADC Fee shall be increased on July 1 by the percentage increase in the annual average CPI for the preceding January to December. These calculations are mathematically and hypothetically illustrated for the first CPI adjustment (July 2014) as follows in Exhibit A.

5.7. Billing and Payment Procedure. On or before the 20th day of each month, Owner shall submit to City an invoice for Disposal Fees and ADC Fees, and for any applicable additional charges as allowed by the terms of this Agreement for the prior calendar month, except for the Sustainability Fee. The Sustainability Fee will be invoiced separately in accordance with Sections 5.1.3 and 5.2.3. Payment shall be due (30) thirty days from City's receipt of the invoice. Owner may charge City interest on past due accounts up to twelve percent (12%) per annum (one percent (1%) per month). If City disputes any amount billed by Owner, City shall provide written objection within twenty (20) days of receipt of the invoice containing the disputed amount. City shall pay any amount not in dispute. The parties shall promptly attempt to resolve any dispute, but in the event the dispute is not resolved, either party may pursue legal action.

Invoices related to Residual Solid Waste, Municipal Solid Waste, ADC Material and other materials will be submitted to:

City of Oxnard
Solid Waste Superintendent
111 S. Del Norte Blvd.
Oxnard, CA 93030

Invoices related to Biosolids will be submitted to:

City of Oxnard
Wastewater Superintendent
6001 Perkins Road
Oxnard, CA 93033

6. INDEMNITY AND INSURANCE

6.1. Indemnification of City. Owner shall indemnify defend and hold harmless City and its member agencies, officers, directors, employees, agents, representatives and the members of City's and City's member agencies and legislative bodies, from and against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses, including without limitation claims based in tort or for death or personal injury, or damage to property or for contribution or indemnity claimed by third parties against City or incurred by City, known or unknown, contingent or otherwise, directly or indirectly, arising from occasioned by, or related to Owner's performance of, or its failure to perform its obligations under this Agreement or under any federal, state or local law, statute, order or regulation, or related in any way to Owner's management of City's Residual Solid Waste at the Facility, including, without limitation, the design, construction, operation (including without limit, the delivery of waste to, or the acceptance and disposal of Municipal Solid Waste, Biosolids, and ADC material at the Facility) of the Facility, or related to the closure or post-closure maintenance of the Facility. "Liability, demands, claims, costs, losses, damages, recoveries, settlements and expenses", as set forth in this Section, include, without limitation, property damage, bodily injury or death, or any damage to natural resources or the environment (including damages from the release of hazardous substances) or cost of environmental clean-up including those that arise under any federal, state or local law, or regulation, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USCA Section 9601 et. seq.); the Resource Conservation and Recovery Act (42 USCA Section 6901 et. seq.); the Clean Water Act (33 USCA Section 1251 et seq.); the Clean Air Act (42 USCA Section 7401 et. seq.); the Hazardous Substances Account Act (California Health and Safety Code Section 25300 et. seq.); and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq). Owner shall defend City at Owner's sole cost and expense, including, but not limited to, reasonable attorneys fees, direct litigation costs and expert witness and consultant fees, in any legal or administrative action or proceeding based upon any such liability, demand, claim, cost, loss, damage, recovery, settlement or expense. Owner shall select legal counsel in any matters in which City is indemnified hereunder, subject to the reasonable approval of City. Such legal counsel may also be counsel for Owner. The obligations of Owner set forth in this Section are effective as to contamination, occurring as a "sudden and accidental" event or occurring over a more extended period of time.

Notwithstanding the above, the foregoing indemnity shall not apply to the extent any liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses directly or indirectly, arise from, are occasioned by, or relate to the negligent or intentional acts or omissions of City, or its officers, employees, subcontractors or agents, occurring in the course of City's performance of its obligations under this Agreement, acts or omissions in violation of the Environmental Laws, or the delivery of Non-Conforming Waste to the Facility.

6.2. <u>Indemnification of Owner</u>. City shall indemnify defend and hold harmless Owner and its officers, directors, employees, agents, and representatives from and against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses, including without limitation claims based in tort or for death or personal injury, or damage to property or for contribution or indemnity claimed by third parties against Owner or incurred by Owner, known or unknown, contingent or otherwise, directly or indirectly, arising from occasioned by, or related to the negligent or intentional acts or omissions of City, or its officers, employees, subcontractors or agents, occurring in the course of its performance of its obligations under this Agreement, including acts or omissions in violation of the Environmental Laws, or the delivery of Non-Conforming Waste to the Facility.

6.3. <u>Insurance</u>.

6.3.1. City is self insured under provisions of California Law for amounts up to $1,000,000 for automobile and general liability purposes, and up to $300,000 for workers' compensation purposes. With respect to insurance above these amounts, City is a member of BICEP, an organization of California cities that pool risk. City will, upon written request, provide Owners such documentation as appropriate to evidence and describe City's insurance arrangements. The City shall promptly inform Owner in the event it terminates its membership in BICEP. The City shall make arrangements for equivalent insurance coverage effective upon the termination of its membership in BICEP, and shall promptly notify Owner of such alternative arrangements in writing.

6.3.2. Owner's Minimum Coverage. Owner agrees to maintain Insurance coverage for any liability, loss, expense or claim which may arise out of or result from Owner's performance under this Agreement, whether such performance be by Owner or by any contractor of Owner or anyone directly or indirectly employed by Owner or such contractor, or by anyone for whose act Owner may be liable, with the following limits, which limits shall be adjusted every three years by the increase in the Consumer Price Index, using the same formula described for price adjustments in Section 5.6:

6.3.2.1. General liability insurance, including comprehensive form, premises operation and broad form property damage coverage, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit coverage;

6.3.2.2. Automobile liability insurance, including comprehensive form, including loading and unloading, owned, hired and non-owned coverage, with a limit of not less than Five Million Dollars ($5,000,000) combined single limit coverage;

6.3.2.3. Contractual personal injury liability and contractual property damage insurance covering liability assumed under this Agreement, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit coverage;

6.3.2.4. Workers' compensation insurance as required by law; and

6.3.2.5. Employer's Liability Insurance with a limit of not less that One Million Dollars ($1,000,000).

6.3.3. Certificates. City is self insured, with excess coverage and pool participation as provided under California Law. City agrees to provide Owner with information concerning City's self insured provisions upon written request by Owner. Certificates of Owner's insurance acceptable to City shall be filed with City prior to commencement of any operation or performance under this Agreement. The certificates shall state that City, its City Council, officers, employees, agents and volunteers are additional insureds for coverage in 6.3.2.1-3 above, that the insurance afforded shall be primary insurance, and that coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice (ten (10) days in the event of cancellation for non-payment) has been given to City.

6.3.4. Each subcontractor performing services pursuant to this Agreement shall be covered by the above policies, respectively, or by a separate policy or policies having the same limits, terms and conditions.

6.3.5. Owner shall provide the above coverages with an insurance carrier having an A.M. Best's rating of A VII or higher.

6.3.6. Maintenance of proper insurance coverages by Owner is a material element of this Agreement. Owner's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

7. DEFAULT BY CITY

7.1. Right to Suspend or Terminate Upon Default. City shall be in default under this Agreement, and Owner shall have the right to suspend or terminate this Agreement, in the event City fails to perform its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving notice from Owner specifying the breach; provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as it promptly commences action required to cure the breach within ten (10) calendar days after receipt of such notice and continues such performance diligently until the cure is completed. Notice of default shall be in writing and delivered to the representative of City designated in Section 9.5.

7.2. Owner's Remedies Cumulative. Owner's rights to suspend or terminate this Agreement under Section 7.1 are not mutually exclusive, and Owner's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in the alternative and in addition to any and all other legal and equitable rights and remedies that Owner may have.

8. DEFAULT BY OWNER.

8.1. Right to Suspend or Terminate Upon Default. Owner shall be in default under this Agreement and City shall have the right to suspend or terminate this Agreement in the event Owner fails to accept and dispose of Residual Solid Waste or ADC Material as required by Section 4 or otherwise fail to perform its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving notice from City specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Owner shall not be in default so long as Owner commences action required to cure the breach within ten (10) calendar days after receipt of such notice and continues such performance diligently until the cure is completed. Notice of default shall be in writing and delivered to the representative of Owner designated in Section 9.5.

8.2. City's Remedies Cumulative. City's rights to suspend or terminate this Agreement under Section 8.1 are not mutually exclusive, and City's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in the alternative and in addition to any and all other legal and equitable rights and remedies that City may have.

9. OTHER AGREEMENTS OF THE PARTIES

9.1. Relationship of Parties. The parties intend that Owner shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venturer with City. No employee or agent of Owner shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Owner shall have the exclusive control over the manner and means of conducting the Residual Solid Waste disposal services performed under this Agreement and all persons performing such services. Owner shall be solely responsible of acts and omissions of its officers, employees, subcontractors, and agents. Neither Owner, nor its officers employees, subcontractors or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City's employees by virtue of their employment with City.

9.2. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

9.3. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any right on any Persons other than the parties to it and their representatives, successors and permitted assigns.

9.4. Waiver. The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

9.5. Notice. Except as provided otherwise herein, any notice required under this Agreement shall be made either by personal delivery or by registered or certified mail, return receipt requested, and shall be deemed given upon personal delivery or within three (3) days of mailing. Notices shall be given to the parties at the following addresses:

To Owner:

District Manager
Simi Valley Recycling and Disposal Facility
2801 N. Madera Road
Simi Valley, CA 93065-6208

With a Copy to:

Waste Management—Southern California Market Area
9081 Tujunga Avenue
Sun Valley, CA 91352
Attn: Legal Counsel

To City:

City of Oxnard
Solid Waste Superintendent
111 South Del Norte Blvd.
Oxnard, CA 93030

With a Copy To:

City of Oxnard
City Attorney
300 West Third Street, Suite 300
Oxnard, CA 93030

Either party may change the location of individuals for receipt of notices hereunder by providing written notice to the other party as aforesaid.

9.6. Approvals. Except as provided otherwise herein, whenever this Agreement calls for the consent, review, approval, action or permission of a party, such party shall act reasonably under the circumstances, and such consent, review, approval, action or permission shall not be arbitrarily or unreasonably taken, given, withheld, exercised or delayed.

9.7. Force Majeure.

9.7.1. Neither Owner nor City shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other similar catastrophic events), war, insurrection, riot, acts of any government (including judicial action), condemnation or other taking by a governmental entity, Change in Law, labor unrest (including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Owner's employees or directed at Owner or third parties) or other similar causes which are not the fault of, and beyond the reasonable control of, the party claiming excuse from performance.

9.7.2. Any interruption or discontinuance of Owner's ability to accept and dispose of Residual Solid Waste caused by one or more of the events described in this section shall not constitute an event of default by Owner under this Agreement.

9.7.3. If either City's or Owner's performance is affected by any such event, it shall give written notice to the other party as soon as it is reasonably practical and further, shall diligently attempt to resolve such condition.

9.8. Authority of City. City hereby represents it has the power and authority to execute this Agreement and to be bound by the terms and conditions contained herein. City further represents that it has the authority to direct the disposal of Residual Solid Waste to the Facility on behalf of City during the entire Term hereof.

9.9. Other Remedies. In addition to the other remedies expressly provided for elsewhere herein, the parties may exercise any and all rights and remedies provided by law or equity for any breach of this Agreement.

10. MISCELLANEOUS PROVISIONS

10.1. Entire Agreement. This Agreement represents the full and entire agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

10.2. Section Headings. The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement and not to alter or affect its provisions.

10.3. Interpretation. This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

10.4. Amendment. This Agreement may not be modified or amended in any respect except by a writing signed by the parties

10.5. Severability. If any non-material provision of this Agreement is for any reason deemed to be invalid, and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

10.6. Attorneys' Fees. Subject to the provisions of Section 9.3, the prevailing party in any arbitration or litigation brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

10.7. References to Laws. All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or rectified, unless other specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

10.8. Definitions. Capitalized terms used in this Agreement without definitions have the meanings specified in the Definitions section, unless the context clearly requires otherwise.

10.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

10.10. Successors/Assignment. This Agreement shall bind the successors, assigns and legal representatives of the parties. This Agreement may not be assigned by either party without the advance written consent of the other, which consent shall not be withheld unreasonably nor required for an assignment to an affiliate of Owner. In determining whether to grant or withhold consent a party may consider the financial strength of the proposed assignee as compared to the financial strength of the party seeking assignment, the experience and reputation of the assignee in the industry, and such other factors as are commercially reasonable.

IN WITNESS WHEREOF, City and Owner have executed this Agreement as of the date and year first above written.

CITY OF OXNARD	**WASTE MANAGEMENT OF CALIFORNIA, INC.**
By: ______________________	By: ______________________
Tim Flynn, Mayor	Name: MIKE SMITH
	Mike Smith Vice President, Market Area General Manager

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, Acting City Attorney

APPROVED AS TO CONTENT:

Rob Roshanian, Interim Public Works Director

APPROVED AS TO INSURANCE

James Cameron, Risk Manager

APPROVED AS TO AMOUNT:

Karen R. Burnham, Interim City Manager

EXHIBIT A

EXAMPLE RATE ADJUSTMENT METHODOLOGY

C PI Adjustment = A x (B-C) / C

A = Disposal Fee, Effective Date (Disposal Fee) = \$27.07 (for example, calculation would be made for each rate in the rate matrix)

B= 2013 Annual Average CPI (Consumer Price Index All Urban Consumers Los Angeles-Riverside-Orange County 1982-1984=100) = 242.564(a hypothetical value for example only)

C= 2012 Annual Average CPI (Consumer Price Index All Urban Consumers Los Angeles-Riverside-Orange County 1982-1984=100) = 236.648

July 2014 Disposal Fee CPI Adjustment =

= \$27.07 ((242.564 – 236.648) ÷ 236.648)
= \$27.07 x 0.025
= \$0.68

July 2014 Disposal Fee = Disposal Fee + CPI Adjustment
= \$27.07 + \$0.68
= \$27.75

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	Info/Consent
☐ Ord. No(s). ____	☒ Report
☐ Res. No(s). ____	☐ Public Hearing (Info/consent)
☐ Other ____	☐ Other ____

Prepared By: Cynthia Daniels Agenda Item No. K-1

Reviewed By: City Manager City Attorney Finance Jim Cameron Other Winegar

DATE: September 25, 2013

TO: City Council

FROM: Cynthia Daniels, Project Manager Cynthia Daniels
Development Services Department

SUBJECT: **Parking Ordinance and Hourly Fee for Electric Vehicle Charging**

RECOMMENDATION

That City Council:

1. Approve the first reading by title only and subsequent adoption of an ordinance establishing parking regulations for electric vehicle charging on city-owned and operated parking facilities.

2. Provide direction to staff about changing the hourly rate for electric vehicle charging on city-owned property.

DISCUSSION

The City has three electric vehicle charging stations at two locations: two at 255 E. Fifth Street at the Oxnard Transit Center long-term parking lot, and one at 324 South B Street at the downtown parking garage. Staff recommends the parking ordinance be amended to allow the City to enforce exclusive use of the parking spaces for electric vehicle charging as authorized by the California Vehicle Code.

On July 23, City Council held a public hearing and adopted Resolution No. 14,431 establishing a user fee of $2.25 per hour for electric vehicle charging. The charging fee recovers the estimated operational costs (which are the fees from the vendors, annual maintenance, and electricity costs) in accordance with the financial management policies in City Council Resolution No. 14,430. Resolution No. 14,430 states the City Council will recover the costs of providing a private benefit to users through the imposition of user fees and charges. The City Council has declared it establishes all user fees and charges at a level related to the direct and indirect costs of providing services and the degree of public versus private benefit. A public hearing would be required to change the fee from $2.25 per hour. If the City Council wishes to reconsider the fee, then staff would return later with a recommendation and analysis of the potential public versus private benefit.

FINANCIAL IMPACT

The financial impact of enforcing restricted parking for electric vehicles may be an increase for police enforcement costs and may increase revenue from parking fines. The financial impact of a reduced hourly fee for electric vehicle parking will depend on the amount of the change.

CD

Attachment #1 - Ordinance amending City Code Ch. 8
Attachment #2 Estimated Cost of Electric Vehicle Charging
Attachment #3 Electric Vehicle Charging Fees in Other Cities and Public Facilities

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO.

ORDINANCE OF THE CITY OF OXNARD, CALIFORNIA, AMENDING DIVISION I OF ARTICLE IV OF CHAPTER 8 OF THE OXNARD CITY CODE CONCERNING THE PARKING OF ELECTRIC VEHICLES AND ELECTRIC VEHICLE CHARGING

WHEREAS, Section 22511(a) of the California Vehicle Code provides that a local authority, by ordinance or resolution, may designate stalls or spaces in an off-street parking facility owned or operated by that local authority for the exclusive purpose of charging and parking a vehicle that is connected for electric charging purposes; and

WHEREAS, Section 22511(f) of the California Vehicle Code provides that Section 22511 does not interfere with existing law governing the ability of local authorities to adopt ordinances related to parking programs within their jurisdiction; and

WHEREAS, in order to promote and facilitate the use of electric vehicles, the City of Oxnard has provided off-street electric charging stations within city-owned parking facilities for the purpose of refueling electric vehicles; and

WHEREAS, an electric vehicle means any car, truck, or other vehicle that does not produce tailpipe or evaporative emissions or is a plug-in hybrid electric vehicle (PHEV), as that term is used by the State Air Resources Board; and

WHEREAS, the City wishes to ensure that the electric charging stations are available for the fueling of electric vehicles as defined herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES ORDAIN AS FOLLOWS:

Part 1. Division I of Article IV of Chapter 8 of the City Code is hereby amended to add Section 8-57 to read as follows:

"SEC. 8-57. ELECTRIC VEHICLE CHARGING.

No person shall park a vehicle in an off-street parking facility owned or operated by the city in a stall or space designated exclusively for parking an electric vehicle for charging purposes, which is posted in accordance with California Vehicle Code section 22511, as it may be amended or renumbered from time to time, for any purpose other than to charge an electric vehicle. Nor shall any person connect any device, item, equipment, or thing to an electric charger located at such space or stall other than an electric vehicle, as defined herein. As used in this Section 8-57:

1. An "electric vehicle" means a plug-in electric vehicle, including an exclusively electric vehicle ("EV") and a plug-in hybrid electric vehicle ("PHEV");

2. An EV means a motor vehicle exclusively powered by an electric propulsion system; and,

3. A PHEV means a motor vehicle primarily powered by an electric propulsion system and secondarily by an internal combustion system, which powers the electric propulsion system when the on-board source of electricity is depleted or discharged."

Part 2. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation, published and circulated in the City. Ordinance No. _________ was first read on _______________________________, 2013, and finally adopted on _______________________________, 2013, to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

ABSTAIN:

____
Tim Flynn, Mayor

ATTEST:

____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

____
Stephen M. Fischer, Acting City Attorney

45

Electric Vehicle Charging Station
Calculation of Cost

Pricing for Electric Vehicle Charging

Fixed Costs Per Unit	Amount	Per Day	Per Month	Yearly	Units	One Year Budget
1. Liberty Plug IN administrative fee	$ 6.00	$ 0.20	$ 6.00	$ 72.00	3	$ 216.00
2. Park Mobile initial set up fee (one time charge)	$ 50.00	$ 0.14	$ 4.20	$ 50.00	3	$ 150.00
3. Maintenance $180/hr, assume 4 hrs/yr	$ 720.00	$ 1.97	$ 59.10	$ 720.00	3	$ 2,160.00
4. Standby electrical consumption 6 watts	54 kWhr/yr	$ 0.03	$ 0.81	$ 9.72	3	$ 29.16
5. Park Mobile transaction fee (minimum 100 transactions)	$ 0.35	$ 1.17	$ 35.00	$ 420.00	3	$ 1,260.00
Subtotal		$ 3.51	$ 105.11	$ 1,271.72		$ 3,815.16
Variable Costs Per Unit						
Electricity cost per kilowatt hour	$ 0.18					
6. Cost in kWhr for Model CS-40 EV Charger uses 7.2 watts/hr (assume 8 hr/day)	$ 1.30	$ 10.37				$ 3,766.84
Subtotal Per Hour	$ 1.30					
					Total	$ 7,582.00
					Rounded	$ 7,550.00
Adopted Fee 7/23/2013	$2.25	Per Hour				

ATTACHMENT 2
PAGE 1 OF 2

File Name Location: C:\Documents and Settings\pwcynd\My Documents\Electric Vehicle Chargers\City Council Reports, Actions\20131008-IC-DS-Electric vehicle parking, fee\, Electric vehicle charger pricing for CC_3 10.8.13, Tab Name: EV $
Prepared by C Daniel

Electric Vehicle Charging Station
Calculation of Cost

Scenarios for Assumed Usage Per Unit	Per Day Revenue	Per Day Cost	Per Day Net Income	[Transactions less than 100 per month, $35/mo fee due]		Annual Revenue or (Cost = Subsidy) 3 Chargers
A. **Scenario at $1.75/hr**						
2 cars, 4 hours each per day	$ 14.00	$ 13.91	$ 0.09	7.9	minimum hours to recover costs	$ 98.55
1 car, 4.5 hours each day	$ 7.88	$ 9.36	$ (1.48)	5.3	minimum hours to recover costs	$ (1,620.60)
1 car, 2 hours each day	$ 3.50	$ 6.11	$ (2.61)	3.5	minimum hours to recover costs	$ (2,857.95)
B. **Scenario at $2.00/hr**						
2 cars, 4 hours each per day	$ 16.00	$ 13.91	$ 2.09	7.0	minimum hours to recover costs	$ 2,288.55
1 car, 4.5 hours each day	$ 9.00	$ 9.36	$ (0.36)	4.7	minimum hours to recover costs	$ (394.20)
1 car, 2 hours each day	$ 4.00	$ 6.11	$ (2.11)	3.0	minimum hours to recover costs	$ (2,310.45)
C. **Scenario at $2.25/hr**						
2 cars, 4 hours each per day	$ 18.00	$ 13.91	$ 4.09	6.2	minimum hours to recover costs	$ 4,478.55
1 car, 4.5 hours each day	$ 10.13	$ 9.36	$ 0.77	4.1	minimum hours to recover costs	$ 843.15
1 car, 2 hours each day	$ 4.50	$ 6.11	$ (1.61)	2.7	minimum hours to recover costs	$ (1,762.95)

ATTACHMENT 2
PAGE 2 OF 2

File Name Location: C:\Documents and Settings\pwcynd\My Documents\Electric Vehicle Chargers\City Council Reports, Actions\20131008-IC-DS-Electric vehicle parking, fee\, Electric vehicle charger pricing for CC_3 10.8.13, Tab Name: EV $
Prepared by C Daniel

Survey of Other Public Electric Vehicle Charging Stations

	Cost/Hr	Type of Charger
City of Santa Barbara	$1/hr, $1 minimum to charge	ChargePoint Level 2
City of Solvang	$0.45/hr	Unknown
City of Ventura	$0.50/hr, $0.50 minimum	ChargePoint Level 2
City of Thousand Oaks	$1-2/hr based on membership Free	Blink Level 2 ClipperCreek Level 2
City of Santa Monica	Free	
City of Ojai	Free	ClipperCreek Level 2
National Parks Service Visitors Center Thousand Oaks	Free Free	Blink Level 2 ClipperCreek Level 2

Chargepoint Vehicle Charging Stations Information

City	Charge
Bellevue, WA	$0 now, spring $2-$4 per session
Beverly Hills	Free to charge - pay parking rate if applicable
Burbank	Free to charge - pay parking rate if applicable
Century City	Free to charge - pay parking rate if applicable
	$.95 - $3/hr
Costa Mesa	Free to charge - pay parking rate if applicable
Huntington Beach	Free - re-assess in 2013
Laguna Beach	Free to charge - 4 hour parking max
	Summer: $5 for 4 hours
Laguna Niguel (Kohls)	Free to charge - pay parking rate if applicable
Long Beach	Free to charge - pay parking rate if applicable
Los Angeles	Free to charge - pay parking rate if applicable
Santa Monica	Free to charge - plan to start charging, will install CC swiping equipment, cost still up for debate
Seal Beach	$3.37 / hour
UCLA	$2/hr
Santa Barbara	$1/hr
VENTURA	$0.5/hr, 1 hour minimum

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☐ Info/Consent
☐ Ord. No(s). ______	■ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: Todd Housley, Environmental Resources Superintendent TH Agenda Item No. K-2

Reviewed By: City Manager / City Attorney SMF Finance / Human Resources Public Works

DATE: October 4, 2013

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director
Public Works

SUBJECT: **Verbal Report on the Materials Recycling Facility and Approval of a Resolution Amending Resolution Number 14,427, Authorizing Full-Time Positions in the City Service**

RECOMMENDATION

That City Council receive a verbal report on the Materials Recycling Facility and approve a Resolution amending Resolution Number 14,427, authorizing regular full-time positions and the creation of new full-time positions in the City service.

DISCUSSION

On July 30, 2013, the City Council directed staff to return to City Council with a business plan for the City to perform the management, operation and maintenance of the Del Norte Facility. On September 24, 2013, a City Council Study Session was conducted to receive a staff report, public comments and comments from Council regarding the Business and Transition Plan developed by the Public Works Department. On October 1, 2013, the City Council approved the Del Norte Facility Business and Transition Plan.

The Del Norte Facility Business and Transition Plan provides an outline for transition of operations of the Del Norte Facility from Republic Services of Oxnard, Inc. to the City of Oxnard. A staffing plan has been identified in order to address the operational needs and to protect the health and safety of both employees and the public. Staff is requesting that Council formally approve the addition of the regular full-time City positions required to operate the facility. The requested action includes the addition of more positions within the existing City classification plan and the creation of new positions not within the existing City classification plan.

Attachment No. 1 is the Resolution Amending Resolution Number 14,427, Authorizing Regular Full-Time Positions in the City Service. Attachment No. 2 is a table that lists the 38 new full-time positions required for customer service and MRF operations requested by this Council action.

FINANCIAL IMPACT

It is anticipated that adequate savings from the existing operating agreement will cover the costs of the additional staff.

Attachment #1 – Resolution Amending Resolution Number 14,427
#2 – Listing of New Full-Time Positions Required for Customer Service and MRF Operations

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. ______

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD AMENDING RESOLUTION NO. 14,427 AUTHORIZING FULL-TIME EQUIVALENT POSITIONS IN ACCORDANCE WITH THE OPERATING BUDGET OF THE 2013-14 and 2014-15 FISCAL YEARS.

WHEREAS, on October 1, 2013 the City Council voted to transition operation of the Del Norte Facility from Republic Industries of Oxnard, Inc. to the City; and

WHEREAS, the staff has recommended amendments to Resolution No. 14,427, authorizing full-time positions in the City service; and

WHEREAS, the City Council has carefully reviewed the amendments and finds that they are desirable in the interest of maintaining an efficient and safe municipal organization.

NOW, THEREFORE, the City Council of the City of Oxnard resolves that Resolution No. 14,427 shall remain in force with the following amendments adding specified positions in the City Service, effective October 15, 2013.

Resolution No. 14,427

CATEGORY, GROUP, PROGRAM CLASSIFICATION TITLE	**HOME PROGRAM FULL-TIME EQUIVALENT POSITIONS**	
	FROM	TO
PUBLIC WORKS		
ENVIRONMENTAL RESOURCES		
Environmental Resources Supt**	1.00	1.00
MRF Operations Manager	0.00	1.00
Health and Safety Supervisor*	1.00	1.00
Maintenance Supervisor*	1.00	1.00
Zero Waste / Recycling Supervisor**	0.00	1.00
Scalehouse/Buyback Center Attendant**	0.00	6.00
Customer Service Representative	0.00	4.00
Heavy Equipment Operator	0.00	6.00
Maintenance Technician	0.00	3.00
MRF Equipment Operator**	0.00	3.00
MRF Dispatcher**	0.00	1.00
Zero Waste Coordinator**	0.00	2.00
Sorter	0.00	6.00
Geographic Information System Technician III	0.00	1.00
Environmental Resources Total	79.70	113.70
Public Works Total	253.00	287.00
City-Wide Total	1,226.00	1,260.00

*Currently Solid Waste Supervisor position to be converted to new title to be determined after the new classification is developed.

**Working titles. Council action will make positions available to be converted to new title to be determined after the new classifications are developed.

PASSED AND ADOPTED this 15th day of October, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

____
Tim Flynn, Mayor

ATTEST:

____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

____
Stephen M. Fischer, Acting City Attorney

Environmental Resources Division
New Full-Time Positions Required for
Customer Service and MRF Operations

Position	Position Control Status	Category, Group, Program Classification Title	Action Required
New Title for ER Supt	not in position control	unexisting classification	create position / add to position control / approve recruitment
MRF Operations Manager	not in position control	unexisting classification	create position / add to position control / approve recruitment
Health and Safety Supervisor*	not in position control	unexisting classification	create position / add to position control / approve recruitment
Maintenance Supervisor*	not in position control	unexisting classification	create position / add to position control / approve recruitment
Zero Waste / Recycling Supervisor	not in position control	unexisting classification	create position / add to position control / approve recruitment
Buyback Center Attendant	not in position control	unexisting classification	create position / add to position control / approve recruitment
Buyback Center Attendant	not in position control	unexisting classification	create position / add to position control / approve recruitment
Buyback Center Attendant	not in position control	unexisting classification	create position / add to position control / approve recruitment
Buyback Center Attendant	not in position control	unexisting classification	create position / add to position control / approve recruitment
Buyback Center Attendant	not in position control	unexisting classification	create position / add to position control / approve recruitment
Buyback Center Attendant	not in position control	unexisting classification	create position / add to position control / approve recruitment
Account Clerk III	in position contol / unfilled vacancy	existing classification	approve recruitment
Heavy Equipment Operator	not in position control	existing classification	create position / add to position control / approve recruitment
Heavy Equipment Operator	not in position control	existing classification	create position / add to position control / approve recruitment
Heavy Equipment Operator	not in position control	existing classification	create position / add to position control / approve recruitment
Heavy Equipment Operator	not in position control	existing classification	create position / add to position control / approve recruitment
Heavy Equipment Operator	not in position control	existing classification	create position / add to position control / approve recruitment
Heavy Equipment Operator	not in position control	existing classification	create position / add to position control / approve recruitment
MRF Maintenance Technician	not in position control	unexisting classification	create position / add to position control / approve recruitment
MRF Maintenance Technician	not in position control	unexisting classification	create position / add to position control / approve recruitment
MRF Maintenance Technician	not in position control	unexisting classification	create position / add to position control / approve recruitment
MRF Equipment Operator	not in position control	unexisting classification	create position / add to position control / approve recruitment
MRF Equipment Operator	not in position control	unexisting classification	create position / add to position control / approve recruitment
MRF Equipment Operator	not in position control	unexisting classification	create position / add to position control / approve recruitment
Dispatcher	not in position control	unexisting classification	create position / add to position control / approve recruitment
Zero Waste Coordinator	not in position control	unexisting classification	create position / add to position control / approve recruitment
Zero Waste Coordinator	not in position control	unexisting classification	create position / add to position control / approve recruitment
Office Assistant II	in position control / unfilled vacancy	existing classification	approve recruitment
Sorter	not in position control	unexisting classification	create position / add to position control / approve recruitment
Sorter	not in position control	unexisting classification	create position / add to position control / approve recruitment
Sorter	not in position control	unexisting classification	create position / add to position control / approve recruitment
Sorter	not in position control	unexisting classification	create position / add to position control / approve recruitment
Sorter	not in position control	unexisting classification	create position / add to position control / approve recruitment
Sorter	not in position control	unexisting classification	create position / add to position control / approve recruitment
Customer Service Representative I	not in position control	existing classification	add to position control / approve recruitment
Customer Service Representative I	not in position control	existing classification	add to position control / approve recruitment
Customer Service Representative I	not in position control	existing classification	add to position control / approve recruitment
Customer Service Representative I	not in position control	existing classification	add to position control / approve recruitment

Total Positions 38

*Currently Solid Waste Supervisor position to be converted to new title to be determined after the new classification is developed.
All titles are working titles. Council action will make position available to be converted to new title to be determined after the new classification is developed.

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10 /15 / 13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: Michelle Téllez, Director of Human Resources ______ Agenda Item No. N-3

Reviewed By: City Manager KPB City Attorney RT Finance JK Other *(Specify)*

DATE: October 9, 2013

TO: City Council

FROM: Michelle Téllez, Director of Human Resources
Human Resources Department

SUBJECT: **City Attorney Recruitment**

RECOMMENDATION

That City Council:

1. Name an interim City Attorney and provide appropriate temporary upgrade pay.
2. Work with Human Resources to either establish a recruitment protocol for a new City Attorney or Council appoint a new City Attorney.

DISCUSSION

In past City Attorney recruitments, Council worked with the Director of Human Resources to coordinate the selection of an executive search firm for the purpose of hiring a City Attorney. Typically, the Director of Human Resources receives bid proposals from a number of executive search firms that specialize in public sector employer recruitments. The Director of Human Resources communicates with and works directly with an established Council Committee (two Council members) in the selection of the executive search firm, including defining that for which Council determines are the qualities and qualifications needed for the City's Attorney.

Also, Council has the authority to appoint a City Attorney and can do so without engaging an executive search firm.

FINANCIAL IMPACT

Interim appointments at this level have been within the range of the former employee's salary.

Council should anticipate spending more than $25,000 to engage an executive search firm. If Council appoints a City Attorney, there are no discernable costs other than the City Attorney's salary.

MHT

AGENDA ITEM NO.
S-1

MINUTES

OXNARD CITY COUNCIL
Regular Meeting
September 24, 2013

A. ROLL CALL/POSTING OF AGENDA

At 5:09 p.m., the regular meeting of the Oxnard City Council convened in the Council Chambers. Councilmembers Tim Flynn, Bryan A. MacDonald, Carmen Ramirez, Dorina Padilla and Bert Perello were present. The City Clerk stated that the agenda was posted on Friday in the Library and City Clerk's Office. Mayor Flynn presided and called the meeting to order. Staff members present were: Daniel Martinez, City Clerk: Karen Burnham, Interim City Manager; and Stephen Fischer, Acting City Attorney.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

Public comments were received from: Steve Nash and Christina Aerenlund.

C. CLOSED SESSION

At 5:14 p.m. the City Council recessed to a closed session, pursuant to Government Code section 54956.9(d)(1), to confer with its attorneys. The title and case number of the litigation being discussed is United States, et al., ex rel. Hendrix v. J-M Manufacturing Company, Inc., et al., United States District Court for the Central District of California, Case No. ED CV 06-00055-GW.

The City Council also recessed to a closed session, pursuant to Government Code section 54956.9(d)(4), based on existing facts and circumstances, to decide whether to initiate litigation in one potential case.

The City Council also recessed to a closed session, pursuant to Government Code section 54957.6, to ascertain if the Oxnard Mid-Managers' Association has met the requirements of the City Code to be recognized as a certified collective bargaining group and to provide instructions to designated representatives Michelle Téllez, Human Resources Director and City's labor attorney, Jeffrey C. Freeman.

At 6:09 p.m. the City Council reconvened and recessed to the evening session. The Acting City Attorney announced the City Council voted to recognize the Mid-Manager group.

D. OPENING CEREMONIES

At 6:13 p.m., the regular meeting of the Oxnard City Council reconvened in the Council Chambers. The meeting opened with the pledge of allegiance to the flag of the United States, followed by a moment of silence. Mayor Flynn presided. Additional staff members present were: Danielle Navas, City Treasurer; Jeri Williams, Police Chief; James Cameron, Chief Financial Officer; Rob Roshanian, Interim Public Works Director; Michelle Tellez, Human Resources Director; Chris Williamson, Principal Planner; and Todd Housley, Environmental Resources Management Superintendent.

E. CEREMONIAL CALENDAR

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comments received from: Rebecca Ralph; Lydia Rivera; Rebekah Evans; Neneyda Magdaleno; Dan Lechliter; Thomas Greer; Morey Navarro; Martin Glatt; Larry Stein and Abel Magana.

G. TRANSMITTAL OF INFORMATION ONLY ITEMS

Finance Department

1. SUBJECT: Monthly Budget Status Report for the Period Ending August 31, 2013. (001)
RECOMMENDATION: Approve Report.
DISCUSSION: The Interim City Manager and Chief Financial Officer reviewed the financial information that can be made available online.

The City Council discussed types of financial information that should be available.

Public comments received from: Larry Stein.

ACTION: Provided comments to staff and filed.

H. INFORMATION/CONSENT PUBLIC HEARINGS

I. PUBLIC HEARINGS

Mayor Flynn opened the public hearing. The City Clerk reported on publication and that there were no written communications received.

Planning Department

1. SUBJECT: Planning & Zoning Permit Nos. 13-500-01 (Special Use Permit), 13-570-03 (Zone Change), 13-580-04 (Zone Text Amendment) and 13-310-01 (Lot Line Adjustment): Proposed Fire Station No. 8 Located at 3000 South Rose Avenue. Filed by the Oxnard Fire Department. (019)
RECOMMENDATION: 1) Approve the first reading by title only and subsequent adoption of **Ordinance No. 2872** approving a Zone Change (PZ No. 13-570-03) from Multiple-Family Residential (R-2-PD) to Community Reserve (C-R) for three properties located at the southeast corner of South Rose Avenue and East Channel Islands Boulevard; 2) Approve the first reading by title only and subsequent adoption of **Ordinance No. 2873** approving a Zone Text Amendment (PZ No. 13-580-04) to City Code Sections 16-257(N) and 16-260 to 16-263; and 3) Adopt **Resolution No. 14,435** upholding the Planning Commission's approval of Planning & Zoning Permit No. 13-500-01 (Special Use Permit) and condition of approval for Planning & Zoning Permit No. 13-310-01 (Lot Line Adjustment), subject to the conditions set forth in Planning Commission Resolution No. 2013-22.
DISCUSSION: The Principal Planner reviewed: actions of the Planning Commission; the proposed zone change and property boundaries. The Acting City Attorney reviewed: 1) past use of the property; 2) Board of Supervisors discussions; and 3) the proposed use of property.

Public comments were received from: Sergio Martinez; William Terry; Tina Martinez; Larry Stein; Courtney Perez; Morey Navarro; Lonnie McCowan; Theadora Daritt-Cornyn; Sonny Sajor, Mylihn Sajor; Veronica Mendoza; Steve Nash; Jim Lavery; Patty Einstein; Salvador Ayala; David Haynes; Darlene Miller and Rebecca Ralph.

The Council discussed: comments of the Board of Supervisors; location of proposed Fire Station No. 8; financing of the proposed Fire Station No. 8; municipal services to be provided to the community and past community specific plans regarding the building and location of a fire station.

ACTION: Close the public hearing. (Padilla/Ramirez) Ayes: MacDonald, Padilla, Perello, Flynn, and Ramirez. Approved as recommended. (MacDonald/Flynn) Ayes: MacDonald, Padilla, Perello, Flynn, and Ramirez.

N. CITY COUNCIL BUSINESS/COMMITTEE REPORTS

City Clerk Department

1. SUBJECT: Appointment Councilmember to Various Boards, Commissions, and Committees. (147)
RECOMMENDATION: 1) That the Mayor, with the approval of the City Council, appoint Councilmember Perello to the following boards, commissions and committees: A) Big Independent Cities Excess Pool Joint Powers Authority; B) Channel Islands Harbor Task Force; C) Economic Development Corporation of Oxnard; D) Oxnard Convention & Visitors Bureau (Alternate); E) Oxnard Plain/RiverPark Reclamation and Recharge Joint Powers Authority; F) Ventura County Regional Energy Alliance; G) Ventura County Regional Sanitation District (Alternate); H) Ormond Beach Property Oversight Ad Hoc Committee; I)Policies and Procedures Concerning City Council Business; and 2) That the Mayor, with the approval of the City Council, appoint or move Councilmembers from an assigned appointment(s) if necessary: a) Association of Water Agencies for Ventura County (one primary and alternate); b) Beach Erosion Authority for Control of Operation & Nourishment (one primary and alternate); c) Big Independent Cities Excess Pool Joint Powers Authority (one primary and alternate*); d) Economic Development Collaborative –Ventura County (one primary); e) Economic Development Corporation of Oxnard (two primary); f) Gold Coast Transit (one primary and alternate); g) InterCity Transit (sub-committee of VCTC Vista) (one primary); h) Las Cortes Housing Development Corporation (two primary); i) Oxnard Convention & Visitors Bureau (one primary and alternate); j) Oxnard Plain/RiverPark Reclamation and Recharge Joint Powers Authority (two primary and alternate); k) Performing Arts and Convention Center Corporation (two primary); l) Point Mugu Regional Airport Authority (one primary and alternate); m) Regional Defense Partnership for the 21st Century (one primary and alternate); n) Oxnard Successor Agency Oversight Board (one primary); p) Southern California Association of Governments (one primary and alternate); q)Ventura Council of Governments (one primary and alternate); r) Ventura County Animal Regulation Commission (one primary and alternate); s) Ventura County Regional Energy Alliance (one primary and alternate); t) Ventura County Local Agency Formation Commission (one primary if appointed); u) Ventura County Air Pollution Control District Board (one primary); v) Ventura County Transportation Commission (one primary); w) Ventura Regional Sanitation District (one primary and alternate); x) Channel

Islands Harbor Task Force (two primary); y) City Wide Enhancement Program (two primary); z) City Manager Recruitment Ad Hoc Committee (two primary); aa) Cultural Arts Committee (two primary); bb) Downtown Improvement Task Force (two primary); cc) Fiscal Policy Task Force (two primary); dd) Graffiti Task Force (two primary); ee) Homeless Plan Working Group; ff) Mobile Food Facilities (MFF) Ad Hoc Committee (two primary); gg) Ormond Beach Property Oversight Ad Hoc Committee (two primary); hh) Oxnard Downtown Management District (two primary); ii) Policies and Procedures Concerning City Council Business (two primary); jj) Transportation Policy Committee (two primary); kk) Utilities Task Force (two primary); and 3) That the City Council, as a whole, appoint or move Councilmembers from the Oxnard Airport Authority if necessary. * Alternate may be a staff member.
ACTION: Mayor Flynn announced that Mayor Pro Tem Ramirez had been appointed to the Southern California Association of Governments. The Mayor, with the approval of the City Council, appointed Councilmember Perello to the following boards, commissions and committees: A) Big Independent Cities Excess Pool Joint Powers Authority; B) Channel Islands Harbor Task Force; C) Economic Development Corporation of Oxnard; D) Oxnard Convention & Visitors Bureau (Alternate); E) Oxnard Plain/RiverPark Reclamation and Recharge Joint Powers Authority; F) Ventura County Regional Energy Alliance; G) Ventura County Regional Sanitation District (Alternate); H) Ormond Beach Property Oversight Ad Hoc Committee; I) Policies and Procedures Concerning City Council Business; J) Performing Art Center Corporation; and K) Graffiti Task Force; and Moved to appoint Councilmember Perello to the Oxnard Airport Authority (Ramirez/ MacDonald) Ayes: Padilla, Perello, Flynn, Ramirez and MacDonald.

J. APPOINTMENT ITEMS

Public Works Department

1. SUBJECT: Study Session on Del Norte Facility Business and Transition Plan. (073)
RECOMMENDATION: Receive a report and provide comments regarding the Del Norte Facility Business and Transition Plan.
DISCUSSION: The Interim Public Works Director outlined the creation of the business plan. Dr. Eugene Tseng, Solid Waste Consultant, presented possible facility options that the Council may consider to manage solid waste facility. The Interim City Manager, Human Resources Director and Environmental Resources Manager commented on process to hire employees for the facility. The Chief Financial Officer reviewed projected costs including future revenues, maintenance costs, operation expenses, labor costs and equipment costs and possible use of material broker. The Interim Public Works Director stated staff would investigate past maintenance of facility equipment.

At 10:07 p.m., Mayor Flynn left the meeting and Mayor Pro Tem Ramirez presided. At 10:10 p.m., Mayor Flynn returned to the meeting and presided.

Public comments were received from: Larry Stein; Jim Ambroso; Pat Brown; Jim Gilmer; Gerard Kapuscik; Dick Jaquez; Vincent Gasca; Jeffrey Palma; Lucas Zucker; Baltazer Paz; Silvia Renteria; Salvador Cabrero; Elva Ortega; Carmen Ochoa; Ramon Pena; Rosa Huasto; Ruben Chavez; Gus Sanchez; Elizabeth Wolfel; Justin Remo; Steve Nash; Abel Magana; Harold Ceja; William Terry; Dan Pinedo; Daniel Lechliter and Barbara Macri-Ortiz.

The Council discussed: 1) transferring the MRF facility from private management to public management; 2) hiring of personnel; 3) capital expenses; 4) operating costs; 5) labor options; 6) regulation costs; 7) maintenance of equipment; and 8) use of transfer truck drivers.

ACTION: The City Council received the report and provided comments to staff.

S. INFORMATION/CONSENT AGENDA

Public Works Department

6. SUBJECT: First Amendment to Agreement for Waste Disposal at Toland Road Landfill between the Ventura Regional Sanitation District (VRSD) and the City of Oxnard. (187)
RECOMMENDATION: Approve and authorize the Mayor to execute the First Amendment to the Agreement for Waste Disposal at the Toland Road Landfill between VRSD and the City (A-5903).
DISCUSSION: The Interim Public Works Director briefly reviewed the proposed agreement.

The Council commented on issues regarding approving this contract.

Public comments were received from: Mark Lawler; Mark Zirbel; Jon Sharkey; Kevin Kildee; David Grau and Dan Lechliter.

ACTION: Continue to October 1, 2013.

7. SUBJECT: Agreement for Waste Disposal at the Simi Valley Landfill between the City of Oxnard and Waste Management of California, Incorporated. (213)
RECOMMENDATION: Approve and authorize the Mayor to execute an Agreement for Waste Disposal at the Simi Valley Landfill with Waste Management of California, Incorporated (A-7618).
ACTION: Continue to October 1, 2013.

K. REPORTS

City Treasurer Department

1. SUBJECT: Investment Policy and Annual Report of Investment Activity. (113)
RECOMMENDATION: 1) Approve the Investment Policy for the City of Oxnard; and 2) Adopt a resolution delegating investment authority to the City Treasurer.
ACTION: Continue to October 1, 2013.

L. PUBLIC COMMENTS ON REPORTS

M. REPORT OF CITY MANAGER

O. STUDY SESSION

P. PUBLIC COMMENTS ON STUDY SESSION

Q. REVIEW OF INFORMATION/CONSENT AGENDA

Comments were received from: Interim Public Works Director (S-9).

R. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

Public comments were received from: Pat Brown (S-4) and Daniel Lechliter (S-4).

S. INFORMATION/CONSENT AGENDA

City Clerk Department

1. SUBJECT: Minutes of the Special Meetings of the Oxnard City Council for July 30, 2013. (157)
RECOMMENDATION: Approve.

City Manager Department

2. SUBJECT: Agreements for City Council Review. (165)
RECOMMENDATION: Approve and authorize the Interim City Manager, to execute the attached agreements/contracts and change orders/amendments in amounts more than $25,000 but less than $250,000.

City Treasurer Department

3. SUBJECT: Quarterly Investment Report for the Fourth Quarter F/Y 2012-2013. (167)
RECOMMENDATION: Accept the quarterly Investment Report for the Fourth Quarter F/Y 2012-2013.

Police Department

4. SUBJECT: State of California Grant for Selective Traffic Enforcement. (175)
RECOMMENDATION: Adopt **Resolution No. 14,437**: 1) Authorizing the City Manager to execute and submit an application for $252,357 in grant funds to the State of California Office of Traffic Safety (OTS), to be used for the FY-2013/14 Selective Traffic Enforcement Program; 2) Authorizing the City Manager or designee to execute grant agreement; 3) Authorizing the Chief Financial Officer or designee to submit financial reports and grant claims and approve special budget appropriations for the use of grant funds; and 4) Authorizing the Chief of Police or designee to submit non-financial reports.

5. SUBJECT: State of California AVOID the 14 DUI Enforcement Grant. (183)
RECOMMENDATION: Adopt **Resolution No. 14,438**: 1) Authorizing the City Manager to execute and submit an application for $175,000 in grant funds to the State of California Office of Traffic Safety (OTS), to be used for the FY-2013/14 AVOID the 14 DUI Enforcement Program; 2) Authorizing the City Manager or designee to execute grant agreements; 3) Authorizing the City Manager or designee to execute a Memorandum of Understanding between coalition agencies and the City of Oxnard; 4) Authorizing the Chief Financial Officer or designee to submit financial reports and grant claims and approve special budget appropriations for the use of grant funds; and 5) Authorizing the Chief of Police or designee to submit non-financial reports.

Public Works Department

8. SUBJECT: Second Amendment to the Agreement for Trade Services with Ashland Hercules Water Technologies for Supply and Delivery of Praestol K144L Polymer to the Wastewater Treatment Plant. (249)
RECOMMENDATION: Approve and authorize the Mayor to execute a Second Amendment with Ashland Hercules Water Technologies (A-7456) for supply and delivery of Praestol K144L Polymer to the Wastewater Treatment Plant to extend the contract to September 30, 2014 and increase the total by $275,000 for a total contract value of $825,000.

9. SUBJECT: Project Specification PW 14-03 Kingsbridge Way Seawall Stabilization Project. (253)
RECOMMENDATION: Approve Project Specification No. PW 14-03 for the major repair of the Kingsbridge Way Seawall Stabilization Project located in the Mandalay Bay Waterway and to authorize staff to solicit bids.

10. SUBJECT: First Amendment to Agreement for Professional Services with Harbor Offshore, Inc. for On-Call Diving and Maintenance Services for Mandalay Waterways of Mandalay Bay, Westport and Seabridge Communities. (257)
RECOMMENDATION: Approve and authorize the Mayor to execute the First Amendment to the Agreement with Harbor Offshore, Incorporated (A-7449) to increase the amount by $250,000 from an agreement value of $200,000 to $450,000 and to extend the expiration date from November 14, 2013 to November 14, 2014, for on-call diving and maintenance services for the Mandalay Waterways of Mandalay Bay, Westport, and Seabridge Communities.

INFORMATION/CONSENT AGENDA ACTION: Approved as recommended. (MacDonald/Ramirez) Ayes: Perello, Flynn, Ramirez, MacDonald and Padilla.

N. CITY COUNCIL BUSINESS/COMMITTEE REPORTS

Councilmembers discussed: housing concerns in Colonia neighborhood; activation of the Youth Commission; storage of wastewater from oil industry; reimbursement letter status regarding former $300 management retirement benefit; theft/loss of recyclable items to be collected for the MRF; and unlicensed group homes.

T. ADJOURNMENT

At 12:56 a.m. the City Council concurred to adjourn the meeting.

DANIEL MARTINEZ
City Clerk

TIM FLYNN
Mayor

CARMEN RAMIREZ
Mayor Pro Tem

MINUTES
OXNARD CITY COUNCIL
Regular Meeting
October 1, 2013

A. ROLL CALL/POSTING OF AGENDA

At 6:07 p.m., the regular meeting of the Oxnard City Council convened in the Council Chambers. Councilmembers Tim Flynn, Carmen Ramirez, Bryan A. MacDonald, Dorina Padilla and Bert Perello were present. The City Clerk stated that the agenda was posted on Thursday in the Library and City Clerk's Office. Mayor Flynn presided and called the meeting to order. Staff members present were: Daniel Martinez, City Clerk; Danielle Navas, City Treasurer; Karen Burnham, Interim City Manager; Stephen Fischer, Acting City Attorney; Jeri Williams, Police Chief; James Williams, Fire Chief; Rob Roshanian, Interim Public Works Director; Michelle Tellez, Human Resources Director; Barbara Murray, Library Director; William "Bill" Wilkins, Housing Director; Grace Magistrale Hoffman, Deputy City Manager; Michael Henderson, General Services Manager; Martin Erickson, Deputy City Manager; Todd Housley, Environmental Resources Management Superintendent and Daniel Rydberg, Construction and Maintenance Superintendent.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

C. CLOSED SESSION

D. OPENING CEREMONIES

The meeting opened with the pledge of allegiance to the flag of the United States, followed by a moment of silence for Jess Beltran.

E. CEREMONIAL CALENDAR

1. SUBJECT: Presentation of Proclamation Designating October 2013 as "Multicultural Month"
   DISCUSSION: Commissioner Stein thanked the Council for supporting the "Multicultural Festival" at Plaza Park. Martha Guillen, Multicultural event coordinator, thanked sponsors and invited the community to the Saturday event.

2. SUBJECT: Presentation of Proclamation Designating October 2013 as "Community Planning Month"
   DISCUSSION: Mayor Flynn commented on the importance of the Planning Commissioners. Ashley Golden, Senior Planner, invited the community to attend scheduled "community planning" events and activities.

3. SUBJECT: Employee of the Third Quarter.
   DISCUSSION: James Williams, Fire Chief, announced Fire Captain Alex Hamilton-Smith as employee of the Third Quarter.

4. SUBJECT: New West Concert
   DISCUSSION: Kerrie Sadler, New West Symphony, invited the community to attend the New West Symphony 2013-14 season at the Oxnard Performing Arts Center.

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comments were received from: William Terry; Steve Fleischer; Chuck Hookstra; Deborah O'Malia; Ed Ellis; Steve Nash; Martin Glatt; Lucy Cartagena; Lorenzo Chavez; Daniel Lechliter; Pat Brown; Harold Ceja and Francine Castanon.

G. TRANSMITTAL OF INFORMATION ONLY ITEMS

H. INFORMATION/CONSENT PUBLIC HEARINGS

I. PUBLIC HEARINGS

J. APPOINTMENT ITEMS

1. SUBJECT: First Amendment to Agreement for Waste Disposal at Toland Road Landfill between the Ventura Regional Sanitation District (VRSD) and the City of Oxnard. (001)
   RECOMMENDATION: Approve and authorize the Mayor to execute the First Amendment to the Agreement for Waste Disposal at the Toland Road Landfill between VRSD and the City (A-5906).
   DISCUSSION: The Interim Public Works Director briefly commented on proposed agreement.

   Public comments were received from: Kevin Kildee; Frank Kiesler; Dick Themseal; David Grau; Jon Starkey and Mark Zirbel.

   The Council discussed the proposed agreement.

   ACTION: Approved as recommended. (Ramirez/Perello). Ayes: Ramirez, MacDonald, Padilla, Perello and Flynn.

2. SUBJECT: Agreement for Waste Disposal at the Simi Valley Landfill between the City of Oxnard and Waste Management of California, Incorporated. (027)
   RECOMMENDATION: Approve and authorize the Mayor to execute an Agreement for Waste Disposal at the Simi Valley Landfill with Waste Management of California, Incorporated (A-7618).
   DISCUSSION: The Interim Public Works Director reviewed details of the agreement which had expired and had been renegotiated.

   Scott Tignac, Waste Management of California, commented on honoring the expired agreement and possible extension of the agreement.

   The Council discussed the landfill facility use by other cities and the condition to use only Simi Valley Landfill facility if Toland Road Landfill facility closed.

   Public comment was received from: Orlando Dozier.

   ACTION: Directed staff to renegotiate with Waste Management of California.

N. CITY COUNCIL / BUSINESS/COMMITTEE REPORTS

1. SUBJECT: Unlicensed Group Homes (Mayor Flynn)
   DISCUSSION: The City Attorney cautioned the City Council to place this item on a future agenda item.

   Public comments were received from: Steve Fleischer; Karen Martin; Rebecca Barkley; Jose Moreno; Julie Moreno and Dan Lechliter.

   ACTION: Directed staff to place this issue on a future agenda.

K. REPORTS

City Treasurer Department

1. SUBJECT: Investment Policy and Annual Report of Investment Activity. (063)
   RECOMMENDATION: 1) Approve the Investment Policy for the City of Oxnard; and 2) Adopt **Resolution No. 14, 438** delegating investment authority to the City Treasurer.
   DISCUSSION: The City Treasurer reviewed the investment policy, investment activity, objectives, having an officer reviewing licensed businesses and requested authorization of City Treasurer.

   The Council discussed: responsibilities of the City Treasurer; working with County Treasurer regarding pool investments and the process of buying of bonds.

   Public comments were received from: William Terry; Francine Castanon and Daniel Lechliter.

   ACTION: Approved as recommended. (Ramirez/MacDonald). Ayes: MacDonald, Padilla, Perello, Flynn and Ramirez.

Public Works Department

2. SUBJECT: Del Norte Facility Business and Transition Plan. (097)
   RECOMMENDATION: Approve the Del Norte Facility Business and Transition Plan and authorize staff to implement the plan for the City Management, Operation and Maintenance of the Facility.
   DISCUSSION: The Interim Public Works Director reviewed projected savings, rate stabilization, investment of capital costs and process of hiring employees. The Construction and Maintenance Superintendent outlined the transition process. Dr. Eugene Tseng, Consultant, commented on preparing a "long-term" plan and reviewing all costs/benefits.

   The Interim City Manager and Environmental Resources Manager discussed proposed staffing levels and the hiring process.

   The Council discussed: 1) time factors; 2) State regulations; 3) replacement of equipment; 4) hiring of personnel; 5) having "safe" working conditions; 6) hiring employees using City policies; and 7) projected rates.

Public comments were received from: Karen Martin; Lupe Anguiano; Daniel Lechliter; Dave Hauser; John Cortez; Gus Sanchez; Lucas Zucker; Victor Magana; Juan Delgado; Darlene Miller; Elizabeth Wolfel; William Terry; Dan Pinedo and Francine Castanon.

ACTION: Approved as recommended. (Ramirez/Perello). Ayes: Perello, Flynn and Ramirez. Noes: MacDonald and Padilla.

3. SUBJECT: Ventura County Watershed Protection District Verbal Update on Three Major Flood Protection Projects in Oxnard (SCR-1 and SCR-3 Levee Rehab and J-Street Drain).
RECOMMENDATION: Receive the report.
DISCUSSION: Gerard Kapuscik, Ventura County Public Works Agency, commented on: 1) the history and construction of the Santa Clara river levee; 2) possible options/costs to resolve levee problems; 3) working with Corps of Engineers; 4) possible phasing of the levee project; 5) proposed levee project timeline; 6) "J" Street channel project; and 7) possible State & federal funding.

Public comments were received from: Daniel Lechliter and Steve Nash.

The Council discussed: proposed plans for the levee; funding for the levee; and the "J" Street channel.

ACTION: Received report.

L. PUBLIC COMMENTS ON REPORTS

O. STUDY SESSION

P. PUBLIC COMMENTS ON STUDY SESSION

Q. REVIEW OF INFORMATION/CONSENT AGENDA

Comments were received from: Public Information Officer (S-2(1)); Environmental Resources Management Superintendent (S-2(b)) and Acting City Attorney (S-3).

R. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

Public comments were received from: Steve Nash (S-3).

S. INFORMATION/CONSENT AGENDA

City Clerk Department

1. SUBJECT: Minutes of the Regular Meetings of the Oxnard City Council for September 10 and 17, 2013; and Minutes of the Special Meeting of the Oxnard City Council for September 17, 2013. (145)
RECOMMENDATION: Approve.

City Manager Department

2. SUBJECT: Agreements for City Council Review. (157)
RECOMMENDATION: Approve and authorize the Interim City Manager, to execute the attached agreements/contracts and change orders/amendments in amounts more than $25,000 but less than $250,000.

Planning Department

3. SUBJECT: Second reading of Ordinance No. 2872 Approving Planning & Zoning Permit No. 13-570-03 (Zone Change); and Second Reading of Ordinance No. 2873 Amending Chapter 16 (Zoning) of the City Code. (159)
RECOMMENDATION: Second reading and adoption.

INFORMATION/CONSENT AGENDA ACTION: Approved as recommended. (MacDonald/ Ramirez) Ayes: Perello, Flynn, Ramirez, MacDonald and Padilla.

M. REPORT OF CITY MANAGER

The Interim City Manager commented on: first graduation of Spanish Citizen Academy and the recognition of Dr. Shalabh Puri, a local dentist, who has provided dental services to the community. The Interim Public Works Director stated staffing information would be provided at next week's business plan of MFR.

N. CITY COUNCIL / BUSINESS/COMMITTEE REPORTS

The Council commented on: use of Measure "O" funding for road maintenance; implementation of the beach life guard program; need for training of Planning Commissioners; update of Camion del Sol development; and review of "bid" project policies.

T. ADJOURNMENT

At 12:52 a.m. the City Council concurred to adjourn the meeting.

DANIEL MARTINEZ City Clerk	TIM FLYNN Mayor

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/2013

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: Karen R. Burnham, Interim City Manager ______ Agenda Item No. S-2

Reviewed By: City Manager KRB City Attorney SMF Finance JC Other *(Specify)*

DATE: October 9, 2013

TO: City Council

FROM: Karen R. Burnham, Interim City Manager
City Manager's Office

SUBJECT: **Agreements for City Council Review**

RECOMMENDATION

That City Council, pursuant to Ordinance 2835, and Resolution No. 13,932, approve and authorize the City Manager, to execute the agreements/contracts and change orders/amendments in amounts more than $25,000 but no more than $250,000, which are described on the attached list.

DISCUSSION

On November 16, 2010, the City Council approved changes to the City's Purchasing Procedures reducing the threshold for City agreements/contracts and change orders/amendments requiring City Council approval to $25,000. The agreements/contract and change orders/amendments described on the attached list involve amounts above $25,000 and up to $250,000.

FINANCIAL IMPACT

Funding information is included on the attached list.

Attachment - #1 – List of Agreements/Contracts and/or Change Orders/Amendments

NOTE: Copies of the agreement/contracts and change orders/amendments on the list are available in the City Clerk's Office after 10:00 a.m. on Thursday prior to the Council meeting.

City Manager Contract List for 10/15/2013

Item	Type	Department/Contact	Vendor/Agreement Number	Description/Purpose	Amount
A	Amendment	**Development Services** Cynthia Daniels 385-7871	**AECOM Technical Services, Inc.** Agreement No. A-7235 Amendment 9	**Professional Services for Construction Management** Provide additional construction management, inspection, and claims assistance for the remaining estimated time for the Rice/Santa Clara Avenue Interchange Improvements at Highway 101 construction project. Consultant was selected after a request for proposals and negotiations on the scope and fee. Original consultant name was Lim & Nascimento, later acquired by AECOM Technical Services Inc. **Total Contract Amount: $4,544,649** **FundingSource: State Gas Tax, Federal Grant**	**$140,610**
B	**Purchase Order**	**Fire - Fire Suppression & Other Emergency Services** Stephanie Huhn 385-8361	**Priority Corporation** Purchase Order No. 1254	**Emergency Medical Dispatch System** Upgrade the CAD system with the Emergency Medical Dispatch program required by the Ventura County EMS Agency. Priority Dispatch Corporation is the sole-source vendor of this required program. Full funding, in the amount of $75,000, was provided by the Ventura County EMS Agency to purchase the Priority Dispatch ProQA Paramount EMD system. **Total Contract Amount: $75,000** **FundingSource: Reimbursement from County of Ventura**	**$75,000**
C	**Change Order**	**Development Services - Transit Services** Cynthia Daniels 385-7871	**Security Paving** Agreement No. A-7228 Change Order 72	**Paving dirt at northbound Hwy 101 Project Specification No. PW03-19 for Rice/Santa Clara Avenue** Contractor will pave area between concrete channel on the northbound Highway 101 and right-of-way fence at East Ventura Boulevard in front of Nyeland Acres. Contractor was the lowest bidder. **Total Contract Amount: $34,652,626** **FundingSource: Gas Tax. Grants & TEA -CIP 101 & Rice Interchange**	**$40,000**
D	**Task Order**	**Public Works Utilities Services - Storm Water Quality Mgt.** Lou Balderrama 340-5358	**Sam Hill & Sons** Agreement No. A-7219 Task Order 48A	**Emergency Repairs to Sewers and Storm Drains** A preliminary investigation for locating the permanent pipe inside the Wooley Road bridge in order to install a permanent force main has been completed. This action is to replace the Wooley Bridge force main. This contract was a Public Bid September 2009. Sam Hill & Sons was the lowest qualified bidder. The total contract amount is unchanged. **Total Contract Amount: $2,778,100** **FundingSource: Wastewater Fund**	**$108,346**

68

ATTACHMENT #1
PAGE 1 OF 1

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: May Roque MR Agenda Item No. S-3

Reviewed By: City Manager City Attorney Finance Jim Cameron Other *(Specify)* N/A

DATE: September 30, 2013

TO: City Council

FROM: Michael Henderson, General Services Superintendent
General Services

SUBJECT: **Second Amendment to Agreement with Genuine Parts Company for On-Site Fleet Parts Program**

RECOMMENDATION

That City Council approve and authorize the Mayor to execute the Second Amendment to the Agreement (6212-13-CM) with Genuine Parts Company dba NAPA Auto Parts from November 1, 2013, to June 30, 2016, for vendor to provide on-site repair parts and tires to City for an estimated amount of $5,370,000, for a total contract amount of $6,000,000 for the three-year contract period from July 1, 2013, to June 30, 2016.

DISCUSSION

The Fleet Services Division of General Services provides maintenance and repair of the City's vehicle and equipment fleet. As Fleet Services does not have a City-owned parts store or dedicated parts staff, this essential service has been provided, since June 1, 2007, via contract through an on-site store.

In July 2012, Fleet Services staff received approval to proceed with a Request for Proposals for an On-site Fleet Parts Program as the agreement with the on-site parts vendor was expiring on June 30, 2013. On February 1, 2013, Request for Proposals No. FS-13-2 was posted on the City's website. Three vendors submitted proposals by the February 28, 2013, deadline: Warren Distributing, Factory Motor Parts, and Genuine Parts Company. Based on proposal evaluation, references, and site visits, staff recommended contract award to Genuine Parts Company dba NAPA Auto Parts, the current vendor.

An emergency agreement for a two-month period from July 1, 2013, to August 30, 2013, for $315,000 was approved by City Council on July 2, 2013, as the City and Genuine Parts Company were trying to resolve insurance/bond issues required by the agreement. As these issues remained unresolved towards the end of July 2013, Fleet Services staff requested and received City Council approval on July 30, 2013, of the First Amendment to Agreement for an estimated amount of $315,000. This First

Amendment extended the agreement for another two months, from September 1, 2013, to October 31, 2013, for an estimated total contract amount of $630,000.

The insurance/bond issue has now been resolved, and Fleet Services staff is requesting approval of the Second Amendment to the Agreement with Genuine Parts Company for the period from November 1, 2013, to June 30, 2016, for an estimated amount of $5,370,000. Total contract amount for the three-year agreement period from July 1, 2013, to June 30, 2016, is $6,000,000.

FINANCIAL IMPACT

As an internal service fund, Fleet Services charges customer departments for services and supplies purchased on their behalf.

mmoar

Attachment No. 1 – Second Amendment to Agreement for On-Site Consulting Services

Agreement No. 6212-13-CM

SECOND AMENDMENT TO AGREEMENT FOR ON-SITE CONSULTING SERVICES

This Second Amendment ("Second Amendment") to the Agreement for On-Site Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this 1st day of November, 2013, by and between the City of Oxnard, a municipal corporation ("City"), and Genuine Parts Company DBA NAPA Auto Parts ("Contractor"). This Second Amendment amends the Agreement entered into on July 1, 2013, by City and Contractor. The Agreement previously has been amended on September 1, 2013, by a First Amendment.

City and Contractor agree as follows:

1. In Section 12 of the Agreement, the date "October 31, 2013" is deleted and replaced with the date "June 30, 2016."

2. As so amended, the Agreement remains in full force and effect.

CITY OF OXNARD

____
Tim Flynn, Mayor

GENUINE PARTS COMPANY DBA NAPA AUTO PARTS

____
Brad Shaffer, Division Vice President

ATTEST:

____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

____
Stephen M. Fischer, Acting City Attorney

APPROVED AS TO INSURANCE:

____
James Cameron, Risk Manager

APPROVED AS TO CONTENT:

____
Michael Henderson, General Services Supt.

APPROVED AS TO CONTENT:

____
Bill Birch, Project Manager

APPROVED AS TO AMOUNT:

____
Karen R. Burnham, Interim City Manager

Attachment No. 1
Page 1 of 1

CITY OF

OXNARD

CALIFORNIA

Meeting Date: 10 / 15 / 13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: Jason M. Samonte ______ Agenda Item No. S-4

Reviewed By: City Manager ______ City Attorney SMF Finance ______ Development Services Director ______

DATE: September 24, 2013

TO: City Council

FROM: Matthew Winegar, Director Chris Williamson
Development Services Department

SUBJECT: **Change Order No. 8 with Sully-Miller Contracting Co. for Project Specification No. DS12-01, Intelligent Transportation System (ITS) Construction Integration.**

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute Change Order No. 8 for Project Specification No. DS12-01 with Sully-Miller Contracting Co. (A-7475) to increase the contract amount by $349,167.91 to a total of $3,532,202.03, and extend the expiration date to October 30, 2013 for the ITS Construction Integration Project.

2. Approve a special budget appropriation in the amount of $174,584 from the Wastewater Operating Fund.

DISCUSSION

On April 17, 2012 City Council approved Agreement No. A-7475 with Sully-Miller Contracting Co. for the ITS Construction Integration Project. Change Order No. 1 was approved on August 21, 2012 for $14,329.48 increasing the agreement to $2,828,946.48. Change Order No. 2 was approved on October 2, 2012 for $291,125.90 increasing the agreement to $3,120,072.38. Change Order No. 3 was approved on August 29, 2012 for $6,581.54 increasing the agreement to $3,126,653.92. Change Order No. 4 was approved on November 7, 2012 for $54,533 increasing the agreement to $3,181,186.92. Change Order No. 5 was approved on February 29, 2013 for $1,847.20 increasing the agreement to $3,183,034.12. Change Order No. 6 was approved on April 23, 2013 to extend the contract by 130 days. Change Order No. 7 was approved on July 18, 2013 to extend the contract by 42 days. Change Order Number 8 will account for work requested by the Wastewater Division. The initial design called for wireless communication from Saviers Road to the Wastewater Division facilities on Perkins Road. The Wastewater Division requested fiber optic installation on Perkins Road and on Hueneme Road to enhance the Supervisory Control and Data Acquisition (SCADA) system.. This change order was for the new Recycled Water Distribution System and Advanced Water Purification Facility.

FINANCIAL IMPACT

The change order increases the amount of Agreement No. A-7475 by $349,167.91 for a total of $3,532,202.03. There is sufficient funding in the GREAT AWPF Project for 50% of the value of Change Order No. 8, $174,584. The remaining $174,584 will be funded from Wastewater Treatment Fund and Wastewater Collection Fund.

JMS/jms

Attachment 1 – Change Order No. CO008

Attachment 2 – Special Budget Appropriation

CITY OF
OXNARD
CALIFORNIA

214 So. C Street, Oxnard, CA 93030

[X] CONTR ADMIN
[X] ACCOUNTING
[X] CONTRACTOR
[X] PURCHASING SERVICE
[X] CONTRACT INSPECTION

CCRC

Phone: (805) 385-7873

REVIEWED

CHANGE ORDER NO. CO008

PROJECT: ITS Master Plan Project

TO: Michael Edwards
Sully-Miller Contracting Co.
135 So. State College Blvd., Ste. 40
Brea, CA 92821
Phone: 714-578-9600
Fax: 714-449-8775

DATE: 8/29/2013
SPEC NO: DS12-01
CONTRACT NO: A-7475
P.O. NO: 4056

Acct No: 104-3410-826-8606 Proj No: 093108 Amt: $349,167.91 100%

Total Amount: $349,167.91 100%

You are hereby directed to make the following changes in this contract:

DESCRIPTION:

CO#8-Balance CO to Add Extra Work
CO#8-Balance Change Order to add extra work and areas not in the original bid work scope that have been added by the City during construction and adjust bid line item quantities.

REASONS FOR CHANGES:

Field Conditions

Item	Description	Stock#	Quantity	Units	Unit Price	Tax Rate	Tax Amount	Net Amount
01	Adj. Bid Line Item Quantitied for Added Work Scope & Areas added by City		1.000		$349,167.91	0.00%	$0.00	$349,167.91

1. Amount of original contract	**$2,814,617.00**
2. Sum of prior change orders	**$368,417.12**
3. Sum of contract prior to this change order	**$3,183,034.12**
4. Amount of this change order	**$349,167.91**
5. Sum of contract including this change order	**$3,532,202.03**
Contract time will be changed by	**132 days**
Completion date of this change order is	**10/31/2013**

ACCEPTED:

City Council/Mayor	Date	Contractor	Date: 6 SEP 13
Attest: City Clerk	Date		
Project Manager	Date	N/A Director of Public Works	— Date
N/A City Engineer	— Date	Contract Compliance Review Committee	9/10/13 Date
Administrative Services	9/4/2013 Date	Budget/Grants	Date
Dept/Section/Purchasing Agent	9/11/2013 Date	City Manager	Date

Expedition

City of Oxnard - Change Order f_co_01a

ATTACHMENT 1
PAGE 1 OF 1

REQUEST FOR SPECIAL BUDGET APPROPRIATION

Department: Development Services **Date:** October 4, 2013
Project/Program Manager: Jason Samonte **Phone:** ext. 7364

Reason for Appropriation:

Provide funding for change order no. 8 of Agreement No. A-7475 with Sully-Miller for the work on Perkins Road to extend the fiber backbone system to the Wastewater Treatment Plant and to the Advanced Water Purification Facility.

Accounts and Descriptions		AMOUNT
Fund: 611 - W/W COLLECTION OPERATING		
Expenditures/Transfers Out		
ITS CONSTR TMC & SEC 1&2 (093108)		
611-3410-826.82-08	CONTRACTS AND SERVICES / SERVICES - CONSTRUCTION	87,292
	Sub-total Expenditures	87,292
	Net Change to Fund Balance	**(87,292)**
Fund: 621 - W/W TREATMENT OPERATING		
Expenditures/Transfers Out		
ITS CONSTR TMC & SEC 1&2 (093108)		
621-3410-826.82-08	CONTRACTS AND SERVICES / SERVICES - CONSTRUCTION	87,292
	Sub-total Expenditures	87,292
	Net Change to Fund Balance	**(87,292)**
	Net Appropriation Change	**174,584**

Approvals

Department Director ____________

Chief Financial Officer James Cameron

City Manager ____________

ATTACHMENT 2
PAGE 1 OF 1

REQUIRES CITY COUNCIL AUTHORIZATION

SBA# (Finance Use Only)____________
BA Doc# (Finance Use Only)____________
Revised : 2/23/2012

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/~~13~~

ACTION	TYPE OF ITEM
❒ Approved Recommendation	X Info/Consent
❒ Ord. No(s). ______	❒ Report
❒ Res. No(s). ______	❒ Public Hearing (Info/consent)
❒ Other ______	❒ Other ______

Prepared By: Cynthia Daniels CD ______ Agenda Item No. S-5

Reviewed By: City Manager KRB City Attorney SMF Finance BCR Other Winegar FOR Jim Cameron

DATE: September 25, 2013

TO: City Council

FROM: Cynthia Daniels, Project Manager Cynthia Daniels
Development Services Department

SUBJECT: **Project Specification No. DS14-04 for Ventura Boulevard Park & Ride Lot, Pedestrian Facilities**

RECOMMENDATION

That City Council adopt plans, specifications, and working details for Project Specification No. DS14-04 to construct a park and ride lot and pedestrian crossing at Ventura Boulevard between Santa Clara Avenue and Nyeland Avenue.

DISCUSSION

The park and ride lot will provide commuter parking spaces for 11 vehicles and bicycle lockers for four bicycles on property acquired during the realignment of Ventura Boulevard as part of the Rice Avenue/Santa Clara Avenue interchange improvements at Highway 101. The pedestrian crossing and sidewalk will improve pedestrian access and safety between the Country Squire Mobile Home Park and the adjacent neighborhood.

FINANCIAL IMPACT

The Ventura Blvd. Park and Ride Lot and Pedestrian Crossing Project, will be funded by the Air Pollution Buy-down Fund. After the project bids are received and evaluated, staff will return to City Council to request appropriation of the necessary funds and recommend award to the lowest responsive and responsible bidder.

CD

Note: Copies of Project Specification No. DS14-04 are available for review at the Contract Procurement Office, 1060 Pacific Avenue, Bldg. 2, Oxnard after 8:00 a.m. on Friday, October 4.

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: Sabrina Rodriguez SR ______ Agenda Item No. S-6

Reviewed By: City Manager ______ City Attorney SMF Finance BR for Jim Cameron Other (Specify)

DATE: September 25, 2013

TO: City Council

FROM: Matthew G. Winegar, Development Services Director
Development Services

SUBJECT: Authorization to Appropriate Revenue from the Public Art Fund

RECOMMENDATION

That City Council approve the appropriation of $20,000 from the Public Art Fund Balance to hire a Cultural Arts Assistant.

DISCUSSION

The Cultural Arts Committee recommends the hiring of a Cultural Arts Assistant to be funded from the Public Art Fund revenues. This would be a limited-benefit employee who would work approximately 15-20 hours per week for up to one year. The purpose of the position is to assist with administering of the Cultural Arts Grant Program, seek and apply for arts-related grants for which the City would be an eligible recipient, assist in support of the Cultural Arts Committee, develop and maintain databases for arts-related activities, events, venues, organizations, and artists, and assist in the coordination and promotion of arts-related events.

FINANCIAL IMPACT

Funds in the amount of $20,000 are available in the Public Art Fund for appropriation.

SR

Attachment #1 - Special Budget Appropriation

REQUEST FOR SPECIAL BUDGET APPROPRIATION

Department: Development Services **Date:** October 8, 2013
Project/Program
Manager: Sabrina Rodriguez **Phone:** 385-7875

Reason for Appropriation:

To provide funding for Cultural Arts Assistant position

Accounts and Descriptions		**AMOUNT**
Fund: 547 - Art in Public Place Trust		
Expenditures/Transfers Out		
547-4270-804-8002	Personal Services/Direct Labor - Temporary	15,000
547-4270-804-8041	Personal Services/Direct Labor - Employee Benefits	5,000
	Sub-total Expenditures	20,000
	Net Change to Fund Balance	**20,000**
	Net Appropriation Change	**20,000**

Approvals

Department Director ______________________

Chief Financial Officer ______________________

City Manager ______________________

ATTACHMENT 1
PAGE 1 OF 1

REQUIRES CITY COUNCIL AUTHORIZATION

SBA# (Finance Use Only)____________
BA Doc# (Finance Use Only)____________
Revised : 2/23/2012

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	☑ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: Matthew G. Winegar Agenda Item No. S-7

Reviewed By: City Manager KRB City Attorney RT Finance JC Other *(Specify)*

DATE: September 10, 2013

TO: City Council

FROM: Jeri Williams, Police Chief
Matthew Winegar, Development Services Director

SUBJECT: Lease for Police Storefront in the Collections Shopping Center

RECOMMENDATION

That City Council authorize the Interim City Manager to execute a lease for the establishment of a Police storefront in the Collections shopping center in RiverPark.

DISCUSSION

The conditions of approval for the Collections shopping center in the RiverPark Specific Plan area require that the developer/owner assist in the provision of a space for a Police Department storefront. The storefront would provide a base of operations not only for police patrol of the Collections but also for the RiverPark area and the encompassing Police beat.

The designated space is on Seaglass Way adjacent to the movie theater. The space is approximately 1,200 square feet and will accommodate up to five Police staff. Designated parking spaces will be provided.

The lease is triple-net which means the Police Department will be responsible for custodial and utility costs. The lease calls for a below market rate rent initially set at $25.00 per square foot for an annual rate of approximately $31,000. The term of the lease is for three years with three three-year options. The lease also provides an approximate $75,000 tenant improvement allowance for walls, flooring coverings, etc. Furniture and equipment will be furnished by the City.

FINANCIAL IMPACT

Funds for the start-up costs and on-going lease costs have been budgeted within the RiverPark Community Facilities District (CFD).

mgw/djo

Attachment #1 - Lease

LEASE

This Lease ("**Lease**") is entered into as of the date set forth in Section 1.1 by and between Landlord and Tenant.

ARTICLE 1.
BASIC LEASE PROVISIONS

The words, figures and definitions set forth in the following Sections are part of this Lease wherever appropriate reference is made thereto, unless modified elsewhere in this Lease.

1.1 Effective Date: means October 1, 2013.

1.2 Landlord: means SOCM I, LLC, a Delaware limited liability company.

1.3 Tenant: means CITY OF OXNARD, to be used as a police substation by the Oxnard Police Department.

1.4 Tenant's Trade Name: not applicable.

1.5 Project: means the commercial development commonly known as The Collection at Riverpark in the location generally as shown on the site plan attached hereto as Exhibit A (the "**Site Plan**"). The Project is located in the City of Oxnard, County of Ventura, State of California.

1.6 Premises: means the area cross-hatched on Exhibit B to this Lease, and depicted as Space "5240", containing approximately 1,272 square feet of Floor Area. (Section 2.1).

1.7 Permitted Use: means, subject to the limitations of Section 7.1, the Premises shall be used solely as a police substation or for office use for administrative and community outreach purposes and for no other use or purpose. As used herein, "police substation" shall mean the Premises shall be used for office space and/or a booking station only. In no event shall the Premises be used in whole or in part as a holding cell, arsenal, munitions holding facility, laboratory, drug rehabilitation facility, or police training center (other than any administrative staff training). Tenant shall procure all licenses and permits required for the use or occupancy of the Premises and the business being conducted therein. (Section 7.1).

1.8 Term: means thirty-six (36) months. (Section 3.1).

1.9 Option Terms: means three (3) Option Terms (as defined in Section 3.4 of the Lease) of three (3) years each. (Section 3.4).

1.10 Monthly Rent and Annual Rent: (Article 4).

Period	**Annual Rent**	**Monthly Rent**	**Rate per Square Foot per annum**
Commencement Date – Thirty-sixth (36^{th}) full calendar month of the Term	$31,800.00	$2,650.00	$25.00
First OptionTerm, if exercised	$34,980.00	$2,915.00	$27.50
Second Option Term, if exercised	$34,980.00	$2,915.00	$27.50
Third Option Term, if exercised	$34,980.00	$2,915.00	$27.50

1.11 Rent: means, as the context requires, either Monthly Rent or Annual Rent.

1.12 (Intentionally Omitted)

1.13 Commencement Date: means the date the Premises are "substantially completed" (as defined in the Work Letter Agreement attached hereto as Exhibit C). The Commencement Date is subject to all of the terms and conditions set forth in Article 3.

1.14 (Intentionally Omitted)

1.15 (Intentionally Omitted)

1.16 (Intentionally Omitted)

1.17 Insurance Limits: means Three Million Dollars ($3,000,000.00). (Article 9)

1.18 (Intentionally Omitted)

1.19 Landlord's Addresses For Rent And Notices: (Section 20.1)

Notices:

c/o Shea Properties
130 Vantis, Suite 200
Aliso Viejo, CA 92656
Attention: Senior VP of Asset Management

with a copy of legal notices only to:

c/o Shea Properties
130 Vantis, Suite 200
Aliso Viejo, CA 92656
Attention: Legal Department

Rent:

c/o CenterCal Properties, LLC
Attention: Accounting Department – Riverpark
1600 Franklin Avenue
El Segundo, CA 90245

1.20 (Intentionally Omitted)

1.21 Tenant's Address For Notices: (Section 20.1)

City of Oxnard
Office of the City Attorney
300 West Third Street, Suite 300
Oxnard, California 93030
Attention: City Attorney
Telephone: (805) 385-7483
Facsimile: (805) 385-7423

1.22 Broker: none.

1.23 Tenant Improvement Allowance: means an amount not to exceed $76,320.00 (based upon the amount of $60.00 per square foot of Floor Area within the Premises). (Exhibit C)

1.24 Rooftop Rights. Tenant shall be entitled to install and maintain certain Rooftop Equipment (as defined in the Rooftop Space Rider attached hereto, subject to and in accordance with the terms and conditions of the Rooftop Space Rider attached hereto.

ARTICLE 2.
PREMISES

2.1 Lease of Premises. Subject to the provisions of this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, which is a part of the Project. Prior to entering into this Lease, Tenant has made a thorough and independent examination of the Premises and all matters related to Tenant's decision to enter into this Lease. Tenant is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Tenant's needs. Tenant does not rely on, and Landlord does not make, any express or implied representations or warranties as to any matters including, without limitation, any characteristics of the Premises or improvements thereon, the suitability of the Premises for the intended use, the likelihood of deriving business from the Project, the economic feasibility of the Tenant's business, or any other matter. Tenant has satisfied itself as to such suitability and other pertinent matters by Tenant's own inquiries and tests into all matters relevant in determining whether to enter into this Lease. Tenant acknowledges that, except as otherwise expressly set forth in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or the Project or their condition, or with respect to the suitability thereof for the conduct of Tenant's business. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises, the Tenant Improvements therein, and the Common Areas were at such time complete and in good, sanitary and satisfactory condition and repair with all work required to be performed by Landlord, pursuant to Exhibit C, completed and without any obligation on Landlord's part to make any alterations, upgrades or improvements thereto.

2.2 Reservation. The exterior walls and roof of, the floor above, and the area beneath the Premises are not demised hereunder, and Landlord hereby reserves the exclusive right to the use of any air space above the Premises and any area or space below the Premises and to the use of the roof and exterior walls, together also with the right, from time to time, in connection with the construction of additional phases and/or buildings in the Project, the Common Area or otherwise, to enter the Tenant's Premises to construct, install, maintain, use, repair and replace therein structural elements such as foundations, columns, walls, and support beams, and other facilities including, without limitation, drains, water lines and facilities, sewage lines, sewage vents, steam and condensate pipes, condenser cooling water pipes, electric power circuits, telephone circuits, pump stations, electric panelboards, sanitary vents, fresh air supply ducts and exhaust ducts, elevators, lifts, utilities lines, conduit, flues, refrigerant lines, sprinkler mains and valves, access panels, and wires. In addition, Landlord expressly reserves the right to grant or relocate all easements now or hereafter required by Landlord for the construction of any additional phases and/or buildings in the Project and on lands nearby or adjacent to the Project for the construction, installation, operation, maintenance, repair and replacement of rights of way, underground lines and other transmission facilities and appurtenances for electricity, gas, telephone, water, sewage, drainage, cable television and other utilities and public services. In exercising its rights reserved herein, Landlord shall not materially and unreasonably interfere with the operation of Tenant's business on the Premises.

2.3 Floor Area. The term "**Floor Area**", as used in this Lease, shall mean all areas designated by Landlord for the exclusive use of retail tenants measured from the exterior surface of exterior walls (and extensions, in the case of openings) and from the center of interior demising walls, and shall include, but not be limited to, restrooms, areas utilized for retail sales, warehouse or storage areas, clerical or office areas and employee areas; provided, however, that the following areas shall not be included in such calculations: (i) space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located vertically above ground floor and separately demised storage areas; (ii) mezzanine areas; (iii) outdoor sales and seating areas; and (iv) on-site management and/or security offices, nonprofit community buildings and child care centers, if any, from time to time located in the Project. Deductions shall not be allowed for columns, sprinkler risers, roof drains, vents, piping, wastelines, conduit, ventilation shafts and related items serving the other tenant spaces. Landlord shall have the right, following the Commencement Date, to cause the Floor Area of the Premises to be remeasured by a licensed architect. Upon determination of the actual Floor Area of the Premises in the manner set forth above, the Rent and all other charges payable by Tenant under this Lease which are determined with reference to the Floor Area of the Premises shall be adjusted accordingly.

ARTICLE 3.
TERM

3.1 Term of Lease; Early Access. This Lease shall be effective from and after the Effective Date. The Term shall commence on the Commencement Date and shall continue, unless sooner terminated in accordance with the provisions of this Lease, for the number of years specified in Article 1 from the first day of the first full calendar month following the Commencement Date (unless the Commencement Date occurs on the first day of a calendar month, in which event the number of months in the Term shall include the month in which the Commencement Date occurs). The "**Expiration Date**" shall be the final day of the one hundred twentieth (120th) full calendar month of the Term. So long as (i) this Lease has been fully executed and delivered by the parties hereto, (ii) Landlord has received the first (1st) installment of Monthly Rent, and (iii) Landlord has received insurance certificates evidencing that Tenant is carrying the insurance required to be carried by Tenant pursuant to the terms of Article 9 of this Lease, Tenant shall be permitted to enter the Premises thirty (30) days in advance of the Commencement Date for the purpose of installing furniture, fixtures and equipment, subject to and upon the terms and conditions of this Section 3.1. If Tenant enters the Premises prior to the Commencement Date, such early access shall be subject to all of the terms and conditions of this Lease, provided, however, so long as Tenant does not commence the operation of business from the Premises, Tenant will not be obligated to pay Monthly Rent during the period of such early access. Tenant agrees to provide Landlord with prior notice of any such intended early access and such early access shall be subject to Landlord's prior written consent. Landlord shall use commercially reasonable efforts to make available for Tenant's use during such installation the elevators, restrooms, parking and utilities serving the Premises. Tenant agrees to cooperate with Landlord during the period of any such early access so as not to interfere with Landlord in the completion of any improvements to the Premises constructed pursuant to Exhibit C. Tenant further acknowledges and agrees that Landlord shall not be liable for any injury, loss or damage which may occur to any of Tenant's work made in or about the Premises in connection with such entry or to any property placed therein prior to the Commencement Date, the same being at Tenant's sole risk and liability. Tenant shall be liable to Landlord for any damage to any portion of the Premises, caused by Tenant or any of Tenant's employees, agents, contractors, consultants, workmen, mechanics, suppliers and invitees. In addition, Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Premises and against injury to any persons caused by Tenant's entry or work during such early access.

3.2 (Intentionally Omitted)

3.3 Commencement Date Letter. Landlord shall have the right to give Tenant written notice in substantially the form of Exhibit D (the "**Commencement Date Letter**") confirming, among other things, Tenant's acceptance of the Premises, the Commencement Date and other pertinent matters. Tenant shall acknowledge such Commencement Date Letter by returning to Landlord an executed copy of the Commencement Date Letter within ten (10) days of Tenant's receipt thereof. If Tenant fails to return the Commencement Date Letter to Landlord within such ten (10) day period, then Tenant shall conclusively be deemed to have approved the contents thereof.

3.4 Options To Extend. Provided that (i) Tenant is not in default of any provision of this Lease at the time of exercise of an option to extend provided herein or at any time thereafter prior to the commencement of the applicable "**Option Term**" (as hereinafter defined), (ii) Tenant is not, and has not been, in monetary or material non-monetary default at any time under this Lease beyond applicable notice and cure periods, (iii) Tenant is open for business to the public for the Permitted Use and operating from the entirety of the Premises in accordance with this Lease, and (iv) Tenant has not assigned its interest in the Lease or sublet the Premises or any portion thereof, Tenant shall have the option to extend the Term for the additional periods set forth in Section 1.9 of this Lease (each such period being referred to herein as an "**Option Term**") only by giving Landlord written notice at least one hundred eighty days (180) days, before the expiration of the then applicable Term. All of the terms, covenants, conditions, provisions and agreements applicable to the initial Term shall be applicable to the Option Terms, except that the Rent payable during each Option Term shall be as set forth in this Lease. The option to extend the Term pursuant hereto by the Option Terms shall be personal to the original Tenant signatory to this Lease. All references in this Lease to the "**Term**" shall be deemed to mean the initial Term as extended by the Option Terms, as applicable.

ARTICLE 4.
RENT

4.1 Rent. From and after the Commencement Date, Tenant shall pay Annual Rent and Monthly Rent (as defined in Section 1.10) and all other monetary obligations of Tenant under this Lease that are in addition to the Annual Rent shall be deemed additional rent ("**Additional Rent**"). Annual Rent, Monthly Rent and Additional Rent are sometimes collectively referred to herein as "**Rent**". Rent shall be paid to Landlord at the address set forth in Section 1.19, or upon written notice from Landlord, to Landlord's assignee or such other place as Landlord may from time to time designate in writing to Tenant, without prior demand, deduction or set-off, as more particularly set forth in this Article 4.

4.2 Annual and Monthly Rent. Tenant shall pay to Landlord Monthly Rent, initially at the monthly rate provided in Section 1.10, in advance on the first day of each calendar month during the Term commencing on the Commencement Date. Concurrently with Tenant's execution and delivery of this Lease to Landlord, Tenant shall pay to Landlord an amount equal to the Monthly Rent to be applied against the first obligation of Tenant to pay full Monthly Rent under this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month, Monthly Rent for the first and last partial months shall be prorated on the basis of the number of actual days in such month.

4.3 Annual Rent for the Option Terms. If properly exercised pursuant to the terms of Section 3.4 of this Lease, the Annual Rent of the Premises shall be as set forth in Section 1.10 of Article 1 (Basic Lease Provisions) of the Lease.

4.4 (Intentionally Omitted)

4.5 (Intentionally Omitted)

4.6 Late Payments. If any installment of Rent or Additional Rent is not received by Landlord from Tenant within five (5) days after the date when due, Tenant shall immediately pay to Landlord a late charge equal to ten percent (10%) of the delinquent amount. Landlord and Tenant agree that this late charge represents a reasonable estimate of the costs and expenses Landlord will incur and is fair compensation to Landlord for its loss suffered by reason of late payment by Tenant.

ARTICLE 5.
TAXES AND UTILITIES

5.1 Taxes.

(a) Unless and to the extent Taxes (as defined below) increase due to a change of ownership of the Project during the Lease Term, Tenant shall not be obligated to pay its share of Taxes as Additional Rent. If a change of ownership occurs, then Tenant shall pay its share of the additional incremental Taxes assessed due to such change of ownership as referenced below. Accordingly, the terms of this Section 5.1 shall obligate Tenant to pay its share of Taxes only in such event, notwithstanding anything to the contrary contained herein. Taxes for any partial year shall be prorated. Landlord shall collect Tenant's payment of its share of Taxes after the actual amount of Taxes are ascertained or in advance, monthly, based upon estimated Taxes. If Landlord elects to collect Tenant's share of Taxes based upon estimates, Tenant shall pay to Landlord monthly in advance from and after the Commencement Date, and thereafter on the first (1st) day of each month during the Term, an amount estimated by Landlord to be the monthly Taxes payable by Tenant. Landlord may periodically adjust the estimated amount. If Landlord collects Taxes based upon estimated amounts, then following the end of each calendar year or, at Landlord's option, its fiscal year, Landlord shall furnish Tenant with a statement covering the year just expired showing the total Taxes for the Project for such year, the total Taxes payable by Tenant for such year, and the payments previously made by Tenant with respect to such year, as set forth above. If the actual Taxes payable for such year exceed Tenant's prior payments, Tenant shall pay to Landlord the deficiency within ten (10) days after its receipt of the statement. If Tenant's payments exceed the actual Taxes payable for that year, and provided Tenant is not in arrears as to the payment of any Annual Rent or Additional Rent, Landlord shall refund to Tenant the amount of any overpayment. In no event shall Tenant have the right to offset any overpayment against future Taxes and/or other Additional Rent payable under this Lease. With regard to the Taxes described in Section 5.1(a)(ii), Landlord shall have the right, at its option, either to include any one or more thereof within the Taxes allocated by reference to Tenant's proportionate share as provided in subparagraph (c) below, or to recover from Tenant, or direct that Tenant pay directly, the amount of any one or more of such Taxes attributable to the payments made by Tenant under this Lease.

(b) As used in this Lease, the term "**Taxes**" shall include, without limitation, the following: (i) any form of tax or assessment, fee, license fee, license tax, business license fee, possessory interest tax, commercial rental tax, levy, charge, assessment, penalty or tax whatsoever imposed by any federal, state, county or city authority having jurisdiction or any political subdivision thereof or any district, including any special assessment district for any improvement, maintenance, school, street, storm drain, sidewalk, community facility, traffic lights, parking facilities, park and ride, drainage, lighting or landscaping, which are imposed on any legal or equitable interest of Landlord in the Project, including any landscape maintenance district or community facilities district; (ii) any tax on Landlord's right to receive, or the receipt of, Rent or income from the Project or against Landlord's business of leasing the Project and any tax based on the size of the Project, including without limitation, gross receipts, sales, transaction privilege, margin and other similar taxes, but excluding any tax determined solely by reference to the net income of Landlord; (iii) any tax, bond or charge for police or fire protection, street, sidewalk and road maintenance, refuse collection or other services provided to the Project by any governmental agency; (iv) any tax imposed upon this transaction or based upon a re-assessment of the Project due to improvements to the Project, or a change in the fee ownership of the Project or the transfer of all or part of Landlord's interest in the Project; (v) any charge or fee (whether or not constituting tax receipts to a governmental agency) replacing, in whole or in part, any tax now or previously included within the definition of Taxes, including for services formerly provided without charge to property owners or occupants or to increase tax increments to governmental agencies; and (vi) any vehicle parking or trip tax. Taxes shall be reduced by any sums paid directly by occupants of the Project on separately assessed tax parcels and by sums paid by owners or tenants of the Other Stores. If the method of taxation of real estate prevailing to the time of execution hereof shall be, or has been altered, so as to cause the whole or any part of the taxes now, hereafter or theretofore levied, assessed or imposed on real estate to be levied, assessed or imposed on Landlord, wholly or partially, as a capital levy or otherwise, or on or measured by the rents received therefrom, then such new or altered taxes attributable to the Project shall be included within the term "**Taxes**", except that the same shall not include any enhancement of said tax attributable to other income of Landlord. The term "**Taxes**" shall not include Landlord's general net income taxes, inheritance, estate or gift taxes.

(c) Tenant's share of the Taxes shall be determined by multiplying all of the Taxes on the Project by a fraction, the numerator of which shall be the Floor Area of the Premises and the denominator of which is the number of square feet of Floor Area in the Project which are occupied and open for business from time to time as of the commencement of the applicable calendar or fiscal year (as the case may be), exclusive of the Floor Area of the Other Stores; provided, however, in no event shall such denominator be less than ninety percent (90%) of the Floor Area of the Project as of the commencement of the applicable calendar or fiscal year (as the case may be), exclusive of the Floor Area of the Other Stores. Tenant acknowledges that the Project is a mixed use property, and that Landlord may incur and allocate certain Taxes to portions of the Project used or held for use as residential, office and commercial uses and to portions of the Project used or held for use as retail premises. The portions of the Project from time to time during the Term designated for use for residential, office, commercial and retail purposes, and the related allocations of Taxes, may be equitably adjusted by Landlord to reflect improvements to the Project, the nature of the use of portions thereof, or the buildings from time to time designated by Landlord as included within the Project. Notwithstanding anything contained in this Article 5 to the contrary, in the event Landlord reasonably determines that the improvements comprising the Premises have a value greater than the value of a majority of the other premises in the Project or within the land covered by the applicable tax bill, Landlord shall have the right to make such reasonable adjustments to Tenant's share of the Taxes so that Tenant pays Taxes on the value of the improvements comprising the Premises which is in excess of the value of the majority of other premises in the Project or within the land covered by the applicable tax bill. Notwithstanding the foregoing, if the premises and underlying realty of any owner or tenant of a portion of the Project is separately assessed for Tax purposes, such Taxes for such separately assessed premises and underlying realty may be excluded in the Taxes payable by Tenant under this Lease, and in such case, the Floor Area on such owner's or tenant's parcel shall not be included in the denominator for purposes of calculation of Tenant's share of Taxes. The term "**Other Stores**" refers to portions of the Project that are, or may be, owned or leased from time to time by various persons or entities occupying facilities that pay Taxes directly to the taxing authority and any store containing at least 20,000 square feet of Floor Area.

5.2 Other Property Taxes. Tenant shall pay, prior to delinquency, all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, trade fixtures, merchandise and other personal property in, on or upon the Premises. If any such items of property are assessed with property of Landlord, then the assessment shall be equitably divided between Landlord and Tenant.

5.3 Tax Exemptions. Notwithstanding anything to the contrary contained herein, Landlord acknowledges that Tenant has advised that as a public agency, Tenant is entitled to an exemption from property taxes assessed against property owned or leased by Tenant. Accordingly, Landlord hereby agrees to apply for and pursue in good faith all available exemptions and credits from property taxes with respect to the Premises and this Lease based upon the identity of Tenant, and Tenant agrees to cooperate with such efforts (at no cost to Tenant). Landlord agrees to keep Tenant informed of its progress in securing a property tax exemption, credit or other benefit, and will provide Tenant with the full benefit of any and all such benefits which may be obtained with respect to this Lease and the space leased and occupied by Tenant and the Project.

5.4 Utilities.

(a) Payments. Tenant agrees to pay directly to the appropriate utility company all charges for utility services supplied to Tenant for which there is a separate meter and/or submeter to the Premises. Tenant agrees to pay to Landlord its share of all charges for utility services supplied to the Premises, plus where allowed by law, a sum (the "**Supervision Fee**") payable to Landlord for administration and overhead in an amount equal to fifteen percent (15%) of such charge, for which there is no separate meter or submeter upon billing by Landlord of Tenant's share based on the reasonable estimates of Landlord's consultant or engineer or, at Landlord's election, Tenant shall pay Landlord's cost for installing separate meters and/or submeters and shall thereafter pay based upon such meters or submeters. Landlord shall have the right at any time and from time to time during the Term to either continue to contract with the existing provider of any utility service for the Premises or to contract with a different company to provide such service. Notwithstanding the foregoing, Landlord shall install a common water meter for the building in which the Premises is located, and Tenant shall have the right to connect to such water meter at a one-time charge of $2,594.88 (based upon the amount of Two and 04/100 Dollars ($2.04) per square foot of Floor Area within the Premises); provided, however, and notwithstanding the foregoing, in the event Tenant is a "wet user" (meaning a tenant that regularly uses proportionately large amounts of water in connection with its business operations from the Premises such as, but not limited to, food users including full-service and quick service restaurants, salons and spas), Tenant shall, at its sole cost and expense, install or cause the installation of an entirely separate water meter just for the Premises. Tenant shall be responsible for the payment of all sewer connection and/or hook-up fees for sewer services supplied to the Premises and any other charges imposed in connection with the commencement of said services.

(b) Provision of Utility Services. If Landlord elects to furnish any utility services to the Premises, Tenant shall purchase its requirements thereof from Landlord so long as the rates charged by Landlord are competitive with those offered directly by the local public utility. In the event that any utilities are furnished by Landlord, whether sub-metered or otherwise, then and in that event Tenant shall pay Landlord for such utilities, including a reasonable administrative charge for Landlord's supervision of such utilities. Regardless of the entity which supplies any of the utility services, Landlord shall not be liable in damages for any failure or interruption of any utility or service. No failure or interruption of any utility or service shall entitle Tenant to terminate this Lease or discontinue making payments of Annual Rent or Additional Rent.

(c) Estimates. At Landlord's option, Landlord may estimate Tenant's utility costs for each calendar year, in which event, Tenant shall pay to Landlord in monthly installments in advance one-twelfth ($1/12^{th}$) of the annual estimate on the first (1^{st}) day of each calendar month, subject to an annual reconciliation. Landlord may adjust the utility estimates charged to Tenant at the end of any calendar quarter on the basis of Landlord's experience and reasonably estimated costs.

5.5 Janitorial Service. Landlord shall not be obligated to provide any janitorial services to the Premises or replace any light bulbs, lamps, starters and ballasts for lighting fixtures within the Premises. Tenant shall be solely responsible, at Tenant's sole cost and expense, for (i) performing all janitorial services, trash removal and other cleaning of the Premises, and (ii) replacement of all light bulbs, lamps, starters and ballasts for lighting fixtures within the Premises, all as appropriate to maintain the Premises in a first-class manner consistent with the first-class nature of the Project. Such services to be provided by Tenant shall be performed by contractors and pursuant to service contracts approved by Landlord. Landlord shall have the right to inspect the Premises upon reasonable notice to Tenant and to require Tenant to provide additional cleaning, if necessary. In the event Tenant shall fail to provide any of the services described in this Section 5.5 to be performed by Tenant within five (5) days after notice from Landlord, which notice shall not be required in the event of an emergency, Landlord shall have the right to provide such services and any charge or cost incurred by Landlord in connection therewith shall be deemed Additional Rent due and payable by Tenant upon receipt by Tenant of a written statement of cost from Landlord.

ARTICLE 6.
COMMON AREA

6.1 Common Area Definition. The term "**Common Area**", as used in this Lease, shall mean all areas within the exterior boundaries of the Project (or areas immediately adjacent to the Project such as, but not limited to, landscaped medians), now or later made available for the general use of Landlord and other persons entitled to occupy Floor Area in the Project.

6.2 Non-Exclusive Use. The use and occupancy by Tenant of the Premises shall include the non-exclusive use of the Common Area (except those portions of the Common Area on which have been constructed or placed permanent or temporary kiosks, displays, carts and stands and except areas used in the maintenance or operation of the Project) in common with Landlord and the other tenants of the Project and their customers and invitees.

6.3 Control of and Changes to Common Area. Landlord shall have the sole and exclusive control of the Common Area, and the right to make changes to the Common Area at Landlord's sole and absolute discretion Landlord shall operate and maintain the Common Areas in good order and condition consistent with similar mixed use shopping centers in the geographic region in which the Project is located; provided, however, if any owner, tenant or occupant of any portion of the Project maintains Common Area located upon its parcel or demised premises (Landlord shall have the right in its sole discretion to allow any purchaser, tenant or occupant to so maintain Common Area located upon its parcel or demised premises and to be excluded from participation in the payment of certain Common Area expenses), Landlord shall not have any responsibility for the maintenance of that portion of the Common Area and tenant shall have no claims against Landlord arising out of any failure of such owner, tenant or occupant to so maintain is portion of the Common Area. Landlord's rights shall include, but not be limited to, the right to (a) restrain the use of the Common Area by unauthorized persons; (b) utilize from time to time any portion of the Common Area for promotional, entertainment and related matters; (c) place permanent or temporary kiosks, displays, carts and stands in the Common Area and to lease same to tenants; (d) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage non-customer use, to prevent dedication or an easement by prescription, for health and safety purposes, for use of same for periodic special events or for any other reason deemed sufficient in Landlord's reasonable judgment; and (e) renovate, upgrade or change the shape and size of the Common Area or add, eliminate or change the extent of the Common Area and/or the location of improvements within the Common Area including, without limitation, buildings, parking areas, roadways and curb cuts, and to construct buildings on the Common Area. Landlord, at any time, may change the shape, size, location, number and extent of the improvements shown on Exhibit A, construct improvements in phases, eliminate, add or relocate any improvements to any portion of the Project, and add land to and/or withdraw land from the Project. Further, notwithstanding anything to the contrary contained in this Lease, Landlord shall have the right, at any time and from time to time during the Term, to remodel, renovate, reduce or expand, in any manner, the Project or a portion thereof, which work may include the addition or removal of shops and/or the addition or removal of buildings to the Project. In exercising the rights reserved in this Section, Landlord shall use reasonable efforts to minimize disruption of Tenant's business. If the Premises are rendered untenantable for a period in excess of three (3) days as a result of the work done by Landlord in exercising such reserved rights, the Annual Rent will abate from the date the Premises become untenantable until Landlord's work is completed to the extent that Tenant may reopen for business.

6.4 (Intentionally Omitted)

6.5 Extraordinary Expenses. Notwithstanding anything contained herein, Landlord shall have the right to cause Tenant to directly pay for any extraordinary expenses resulting from Tenant's operations from the Premises and at the Project.

6.6 Parking. During the Term, Tenant shall be entitled to use five (5) reserved parking spaces, two (2) of which shall be located on Sea Glass Way in close proximity to the Premises, and three (3) of which shall be located in the parking structure near the rear entrance to the Premises, all in locations designated by Landlord (or the parking operator) from time to time. During the initial Term, Tenant will not be charged a monthly fee for Tenant's use of such parking spaces. Tenant and its employees shall park their vehicles only in the parking areas from time to time designated for that purpose by Landlord in accordance with all rules and regulations promulgated by Landlord from time to time including, without limitation, those rules and regulations set forth on Exhibit F hereto. Without limiting the generality of the foregoing, if Landlord implements any program related to parking, parking facilities or transportation facilities including, but not limited to, any program of parking validation, employee shuttle transportation during peak traffic periods or other program to limit, control, enhance, regulate or assist parking by customers of the Project, Tenant agrees to participate in the program and to pay its proportionate share of the costs of the program under reasonable rules and regulations from time to time established by Landlord. Tenant shall furnish Landlord with a list of its and its employees' vehicle license numbers at any time during the Term within ten (10) days after Landlord's written request. Tenant authorizes Landlord without notice to tow, at Tenant's expense, any vehicle belonging to Tenant or Tenant's employees parked in violation of these provisions and/or to attach violation stickers or notices to any such vehicle. Tenant agrees to assume responsibility for compliance by its employees with these parking provisions and to indemnify, defend and hold harmless Landlord and its agents from and against all cost, expense and liability arising from Landlord's reasonable enforcement efforts. If Tenant or its employees fail to park their vehicles in the parking areas designated pursuant to this Section 6.6, Landlord may charge Tenant Twenty-Five Dollars ($25.00) per day for each day or partial day per vehicle parked in any areas other than those designated; provided that no such charge shall be due if with respect to the first occurrence in any twelve (12) month period, Tenant cures such violation within twenty-four (24) hours following written notice to Tenant of such violation;

ARTICLE 7. TENANT'S CONDUCT OF ITS BUSINESS

7.1 Permitted Use; Access. Tenant shall use the Premises solely for the use specified in Section 1.7, and Landlord shall have no obligation whatsoever to agree to or accept any other use of the Premises. So long as Tenant complies with the terms of this Lease and any rules and regulations that Landlord may deem necessary or desirable for the safety and security of the Project or the Premises, Tenant shall have access to the Premises 24 hours per day, 7 days per week, subject to full or partial closures which may be required from time to time for construction, maintenance, repairs, actual or threatened emergency or other events or circumstances which make it reasonably necessary to temporarily restrict or limit access.

7.2 Compliance With Law. Tenant, at Tenant's sole expense, shall comply with all applicable local, state and federal statutes, regulations, rules, codes, including building codes, ordinances and other requirements of governmental authorities now or hereafter in effect (the "**Applicable Laws**") pertaining to the use or condition of the Premises and the conduct of Tenant's business. Tenant shall give to Landlord immediate written notice upon Tenant's becoming aware that the use or condition of the Premises is in violation of any Applicable Laws.

ARTICLE 8. REPAIRS AND MAINTENANCE

8.1 Landlord's Repair Obligations. Landlord shall maintain in good condition and repair the structural components and foundations, roofs and exterior surfaces of the exterior walls of all buildings (exclusive of doors, door frames, door checks, windows, window frames and storefronts and storefront awnings). Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable for failure to make repairs required to be made by Landlord under the provisions of this Lease unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete the repairs within the period of time following receipt of Tenant's written notification set forth in Section 15.1 below.

8.2 Tenant's Repair and Maintenance Obligations. Except for the portions and components of the Premises to be maintained by Landlord as set forth in Section 8.1, Tenant, at its expense, shall keep the Premises and all utility facilities and systems exclusively serving the Premises ("**Tenant Utility Facilities**") in first-class order, condition and repair and shall make replacements necessary to keep the Premises and Tenant Utility Facilities in such condition; provided, however, Tenant shall have no right to spray paint the exterior or interior of the windows or doors. All replacements shall be of a quality equal to or exceeding that of the original. At the option of Landlord, (a) Tenant shall contract with a service company approved by Landlord for the regular (but not less frequently than quarterly) maintenance, repair and/or replacement (when necessary) of the heating, ventilating and air conditioning equipment serving the Premises (the "**HVAC System**") and shall provide Landlord with a copy of any service contract within ten (10) days following its execution, or (b) Landlord may contract with a service company of its own choosing (or provide such service itself) for the maintenance, repair and/or replacement of the HVAC System and bill Tenant periodically for the cost of same or based upon estimates in a manner similar to the way in which Taxes are estimated and billed. Landlord shall be entitled to obtain an administration fee of fifteen percent (15%) on all of the HVAC System expenses billed to Tenant. Tenant shall be required to utilize Landlord's roofing contractor in the event Tenant desires to penetrate the roof of the Premises or for any repairs, alterations or improvements permitted to be made to the roof of the Premises by Tenant pursuant to the terms of this Lease.

8.3 Alterations. Tenant shall not make or cause to be made to the Premises any addition, renovation, alteration, reconstruction or change without Landlord's prior written consent.

ARTICLE 9.
INSURANCE

9.1 Tenant's Insurance. Tenant, at its sole cost and expense, commencing on the earlier of the date the Premises are substantially completed, or (ii) the date Tenant is given earlier access to the Premises, and continuing during the Term, shall procure, pay for and keep in full force and effect the following types of insurance, in at least the amounts and in the forms specified below:

(a) Commercial general liability insurance with coverage limits of not less than the combined single limit for bodily injury, personal injury, death and property damage liability per occurrence specified in Section 1.17, insuring against any and all liability of the insureds with respect to the Premises or arising out of the maintenance, use or occupancy of the Premises or related to the exercise of any rights of Tenant pursuant to this Lease, subject to increases in amount as Landlord may reasonably require from time to time. All such liability insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property set forth in Section 9.6. Further, all such liability insurance shall include, but not be limited to, personal injury, blanket contractual, cross-liability and severability of interest clauses, products/completed operations, broad form property damage, independent contractors, owned, non-owned and hired vehicles and, if alcoholic beverages are served, sold, consumed or obtained in the Premises, liquor law liability. Notwithstanding the foregoing, Tenant may elect not to obtain such insurance from a third-party insurer, in which event Tenant waives any right it may have against Landlord with respect to any damage or loss that would otherwise have been covered by the insurance coverage described in this Section 9.1(a) had the same been obtained through a third party insurer, and Tenant shall also be solely responsible for any deductible applicable thereto.

(b) Worker's compensation coverage as required by law, including employer's liability coverage, with a limit of not less than One Million Dollars ($1,000,000.00) and waiver by Tenant's insurer of any right of subrogation against Landlord and Landlord's property manager by reason of any payment pursuant to such coverage.

(c) (Intentionally Omitted)

(d) Plate glass insurance covering all plate glass on the Premises at full replacement value. Tenant shall have the option either to insure this risk or to self-insure.

(e) Insurance covering all of the Tenant Improvements, Tenant's leasehold improvements, trade fixtures, merchandise and personal property from time to time in, on or about the Premises in an amount not less than their full replacement value from time to time, including replacement cost endorsement, providing protection against any peril included within the classification Fire and Extended Coverage, sprinkler damage, vandalism, malicious mischief and such other additional perils as covered in an "all risks" standard insurance policy. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate under the provisions of Article 10. Landlord shall have the right from time to time during the Term by written notice to Tenant to increase the limits of insurance Tenant is required to carry hereunder, provided that Landlord shall not increase such limits above those from time to time typically required in new leases of similar premises located in the Project.

(f) Any insurance policies designated necessary by Landlord with regard to Tenant's, or Tenant's contractors', construction of the Tenant Improvements, including, but not limited to, contingent liability and "all risks" builders' risk insurance, in amounts acceptable to Landlord.

9.2 Policy Form. All policies of insurance required of Tenant herein shall be issued by insurance companies with a general policy holder's rating of not less than "A" and a financial rating of not less than Class "X", as rated in the most current available "Best's Key Rating Guide", and which are admitted and qualified to do business in the State of California. All such policies, except for the Worker's Compensation coverage, shall name and shall be for the mutual and joint benefit and protection of Landlord, Tenant and Landlord's agents and, at Landlord's option, Landlord's mortgagee(s) or beneficiary(ies), as additional insureds. The policies described in subparagraphs (c) and (e) of Section 9.1 shall also name Landlord and Landlord's mortgagee(s) or beneficiary(ies) as loss payees. Executed copies of the policies of insurance or certificates thereof shall be delivered to Landlord prior to Tenant, its agents or employees entering the Premises for any purpose. Thereafter, executed copies of renewal policies or certificates thereof shall be delivered to Landlord within thirty (30) days prior to the expiration of the term of each policy. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy will give to Landlord thirty (30) days' prior written notice of any cancellation or lapse or the effective date of any reduction in the amounts of insurance. All policies required of Tenant herein shall be endorsed to read that such policies are primary policies and any insurance carried by Landlord or Landlord's property manager shall be excess and noncontributing with such policies. No policy required to be maintained by Tenant shall have a deductible greater than Twenty-Five Thousand Dollars ($25,000.00) unless approved in writing by Landlord.

9.3 Blanket Policies. Notwithstanding anything to the contrary contained in this Article 9, Tenant's obligation to carry insurance may be satisfied by coverage under a so-called blanket policy or policies of insurance; provided, however, that the coverage afforded Landlord will not be reduced or diminished and the requirements set forth in this Lease are otherwise satisfied by such blanket policy or policies.

9.4 Increased Premiums Due to Use of Premises. Tenant shall not do any act in or about the Premises which will tend to increase the insurance rates upon the Premises or the Project of which the Premises are a part. Tenant agrees to pay to Landlord, upon demand, the amount of any increase in premium for insurance resulting from Tenant's use of the Premises, whether or not Landlord shall have consented to the act on the part of Tenant. If Tenant installs upon the Premises any electrical equipment which constitutes an overload of the electrical lines servicing the Premises, Tenant, at its own expense, shall make whatever changes are necessary to comply with the requirements of the insurance underwriters and any appropriate governmental authority.

9.5 Landlord's Insurance. Landlord, at all times from and after the date the Premises are substantially completed, shall maintain in effect during the Term a policy or policies of insurance covering the building of which the Premises are a part (including boiler and machinery) in an amount not less than eighty percent (80%) of the full replacement cost (exclusive of the cost of excavations, foundations and footings) or the amount of insurance Landlord's mortgagee(s) or beneficiary(ies) may require Landlord to maintain, whichever is the greater, providing protection against any peril generally included in the classification "Special Form Causes of Loss" or "Fire and Extended Coverage", loss of rental income insurance, commercial general liability insurance and such other additional insurance as covered in an "all risks" standard insurance policy or maintained by Landlord in Landlord's sole discretion, with earthquake, flood, terrorism and/or environmental coverage insurance if deemed necessary by Landlord in Landlord's sole judgment or if required by Landlord's mortgagee(s) or beneficiary(ies) or by any Federal, state, county, city or local authority. Landlord's obligation to carry this insurance may be brought within the coverage of any so called blanket and/or umbrella policy or policies of insurance carried and maintained by Landlord.

9.6 Indemnity. "Landlord" for the purposes of this Section shall mean and include Landlord and Landlord's directors, officers, shareholders, members, partners, agents and employees. To the fullest extent permitted by law, Tenant covenants with Landlord that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or any other person occurring from and after the Premises are substantially completed (or such earlier date if Tenant is given earlier access to the Premises) from any cause whatsoever related to the use, occupancy or enjoyment of the Premises by Tenant or any person thereon or holding under Tenant including, but not limited to, damages resulting from any labor dispute. Tenant shall pay for, defend (with an attorney approved by Landlord), indemnify, and save Landlord harmless against and from any real or alleged damage or injury and from all claims, judgments, liabilities, costs and expenses, including attorney's fees and costs, arising out of or connected with Tenant's use of the Premises and its facilities, or any repairs, or improvements (including original improvements and fixtures specified as the Tenant Improvements) which Tenant may make or cause to be made upon the Premises, any breach of this Lease by Tenant; provided, however (and though Tenant shall in all cases accept any tender of defense of any action or proceeding in which Landlord is named or made a party and shall, notwithstanding any allegations of negligence or misconduct on the part of Landlord, defend Landlord as provided herein), Tenant shall not be liable for such damage or injury to the extent and in the proportion that the same is ultimately determined to be attributable to the negligence or misconduct of Landlord. This obligation to indemnify shall include all of Landlord's attorneys' fees, litigation costs, investigation costs and court costs and all other costs, expenses and liabilities incurred by Landlord or its counsel from the first notice that any claim or demand is to be made or may be made. Tenant's obligations under this Section shall survive the termination of this Lease.

9.7 Waiver of Subrogation. Except to the extent that insurance required to be maintained by Tenant pursuant to this Article 9 covers loss to Landlord, Landlord and Tenant each waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises or its contents, or to other portions of the Project arising from any liability, loss, damage or injury caused by fire or other casualty for which property insurance is carried or required to be carried pursuant to this Lease. The insurance policies obtained by Landlord and Tenant pursuant to this Lease shall contain endorsements waiving any right of subrogation which the insurer may otherwise have against the non-insuring party. If Landlord has contracted with a third party for the management of the Project, the waiver of subrogation by Tenant herein shall also run in favor of such third party.

9.8 Failure by Tenant to Maintain Insurance. If Tenant refuses or neglects to secure and maintain insurance policies complying with the provisions of this Article 9 or to provide copies of policies or certificates or copies of renewal policies or certificates within the time periods set forth in this Article 9, Landlord may, but is not required to, secure the appropriate insurance policies and Tenant shall pay, upon demand, the cost of the same to Landlord, as Additional Rent. Landlord's election to secure or not to secure the appropriate insurance on Tenant's behalf as described in the foregoing sentence shall in no event be deemed a waiver of any of Landlord's remedies under this Lease, at law or in equity for Tenant's failure to properly maintain insurance as required by this Lease.

9.9 Sufficiency of Coverage. Neither Landlord nor any of Landlord's agents make any representation that the types of insurance and limits specified to be carried by Tenant under this Lease are adequate to protect Tenant. If Tenant believes that any such insurance coverage is insufficient, Tenant shall provide, at its own expense, such additional insurance as Tenant deems adequate. Nothing contained herein shall limit Tenant's liability under this Lease.

ARTICLE 10.
DAMAGE/DESTRUCTION

10.1 Insured Casualty. In the case of damage by fire or other perils covered by the insurance required under Section 9.5, the following provisions shall apply:

(a) Within a period of sixty (60) days after all applicable permits have been obtained, Landlord shall commence such repair, reconstruction and restoration of the Premises as Landlord, in its reasonable business judgment, deems necessary, and shall diligently prosecute the same to completion; provided, however, that Tenant, at its cost, shall repair and restore all items of the Tenant Improvements and replace its stock in trade, trade fixtures, furniture, furnishings and equipment. Tenant shall commence this work promptly upon delivery of possession of the Premises to Tenant and shall diligently prosecute same to completion.

(b) Notwithstanding the foregoing, if the Premises is totally destroyed, or if the Project is destroyed to an extent of at least fifty percent (50%) of the then full replacement cost thereof as of the date of destruction, then (i) if the destruction occurs during the last two (2) years of the Term, Landlord and Tenant shall each have the right to terminate this Lease, and (ii) if the destruction occurs prior to the last two (2) years of the Term, Landlord shall have the right to terminate this Lease. In each case, the termination right shall be exercised by the terminating party giving written notice to the other party within thirty (30) days after the date of destruction.

10.2 Uninsured Casualty. If the Premises or the Project are damaged as a result of any casualty not covered by the insurance required to be carried under Section 9.5, Landlord, within sixty (60) days after all applicable permits have been obtained, shall commence repair, reconstruction or restoration of the Premises to the extent provided herein and shall diligently prosecute the same to completion or, if the damage to the Premises, or to the buildings in the Project excluding the Premises, and excluding any freestanding buildings, is greater than ten percent (10%) of the total replacement cost, Landlord may elect within said ninety (90) days not to so repair, reconstruct or restore the damaged property, in which event, at Landlord's option, this Lease shall cease and terminate upon the expiration of such ninety (90) day period. In the event Landlord elects to restore the Premises, Tenant shall have the same repair, restoration and replacement obligations it has pursuant to Section 10.1(a).

10.3 Distribution of Proceeds. In the event of the termination of this Lease pursuant to this Article 10, all proceeds from the Fire and Extended Coverage and/or property insurance carried by Tenant pursuant to Article 9 and all insurance covering the Tenant Improvements and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, merchandise, signs and other personal property, shall be disbursed and paid to Landlord, and all proceeds from Fire and Extended Coverage and/or property insurance carried by Landlord pursuant to Article 9 shall be retained by Landlord.

10.4 Abatement. In the event of repair, reconstruction and restoration, as provided in this Article 10, and provided Tenant has maintained the business interruption or loss of income insurance required pursuant to Article 9, to the extent that the proceeds of such business interruption or loss of income insurance may be exhausted during the period of repair, reconstruction and restoration, Annual Rent payable hereunder shall be thereafter abated proportionately with the degree to which Tenant's use of the Premises is impaired during the remainder of the period of repair, reconstruction and restoration; provided, however, the amount of Annual Rent abated pursuant to this Section shall in no event exceed the amount of loss of rental income insurance proceeds actually received by Landlord. Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay Additional Rent shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises or the building of which the Premises are a part, Tenant's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

10.5 Waiver of Termination. Tenant waives any statutory rights of termination which may arise by reason of any partial or total destruction of the Premises including, without limitation, the provisions of Section 1932(2) and Section 1933(4) of the Civil Code of the State of California and any amendments thereto or of any law which may hereafter be passed during the Term of this Lease.

ARTICLE 11.
CONDEMNATION

11.1 Taking. The term "**Taking**", as used in this Article 11, shall mean an appropriation or taking under the power of eminent domain by any public or quasi-public authority or a voluntary sale or conveyance in lieu of condemnation but under threat of condemnation.

11.2 Total Taking. In the event of a Taking of the entire Premises, this Lease shall terminate and expire as of the date possession is delivered to the condemning authority and Landlord and Tenant shall each be released from any liability accruing pursuant to this Lease after the date of such termination, but Annual Rent and Additional Rent for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Annual Rent and Additional Rent paid in advance.

11.3 Partial Taking. If there is a Taking of (a) more than twenty-five percent (25%) of the Floor Area of the Premises, or (b) a portion of the Premises and, regardless of the amount taken, the remainder of the Premises is not, in Tenant's reasonable judgment, suitable for the operation of Tenant's business, either Landlord or Tenant may terminate this Lease, as of the date Tenant is required to vacate a portion of the Premises, upon giving notice in writing of such election to the other party within thirty (30) days after receipt by Tenant from Landlord of written notice that a portion of the Premises has been so appropriated or taken.

11.4 Award. The entire award or compensation in any such condemnation proceeding, whether for a total or partial Taking, or for diminution in the value of the leasehold or for the fee, shall belong to and be the property of Landlord; and, in any event, the holder of any mortgage or deed of trust encumbering the Project shall, as between Tenant and such party, have a first priority to the extent of the unpaid balance of principal and interest on its loan. Without derogating the rights of Landlord or said lender under the preceding sentence, Tenant shall be entitled to recover from the condemning authority such compensation as may be separately awarded by the condemning authority to Tenant or recoverable from the condemning authority by Tenant in its own right for the taking of trade fixtures and equipment owned by Tenant and for the expense of removing and relocating its trade fixtures and equipment, but only in the event that the compensation awarded to Tenant shall be in addition to and shall not diminish the compensation awarded to Landlord as provided above.

11.5 Continuation of Lease. In the event of a Taking, if Landlord and Tenant elect not to terminate this Lease as provided above (or have no right to so terminate), Landlord agrees, at Landlord's cost and expense as soon as reasonably possible after the Taking, to restore the Premises (to the extent of the condemnation proceeds) on the land remaining to a complete unit of like quality and character as existed prior to the Taking and, thereafter, Rent shall be reduced on an equitable basis, taking into account the relative value of the portion taken as compared to the portion remaining, and Landlord shall be entitled to receive the total award or compensation in such proceedings.

11.6 Waiver of Right to Terminate. Tenant hereby waives the provisions of California Code of Civil Procedure Section 1265.130, which allows Tenant to petition the Superior Court to terminate this Lease in the event of a partial Taking of the Premises.

ARTICLE 12.
ASSIGNMENT AND SUBLEASES

Tenant shall not assign, sublet, enter into franchise, license or concession agreements, change ownership or voting control, or otherwise transfer (including any transfer by operation of law) all or any part of this Lease, Tenant's interest in the Premises or Tenant's business without first procuring the written consent of Landlord.

ARTICLE 13.
SIGNAGE AND ADVERTISING

13.1 General Prohibition. Except as permitted by this Lease or as expressly permitted by Landlord in writing, Tenant shall not place or permit the placing outside of or on the defined exterior roof, doors, windows or walls of the Premises or Common Areas or on or within five (5) feet of any doors or windows any signs, lettering, placards, sign easels, awnings, aerials, flagpoles or the like. No advertising medium shall be utilized by Tenant which can be heard or seen outside the Premises including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions. No signs or other items shall be placed within the Premises if they materially obstruct a view of the Premises. Tenant shall not display, paint, place or distribute any handbill, bumper sticker or other advertising device on any vehicle parked in the Project. Tenant shall, upon Landlord's request, remove any such sign, advertisement, decoration, marquee or awning in violation of this Section within three (3) days following such request. If Tenant fails to remove any such sign, advertisement, decoration, marquee or awning within such three (3) day period, Landlord may enter upon the Premises and remove the same. If Tenant violates any provision of this Article 13, Tenant shall pay Two Hundred Fifty Dollars ($250.00) per day to Landlord for each day that such violation continues; provided that no such charge shall be due if with respect to the first occurrence in any twelve (12) month period, Tenant cures such violation within twenty-four (24) hours following written notice to Tenant of such violation.

13.2 Internal Signs. Subject to the limitations set forth in Section 13.1, Tenant may, at its own expense, erect and maintain upon the interior floor sales areas of the Premises (meaning those areas of the Premises not visible from outside of the Premises) professionally prepared, first-class signs and advertising matter for retail sales from the Premises, which are not hand-lettered, and are customary and appropriate in the conduct of Tenant's business. The arrangement, style, color and general appearance of any windows, and any displays in the interior of the Premises that are visible from the exterior, such as window displays, merchandise and store fixtures, will be maintained in keeping with the character and standards of a first-class shopping center in the geographical area in which the Project is located.

13.3 Exterior Premises Signs. Subject to the provisions of this Section and Landlord's "Store Design, Sign and Construction Handbook", Tenant shall have the non-exclusive right (and the exclusive right on the storefront of the Premises) to install and use on the exterior of the building in which the Premises is located (with the exception of the roof), at the location set forth in the Store Design, Sign and Construction Handbook, an exterior sign (the "**Tenant's Exterior Sign**") which comply with the Store Design, Sign and Construction Handbook, Applicable Laws and are approved by Landlord, which approval shall not be unreasonably withheld. Landlord shall, at its own cost and expense, in connection with the initial installation of Tenant's Exterior Sign, (a) acquire all permits for the initial installation of Tenant's Exterior Sign, and (b) design, fabricate and install Tenant's Exterior Sign. Any changes to Tenant's Exterior Sign, following the initial installation thereof, shall be subject to Landlord's approval and shall be at Tenant's sole cost and expense. Tenant shall pay all costs to maintain and keep in good repair and aesthetic condition all installations, signs and advertising devices which it is permitted by Landlord to maintain. Upon expiration or termination of this Lease, Tenant shall promptly remove all such installations, signs and devices at its own expense and reimburse Landlord for the cost to repair and repaint any damage and discoloration caused by such removal or original installation. Landlord shall also include Tenant's name and location on the Project directory signage.

ARTICLE 14.
DEFAULTS BY TENANT

14.1 Events of Default. Tenant shall be deemed in default of this Lease if (a) Tenant defaults in the due and punctual payment of Rent, Additional Rent or any other sums required to be paid by Tenant pursuant to the terms of this Lease, and the default continues for a period of five (5) days after the date such payment is due; (b) Tenant vacates or abandons the Premises; (c) this Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and the attachment is not discharged within fifteen (15) days after its levy; (d) Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors; (e) involuntary proceedings under any bankruptcy laws or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of Tenant's property, and the proceedings are not dismissed or the receivership or trusteeship is not vacated within sixty (60) days after the institution or appointment; (f) Tenant admits its inability to pay its debts or continue in business, or suffers the entry of two (2) final non-appealable judgments against it; (g)Tenant or anyone acting on Tenant's behalf falsifies or misrepresents information required to be delivered to Landlord pursuant to this Lease; (h) Tenant fails to take possession of the Premises when otherwise required to hereunder; or (i) Tenant breaches any of the other agreements, terms, covenants, or conditions that this Lease requires Tenant to perform, and the breach continues for a period of thirty (30) days after notice by Landlord to Tenant (provided, however, if the default cannot be rectified or cured within such thirty (30) day period, the default shall be deemed to be rectified or cured if Tenant, within such thirty (30) day period, shall have commenced to rectify or cure the default and shall thereafter diligently and continuously prosecute same to completion) after written notice thereof from Landlord to Tenant specifying the particulars of the default. Landlord may treat any one (1) or more of the foregoing events as a breach of this Lease and, in addition to any or all other rights or remedies of Landlord by law provided, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to Tenant or any other person, (i) to declare the Term ended and to re-enter and take possession of the Premises and remove all persons therefrom, or (ii) without declaring this Lease terminated and without terminating Tenant's right to possession, (A) to re-enter the Premises and occupy the whole or any part for and on account of Tenant and to collect any unpaid rentals and other charges which have become payable or which may thereafter become payable and/or (B) pursuant to California Civil Code Section 1951.4, Landlord may continue this Lease in effect after Tenant's breach of this Lease and abandonment of the Premises and recover rent as it becomes due, or (iii) even though it may have re-entered the Premises as provided in clause (ii) above, to thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises. Any notice given by Landlord above shall be in lieu of, and not in addition to, any notice required under Section 1161 of the Code of Civil Procedure of California or any similar, superseding statute, or any other notice required under the laws of California. The rights and remedies of Landlord specified in this Lease shall be cumulative and in addition to any rights and remedies not specified in this Lease.

14.2 Landlord Remedies. Should Landlord elect to terminate this Lease pursuant to the provisions of Sections 14.1(i) or (iii) above, Landlord may, in addition to all other remedies which may be available under applicable law and/or equity, recover from Tenant, as damages, the following: (a) the worth at the time of award of any unpaid rental which had been earned at the time of the termination, plus (b) the worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of rental loss Tenant proves could have been reasonably avoided, plus (c) the worth at the time of award of the amount by which the unpaid rental for the balance of the Term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided, plus (d) any other amounts necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom plus, at Landlord's election, any other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of California including, without limitation, California Civil Code Section 1951.2. As used in subparagraphs (a) and (b) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate. As used in subparagraph (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). In addition to the foregoing rights and remedies, Landlord shall have the right, but not the obligation, without further notice to Tenant, to incur any expense necessary to perform the obligations of Tenant which Tenant has failed to perform or to otherwise cure Tenant's default, and Tenant shall pay to Landlord the cost thereof upon written demand by Landlord. Additionally, Landlord shall have the right to remedy any default of an emergency nature, in the event Tenant fails to commence to cure any default creating an emergency situation promptly upon being given notice which is reasonable under the circumstances, and Landlord shall have the right to remedy such a default without notice (if the giving of notice is not reasonably practicable) in the event of an emergency. Landlord's right to perform Tenant's obligations pursuant to this Section shall not be deemed to: (i) impose any obligation on Landlord to do so; (ii) render the Landlord liable to the Tenant or any third party for an election not to do so; (iii) relieve the Tenant from any performance obligation hereunder; (iv) relieve the Tenant from any indemnity obligation as provided in this Lease; or (v) cure Tenant's default or limit in any manner any of Landlord's rights and remedies under this Lease including, without limitation, Landlord's right to terminate the Lease due to such default by Tenant.

14.3 Definition of Rental. For purposes of this Article 14 only, the term "**rental**" shall be deemed to be Annual Rent, Additional Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease. All sums, other than Annual Rent, shall, for the purpose of calculating any amount due under the provisions of Section 14.2(c) above, be computed on the basis of the average monthly amount accruing during the immediately preceding sixty (60) month period, except that if it becomes necessary to compute these sums before the sixty (60) month period has occurred, then these sums shall be computed on the basis of the average monthly amount accruing during the shorter period.

ARTICLE 15.
DEFAULTS BY LANDLORD

15.1 Landlord's Default. If Landlord fails to perform any of the covenants, provisions or conditions contained in this Lease on its part to be performed within thirty (30) days after written notice of default (or if more than thirty (30) days shall be required by Landlord, if Landlord shall fail to diligently proceed to commence to cure the default after written notice), then Landlord shall be liable to Tenant for all damages sustained by Tenant as a direct result of Landlord's breach, but Tenant shall not be entitled to terminate this Lease as a result thereof and in no event shall Landlord be liable for consequential damages or Tenant's lost profits resulting from Landlord's default. Notwithstanding anything contained in this Lease to the contrary, it is expressly understood and agreed that any judgment against Landlord 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 the operation of the Project, and Tenant shall have no claim against Landlord or any of Landlord's personal assets for satisfaction of any judgment with respect to this Lease. Without limiting the foregoing, Tenant agrees that no owner, trustee, beneficiary, partner, member, manager, agent, or employee of Landlord (or of any mortgagee or any lender or ground or improvements lessor) nor any person acting under any of them shall ever be personally or individually liable to Tenant or any person claiming under or through Tenant for or on account of any default by Landlord or failure by Landlord to perform any of its obligations hereunder, or for or on account of any amount or obligations that may be or become due under or in connection with this Lease or the Premises; nor shall it or they ever be answerable or liable in any equitable judicial proceeding or order. No deficit capital account of any member or partner of Landlord shall be deemed to be a liability of such member or partner or an asset of Landlord. Any lien obtained to enforce any judgment against Landlord shall be subject and subordinate to any mortgage encumbering the Premises, as applicable. In no event shall Landlord be liable for any special, indirect or consequential damages, including, without limitation, lost profits or revenues, relating to this Lease.

15.2 Cure by Landlord's Lender. If any part of the Premises is at any time subject to a "Loan" (as defined in Section 17.1), and this Lease or the rentals due from Tenant hereunder are assigned by Landlord to "Landlord's Lender" (as defined in Section 17.1) and Tenant is given written notice of the assignment including the post office address of Landlord's Lender, then Tenant shall also give written notice of any default by Landlord to Landlord's Lender, specifying the default in reasonable detail and affording Landlord' Lender a reasonable opportunity to make performance for and on behalf of Landlord. If and when Landlord's Lender has made performance on behalf of Landlord, the default shall be deemed cured.

ARTICLE 16.
TITLE AND QUIET ENJOYMENT

16.1 Superior Agreements. Tenant agrees that it will not violate the terms and conditions of (i) covenants, conditions, restrictions, easements, encumbrances and other matters of record (collectively referred to herein as the "**Agreements**"); or (ii) the entitlements for the Project (collectively referred to herein as the "**Entitlements**"). The Agreements and Entitlements are sometimes collectively referred to herein as the "**Underlying Agreements**". Tenant hereby approves the Underlying Agreements. Tenant further agrees to execute and return to Landlord, within twenty (20) days of written demand by Landlord, an agreement in recordable form subordinating this Lease to any of the Underlying Agreements.

16.2 Quiet Enjoyment. Upon Tenant's observation and performance of all of the covenants, terms and conditions of this Lease to be observed and performed by Tenant, Tenant shall peaceably and quietly hold and enjoy the Premises from and after delivery thereof to Tenant in accordance with and subject to the terms and conditions of this Lease as against all persons claiming by, through or under Landlord; subject, however, to (a) the rights of the parties as set forth in this Lease, (b) the terms of the Underlying Agreements to which this Lease is subordinate, and (c) disturbances, odors and similar inconveniences which are commonly associated with shopping centers of the type and size of the Project and/or with tenants located in such shopping centers.

ARTICLE 17.
SUBORDINATION, ATTORNMENT AND ESTOPPEL CERTIFICATE

17.1 Subordination to Loans. This Lease is subject and subordinate to the lien of any mortgage, deed of trust or the interest of any lease in which Landlord is the lessee (and to all advances made or hereafter to be made upon the security of any of the foregoing) (individually, a "**Loan**" and collectively, the "**Loans**"). Tenant agrees that it will conform to and will not violate the terms of any Loan. Tenant acknowledges that Landlord's mortgagee, the beneficiary of a deed of trust of Landlord or a lessor of Landlord ("**Landlord's Lender**") may elect to cause the lien created by the Loan to be subordinate to this Lease. Subject to such election, if any Loan is not of record as of the date of this Lease, then this Lease shall automatically become subordinate to such Loan upon recordation thereof. Tenant further agrees to execute and return to Landlord, within ten (10) days of written demand by Landlord, a subordination, attornment and non-disturbance agreement ("**SNDA**") for the benefit of Landlord's Lender in the form required by Landlord's Lender subordinating this Lease to any such Loan. Tenant shall not unreasonably withhold its consent to changes or amendments to this Lease requested by Landlord's Lender so long as such changes do not materially alter the economic terms of this Lease or materially diminish the rights, or materially increase the obligations, of Tenant. Landlord agrees to use commercially reasonable efforts to obtain from the current lender holding a lien on the Project as of the date hereof a SNDA in favor of Tenant with respect to this Lease, in the current lender's standard form. Tenant shall reimburse Landlord for any fees charged to Landlord in obtaining such SNDA for Tenant (including any processing fees or costs charged by the current lender).

17.2 Attornment. In the event of the exercise of the power of sale under any Loan or in the event any proceedings are brought for foreclosure (or, in the case of a master lease, termination) under any such Loan, Tenant shall attorn to the purchaser or lessor under such lease upon any foreclosure, sale or lease termination and recognize the purchaser or lessor as Landlord under this Lease, provided that the purchaser or lessor shall acquire and accept the Premises subject to this Lease.

17.3 Estoppel Certificate. Tenant agrees, upon not less than ten (10) days prior notice by Landlord, to execute, acknowledge and deliver to Landlord, a statement in writing in substantially the form of Exhibit G hereto or in such other form as may be required by Landlord's Lender or the purchaser of Landlord's interest in the Project ("**Estoppel Certificate**"). In respect of any Loan from time to time in effect during the Term, Landlord, as the landlord under this Lease and as grantor under the deed of trust, mortgage, assignment of leases and/or other security granted to secure the Loan (the "**Security Instruments**"), hereby acknowledges and agrees for itself and its heirs, successors and assigns, that in the event of a default under the Deed of Trust and/or Assignment of Leases, Tenant may pay all rent and all other sums due under the Security Instruments to Landlord's Lender or the agent of Landlord's Lender ("**Agent**"), or to such person or entity to whom such Landlord's Lender or the Agent (or a subsequent holder of the Security Instruments) may assign the Security Instruments or as directed by them, without incurring any obligation or liability to Landlord as provided in this Lease, the Security Instruments or any other document signed by Landlord.

ARTICLE 18.
ENVIRONMENTAL MATTERS

18.1 Hazardous Materials. Tenant, at its sole cost and expense, shall comply with all federal, state and local laws and regulations relating to the storage, use, handling and disposal of hazardous, toxic or radioactive matter including, without limitation, those materials identified in Sections 66680 and 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30 ("**Title 22**"), as amended from time to time (collectively, "**Hazardous Materials**"). Tenant represents and warrants that, except for materials falling within the definition of "**Hazardous Materials**" which are normally used and properly disposed of in the ordinary course of Tenant's business, or which are sold in Tenant's store in the ordinary course of Tenant's business, neither Tenant, nor its agents, servants, employees, contractors, nor anyone else acting on Tenant's behalf will store, dispose of, produce, use, transport or manufacture any Hazardous Materials on the Premises or any portion of the Project. Tenant shall immediately notify Landlord and provide to Landlord a copy or copies of any environmental entitlements or inquiries related to the Premises. The clean-up and disposal of any Hazardous Materials located or released onto or about the Project by Tenant or its agents, contractors or employees shall be performed by Tenant at Tenant's sole cost and expense and shall be performed in accordance with all applicable laws, rules, regulations and ordinances, pursuant to a site assessment and removal/remediation plan prepared by a licensed and qualified geotechnical engineer and submitted to and approved in writing by Landlord prior to the commencement of any work. The foregoing notwithstanding, Landlord in Landlord's sole and absolute discretion may elect, by written notice to Tenant, to perform the clean-up and disposal of such Hazardous Materials from the Premises and/or the Project. In such event, Tenant shall pay to Landlord the actual cost of same upon receipt from Landlord of Landlord's written invoice therefor. Notwithstanding any other term or provision of this Lease, Tenant shall permit Landlord or Landlord's agents or employees to enter the Premises at any time, upon reasonable notice, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials on or affecting the Premises or to discharge Tenant's obligations hereunder with respect to such Hazardous Materials when Tenant has failed, after demand by Landlord, to do so. All costs and expenses incurred by Landlord in connection with performing Tenant's obligations hereunder shall be reimbursed by Tenant to Landlord within thirty (30) days of Tenant's receipt of written request therefor.

18.2 Conservation. Tenant shall cooperate with and participate in conservation programs for water, electricity and natural gas and recycling programs instituted by the governmental entity with jurisdiction over the Project and/or Landlord, including those for the collection of cardboard, metals, plastics and glass. If Tenant fails to fully and promptly comply with the provisions of this Section 18.2, Tenant shall pay to Landlord Fifty Dollars ($50.00) for each violation in addition to any penalty which may be imposed by law; provided that no such charge shall be due if with respect to the first occurrence in any twelve (12) month period, Tenant cures such violation within twenty-four (24) hours following written notice to Tenant of such violation.

ARTICLE 19.
PROJECT NAME

Tenant shall not use the name "The Collection at Riverpark", "The Collection" or "Riverpark" for any purpose, other than as the address of the business to be conducted by Tenant in the Premises, and Tenant shall not acquire any property right in or to any name which contains said word combination as a part thereof. Tenant shall not use the names "The Landing" or "The Pointe", either alone or in combination with "Riverpark". Landlord shall have the right to change the name of the Project at anytime at Landlord's sole and absolute discretion.

ARTICLE 20.
MISCELLANEOUS PROVISIONS

20.1 Notices. Every notice, demand or request (collectively "**Notice**") required hereunder or by law to be given by either party to the other shall be in writing. Notices shall be given by personal service or by United States certified or registered mail, postage prepaid, return receipt requested, or by same-day or overnight private courier, or by telecopy facsimile with electronic confirmation of delivery (provided that a duplicate thereof is concurrently sent by another method), addressed to the party to be served at the address indicated in Article 1 or such other address as the party to be served may from time to time designate in a Notice to the other party. Notice personally served shall be effective when delivered to (or refused by) the party upon whom such Notice is served. If served by registered or certified mail, Notice shall be conclusively deemed served on the date shown on the return receipt, but if delivery is refused or the Notice is unclaimed, Notice shall conclusively be deemed given forty eight (48) hours after mailing. If served by private courier, Notice to the addressee shall be effective when delivered to (or refused by) the party upon whom such Notice is served. Copies of any Notice shall be sent to the addresses, if any, designated for service of copies of Notices in Article 1. Notices sent in accordance with this Section shall be effective in the case of fax notices, upon receiving confirmation that the facsimile has been transmitted (provided that if the faxed notice is received outside normal business hours [*i.e.*, after 5:00 p.m. on weekdays, and anytime on weekends or holidays], such notice shall not be effective until the next business day).

20.2 (Intentionally Omitted)

20.3 Relocation.

(a) Landlord shall have the right to require Tenant to elect either to relocate its business to other premises in the Project or to terminate this Lease, upon and subject to the terms and conditions set forth below. If Landlord desires to exercise its option, Landlord shall make an offer in writing to Tenant to amend this Lease to relocate Tenant to other premises in the Project upon the following terms and conditions: (i) the premises covered by Landlord's offer (the "**Offered Premises**") shall have an area not more than twenty percent (20%) greater or less than the Floor Area of the Premises originally covered by this Lease at such location in the Project as may be specified by Landlord; (ii) if Tenant elects to relocate to the Offered Premises, Landlord shall, at its sole cost and expense, install interior leasehold improvements in the Offered Premises of a quality and character similar to the leasehold improvements constructed in the Premises at the commencement of the Term; (iii) the Annual Rent and all other charges payable in respect of the Offered Premises shall be at the same rate per square foot provided in this Lease, with an abatement of the rentals and charges payable under this Lease for any period between the Effective Date and the Relocation Date (as such terms are defined in Section 20.3(b) below); (iv) the rentals and charges payable under this Lease by reference to the Floor Area of the Premises covered hereby shall from and after the Relocation Date be payable by reference to the Floor Area of the Offered Premises; (v) on the day immediately preceding the Effective Date, Tenant shall surrender the Premises originally covered by this Lease to Landlord in the condition and in the manner provided in this Lease for the surrender of the Premises at the end of the Term; and (vi) upon and following the Relocation Date, the Offered Premises shall, for all purposes, be the "Premises" covered by this Lease.

(b) Landlord shall make the offer described above upon written notice to Tenant (with the date such notice is given being referred to below as the "**Notice Date**"), and the "**Effective Date**" for purposes of this Section shall be the date which is the ninety-first (91st) day after the Notice Date or, if later, the effective date stated in Landlord's notice. The "**Relocation Date**" for purposes of this Section shall be the Effective Date or such later date for the relocation of Tenant's business to the Offered Premises as Landlord may from time to time specify by written notice to Tenant. For a period of thirty (30) days following the Notice Date, Tenant shall have the right to accept the offer by written notice of acceptance given to Landlord. If Tenant desires that this Lease terminate, Tenant may give written notice to Landlord of its election to terminate this Lease or Tenant may simply fail to accept Landlord's offer within thirty (30) days following the Notice Date, which failure shall constitute a rejection by Tenant of the offer and an election by Tenant to terminate this Lease. In the event that Tenant shall fail to accept Landlord's offer, Landlord shall have no further obligation whatsoever to offer to Tenant any premises in the Project or to negotiate with Tenant for a lease covering the Offered Premises or any other premises in the Project.

(c) In the event that Tenant shall elect to terminate this Lease, either by written rejection of Landlord's offer to relocate or by failure to accept such offer within the time period specified above, the Term shall automatically terminate upon the Effective Date. In the event of such termination, Tenant shall, upon the Effective Date, surrender possession of the Premises to Landlord in the condition and in the manner provided in this Lease for the surrender of the Premises at the end of the Term. Following such surrender, Landlord shall pay to Tenant an amount equal to the then unamortized cost of the leasehold improvements installed by Tenant at its expense within the Premises at the commencement of the Term, such amortization to be calculated as of the Effective Date on a straight-line basis, without allowing interest, over the Term as originally provided in this Lease. Tenant shall furnish to Landlord such backup information as Landlord may reasonably request in connection with the determination of any amount due to Tenant in respect of the unamortized cost of leasehold improvements.

20.4 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes (except financial) beyond the reasonable control of the party obligated to perform ("**Force Majeure**"), shall excuse the performance by that party for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to Rent and Additional Rent to be paid by Tenant pursuant to this Lease.

20.5 Confidentiality. Landlord and Tenant agree that the terms of this Lease are confidential and constitute proprietary information of the parties hereto. Disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate with other tenants of the Project. Each of the parties hereto agrees that such party, and its respective partners, officers, directors, employees, agents and attorneys, shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of the other party hereto except pursuant to an order of a court of competent jurisdiction; provided, however, Landlord shall have the right to provide any exclusive use provision or any other reasonably relevant information or exhibit (including, without limitation, the Site Plan and a depiction of the Premises) to any tenant or prospective tenant of the Project. Provided, further, however, that Landlord may disclose the terms hereof to any lender or prospective lender, to any potential purchaser of Landlord's interest in the Project, to any insurer or prospective insurer of the Project (or any portion thereof) and to the City of Oxnard, and either party may disclose the terms hereof to its respective independent accountants who review its respective financial statements or prepare its respective tax returns, to any prospective transferee of all or any portion of their respective interests hereunder (including a prospective sublessee or assignee of Tenant), to any governmental entity, agency, person, or disclosures to the public, to whom disclosure is required by applicable law, regulation or duty of diligent inquiry and in connection with any action brought to enforce the terms of this Lease, on account of the breach or alleged breach hereof or to seek a judicial determination of the rights or obligations of the parties hereunder.

20.6 Charges. The charges described herein shall be in addition to any other rights or remedies available to Landlord at law or in equity or under this Lease. If Tenant fails to submit any required document, certificate, report, insurance policy or certificate as and when required in this Lease, Tenant shall pay to Landlord a "**Service Charge**" in the amount of One Hundred Dollars ($100.00) for each week or portion thereof that said failure continues; provided that no such charge shall be due if with respect to the first occurrence in any twelve (12) month period, Tenant cures such violation within twenty-four (24) hours following written notice to Tenant of such violation. After notice of such first violation, no prior notice of any subsequent violation shall be required. All amounts due under this Section shall be payable by Tenant within ten (10) days following demand therefor.

20.7 Surrender. Upon the expiration or earlier termination of the Term, Tenant shall peaceably and quietly surrender the Premises broom-clean and in the same condition as the Premises were in upon delivery of possession of same to Tenant by Landlord, reasonable wear and tear and any damage to the Premises which Tenant is not required to repair pursuant to Article 10 or Article 11 excepted. Subject to the foregoing, Tenant shall remove from the Premises all of Tenant's trade fixtures, furniture, equipment, signs, improvements and additions to the extent such items are not permanently affixed to the Premises, and immediately repair any damage occasioned to the Premises by reason of such removal so as to leave the Premises in a neat and clean condition. At Landlord's election, any property left in the Premises by Tenant after the expiration or earlier termination of the Term shall become the property of Landlord without any cost to Landlord, or Landlord may remove same from the Premises and dispose of all or any portion of such property, in which latter event Tenant shall, upon demand, pay to Landlord the actual expense of such removal and disposition together with the cost of repair of any and all damage to the Premises resulting from or caused by such removal. Tenant waives any and all rights it may have under California Civil Code §1980 et seq. and any successor statutes.

20.8 Holding Over. In the event that Tenant shall, without Landlord's prior written consent, fail to surrender possession of the Premises at the expiration or earlier termination of the Term, no holdover tenancy shall be created, and Tenant shall be a tenant at sufferance with no right whatsoever to continue to use or occupy the Premises. Any holding over with the prior written consent of Landlord after expiration of the Term shall be construed to be a tenancy from month to month at a minimum rent of one hundred fifty percent (150%) of the Annual Rent required to be paid by Tenant for the last year of the Term and shall otherwise be on the terms and conditions herein specified so far as applicable, including the payment of Additional Rent as herein provided. Any holding over without Landlord's consent shall entitle Landlord to recover possession of the Premises as provided by this Lease and by law.

20.9 Access to Premises. Landlord, its agents, contractors, servants and employees may enter the Premises following reasonable notice to Tenant and Landlord's good faith efforts to coordinate such entry with Tenant's on-site management so as to minimize interference with Tenant's business operations (except in a case of emergency): (a) to examine the Premises; (b) to perform any obligation or exercise any right or remedy of Landlord under this Lease; (c) to make repairs, alterations, improvements or additions to the Premises or to other portions of the Project as Landlord deems necessary or desirable; (d) to cure any Tenant default (after Landlord has provided Tenant notice and an opportunity to cure such default pursuant to Article 14); (e) to perform work necessary to comply with laws, ordinances, rules or regulations of any public authority or of any insurance underwriter; (f) to perform work that Landlord deems necessary to prevent waste or deterioration in connection with the Premises should Tenant fail to commence such repairs or, after commencing same, fail to diligently pursue such repairs to completion within three (3) days after written demand by Landlord; and (g) to show the Premises to prospective purchasers, tenants and/or occupants. If Landlord makes any repairs which Tenant is obligated to make pursuant to the terms of this Lease, Tenant shall pay the cost of such repairs to Landlord, as Additional Rent, promptly upon receipt of a bill from Landlord for same. Landlord shall be entitled to obtain an administration fee of fifteen percent (15%) on all such repairs billed to Tenant. In exercising its right of entry herein provided, Landlord shall not materially and unreasonably interfere with the operation of Tenant's business on the Premises. In addition, during the last one hundred eighty (180) days of the Term or earlier termination of this Lease, Landlord shall have the right to go upon the Premises to show same to prospective tenants during normal business hours and upon reasonable notice to Tenant.

20.10 General Provisions.

(a) Any waiver by either party of a breach by the other party of a covenant of this Lease shall not be construed as a waiver of a subsequent breach of the same covenant.

(b) It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, agreements and understandings, if any, between Landlord and Tenant. No provision of this Lease may be amended except by an agreement in writing signed by Landlord and Tenant.

(c) This Lease shall be governed by and construed in accordance with the laws of California without giving effect to the choice of law provisions thereof.

(d) Subject to the terms of this Lease, all rights and obligations of Landlord and Tenant under this Lease shall extend to and bind the respective heirs, executors, administrators and the permitted concessionaires, successors, subtenants and assignees of the parties. If more than one individual or entity comprises Tenant, the term, conditions, covenants and agreements imposed on each individual or entity that comprise Tenant under this Lease shall be joint and several.

(e) If Tenant or Landlord is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of the corporation, partnership or limited liability company (in his/her representative capacity only) represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of the corporation, partnership or limited liability company and that this Lease is binding upon the corporation, partnership or limited liability company.

(f) Tenant waives any and all rights of redemption granted under any present and future laws in the event Landlord obtains the right to possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

(g) Tenant represents and warrants that it has not had any dealings with any realtors, brokers or agents in connection with the negotiation of this Lease, except as may be specifically set forth in Section 1.22, and agrees to pay any realtors, brokers or agents not referenced in Section 1.22 and to hold Landlord harmless from the failure to pay any realtors, brokers or agents and from any cost, expense or liability for any compensation, commission or charges claimed by any other realtors, brokers or agents claiming by, through or on behalf of Tenant with respect to this Lease and/or the negotiation hereof.

(h) The voluntary or other surrender of this Lease by Tenant or a mutual cancellation of this Lease shall not effect a merger and shall, at Landlord's sole option, terminate all existing subleases or subtenancies or operate as an assignment to Landlord of any or all of such subleases or subtenancies.

(i) Any claim, demand, cause of action or defense of any kind by Tenant which is based on or arises in connection with this Lease, the negotiations prior to its execution, or any asserted statement, representation, arrangement, agreement or understanding between Landlord and Tenant which is not expressly stated in this Lease shall be barred unless Tenant commences an action thereon, or interposes in a legal proceeding a defense based thereon, within six (6) months after the date of the asserted inaction or omission, or the date of the occurrence of the event or action to which the claim, demand, cause of action or defense relates, whichever applies.

(j) Neither this Lease nor any memorandum hereof shall be recorded by either party hereto.

(k) The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Project. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease accruing after the date of such transfer or conveyance. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Project, the Premises and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

(l) Except where another rate of interest is specifically provided for in this Lease, any amount due from either party to the other under this Lease which is not paid when due, shall bear interest at the rate per annum ("**Interest Rate**") equal to the prime interest rate published from time to time by the Wall Street Journal plus two (2) percentage points (but in no event to exceed the maximum lawful rate) from the date such amount was originally due to and including the date of payment.

(m) Tenant shall pay all costs for work performed by or on account of it and shall keep the Premises and the Project free and clear of mechanics' liens or any other liens. Tenant shall give Landlord immediate notice of any lien filed against the Premises or the Project as a result of any work of improvement performed by or on behalf of Tenant. Tenant shall immediately cause any lien to be discharged or removed of record by either paying the amount thereof or recording a statutory lien release bond in an amount equal to one hundred fifty percent (150%) of the amount of said lien, or such other amount as may be adequate to cause the lien to be released as an encumbrance against the Premises and the Project. If Tenant shall fail to do so within five (5) days after written demand by Landlord to cause the effect of said claim, stop notice or lien to be removed, rescinded or dismissed, in addition to such other remedies it may have, Landlord shall have the right (but not the obligation) to use whatever means in its discretion it may deem appropriate to cause said claim, stop notice, or lien to be rescinded, discharged, compromised, dismissed or removed including, without limitation, (a) posting a bond pursuant to California Civil Code §§3143 and/or 3171; or (b) paying a sum sufficient to discharge, in full, any and all such claims, demands, or liens. Any such sums paid by Landlord, including attorneys' fees and bond premiums, shall be immediately due and payable to Landlord by Tenant.

(n) Landlord and Tenant desire and intend that any disputes arising between them with respect to or in connection with this Lease be subject to expeditious resolution in a court trial without a jury. Therefore, to the extent permitted by law, Landlord and Tenant each hereby waive the right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought by either Landlord against Tenant or Tenant against Landlord on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

(o) In the event that, at any time after the date of this Lease, either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its actual attorneys' fees, and all fees, costs and expenses incurred in connection with such action or proceeding, including, without limitation, any post-judgment fees, costs or expenses incurred on any appeal or in collection of any judgment. If Tenant or any indemnitor of Landlord files for protection under or otherwise becomes subject to the bankruptcy laws, then each of them individually agrees that Landlord shall be entitled to recover, as part of any claim in any such bankruptcy case, its actual attorneys' fees in connection with the assertion of its rights and remedies, including, without limitation, fees and costs incurred in connection with advising Landlord as to its rights and enforcement (whether through negotiation, legal proceedings or otherwise) of its rights under this Lease.

(p) Landlord reserves the absolute right to effect such other tenancies in the Project as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the Term of this Lease, occupy any space in the Project.

(q) (Intentionally Omitted)

(r) Rent required to be paid pursuant to the provisions of this Lease shall be paid in lawful currency of the United States of America or, upon not less than thirty (30) days' written notice from Landlord to Tenant, by check; provided, however, that if Tenant's check should for any reason fail to clear the bank and is returned unpaid to Landlord twice in any twelve (12) month period, then for the next twelve (12) calendar months, at Landlord's option, Tenant shall pay Rent by cashier's or certified check.

(s) In the event that at any time during the Term permanent or temporary storefronts are not in place at the Premises, Tenant shall, at Tenant's sole cost and expense, erect temporary barricades and screening approved by Landlord in order to insure safety of pedestrians, to reasonably contain construction dust and debris and to prevent unreasonable interference with pedestrian use of Common Area sidewalks or the visibility of the premises of other tenants of the Project. To the extent a rear door exists at the Premises, all construction activity undertaken by Tenant in the Premises must be coordinated from the rear of the Premises, with all construction personnel and materials entering and leaving the Premises from the rear of the Premises.

(t) Landlord may, but shall have no obligation to, from time to time, employ one or more persons or entities to patrol or provide security for the Common Areas. Notwithstanding any such activity, Tenant shall have the sole responsibility of providing security for the Premises and the persons therein. Under no circumstances shall Landlord be liable to Tenant or to any other person by reason of any theft, burglary, robbery, assault, trespass, unauthorized entry, vandalism, or any other act of any third person occurring in or about the Premises. Nothing contained herein shall be deemed to create any liability upon Landlord for any damage to motor vehicles of customers or employees or for loss of property from within such motor vehicles. Tenant agrees to pay such costs to Landlord within thirty (30) days following reasonable evidence thereof. Subject to Landlord's approval of Tenant's plans and the terms of this Lease Tenant shall be permitted at its sole expense to install or utilize its own security measures (such as a security system), so long as such systems and services are compatible with Building systems. If Landlord determines in its sole discretion that an emergency in the Premises requires Landlord to gain access to Tenant's Premises, Tenant hereby authorizes Landlord to take such action as may be necessary to gain access, including to forcibly enter the Premises if it is not otherwise generally accessible (and if reasonably practicable given the nature of the emergency, Landlord will use commercially reasonable efforts to provide to Tenant notice of such entry). In such event, Landlord shall have no liability whatsoever to Tenant as a result of such forced entry, and Tenant shall pay all costs and expenses for repairing or reconstructing any entrance, corridor, door or other portions of the Premises and shall also be responsible for any and all damage to the Premises arising out of or resulting from any delay or difficulty in accessing the Premises. Notwithstanding the foregoing, in no event shall Landlord be liable for personal injury, property damage or any other losses or damage for any error or failure of the security access measures in place at the Premises from time to time.

(u) The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until it has been executed by Landlord and delivered to Tenant. Neither party may claim any legal rights against the other by reason of actions taken in reliance on the submission of this Lease including any partial performance of the transactions contemplated in it. Tenant acknowledges and agrees that Landlord will have the right to terminate the negotiations of the Lease or refuse to execute this Lease for any reason or no reason and that neither party owes the other party any duty to negotiate a final Lease. Execution of this Lease by Tenant shall be irrevocable; provided, however, the return to Landlord of Tenant-executed copies of this Lease shall not be binding upon Landlord, notwithstanding any preparation or anticipatory reliance or expenditures by Tenant or any time interval, until Landlord has in fact executed and actually delivered a fully-executed copy of this Lease to Tenant.

(v) (Intentionally Omitted)

(w) (Intentionally Omitted)

(x) All of the exhibits referenced in this Lease are incorporated herein by this reference

(y) Time is of the essence of this Lease and each of its provisions. All references in this Lease to "days" shall mean calendar days unless specifically modified herein to be "business" days.

(z) The invalidity or unenforceability of any provision of this Lease (except for Tenant's obligation to pay Rent) shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by Applicable Law.

(aa) No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

(bb) Tenant acknowledges that, in accordance with the terms of the Owner Participation Agreement (OPA), this Lease is required to include, and Tenant, as lessee, hereby agrees to, the following:

> "The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, marital status, national origin, ancestry, mental or physical disability, sexual orientation or any other status protected by

law, in the leasing, subleasing, transferring, use or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

(cc) This Lease may be signed in multiple counterparts each of which shall be deemed an original, but all of which shall, taken together, be but one and the same instrument. Delivery by facsimile, or e-mail of a PDF copy, of a counterpart of this Lease executed by Landlord or Tenant shall constitute delivery by such party of such party's executed counterpart of this Lease.

(dd) The Premises have not undergone inspection by a certified access specialist to evaluate compliance with the Americans With Disabilities Act of 1990 (as amended), California Senate Bill 1608 (known as the Construction-Related Accessibility Standards Compliance Act) or any other applicable legal requirements.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE ON NEXT PAGE]

SIGNATURE PAGE TO
LEASE
BY AND BETWEEN
SOCM I, LLC
&
CITY OF OXNARD

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease on the day and year first above written.

"Landlord"

SOCM I, LLC,
a Delaware limited liability company

By: Shea Properties Management Company, Inc., a Delaware corporation, its Manager

By: ______________________
Name: ______________________
Title: ______________________

By: ______________________
Name: ______________________
Title: ______________________

CA Broker's License #01382566

"Tenant"

CITY OF OXNARD

____
Karen R. Burnham, Interim City Manager

ATTEST:

____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

For
____
Stephen M. Fischer, Acting City Attorney

APPROVED AS TO INSURANCE:

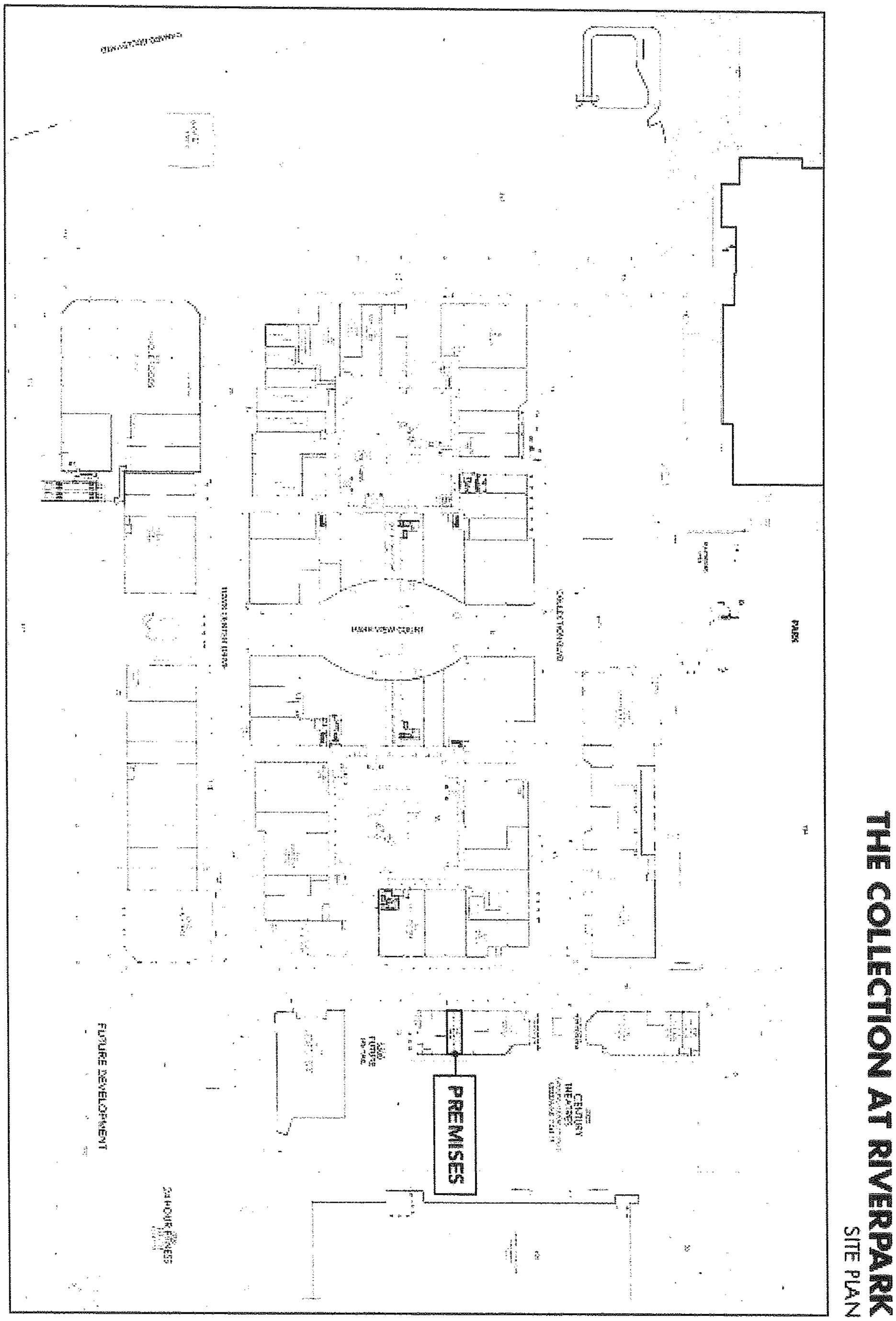
____
James Cameron, Risk Manager

APPROVED AS TO CONTENT:

____
Jeri Williams, Police Chief

EXHIBIT A

SITE PLAN



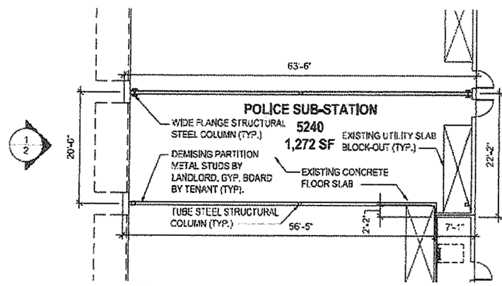
TENANT'S INITIALS HERE: ________________

Landlord, at any time, may change the shape, size, location, number, extent and timing of the improvements shown on this Site Plan and eliminate, add or relocate any improvements to any portion of the Project, and may add land to and/or withdraw land from the Project. Nothing depicted hereon shall constitute a representation, warranty or covenant that any of the depicted improvements will be constructed.

EXHIBIT B

DEPICTION OF THE PREMISES

LEASE OUTLINE DRAWINGS
POLICE SUB-STATION
5240



1. FLOOR PLAN

NOTE:
LEASE LINE SHOWN IS FOR PLANNING PURPOSES ONLY. FINAL LEASE LINE WILL BE DETERMINED BY FINAL CONFIGURATION OF BUILDING.

SIGNAGE LOCATION AND SIZE WILL BE DETERMINED BY TENANT HANDBOOK.

LANDLORD, AT ANY TIME, MAY CHANGE THE SHAPE, SIZE, LOCATION, NUMBER, AND EXTENT OF THE IMPROVEMENTS SHOWN ON THIS SITE PLAN AND ELIMINATE, ADD OR RELOCATE ANY IMPROVEMENTS TO ANY PORTION OF THE PROJECT, AND MAY ADD LAND TO AND/OR WITHDRAW LAND FROM THE PROJECT.

REQUIRED DOORS AND FRAMES SHALL BE PROVIDED AND INSTALLED BY EACH TENANT (AND DOORS SHOWN IN PLANS ARE SUGGESTED ONLY; FINAL DETERMINATION IS BY TENANT). IT IS REQUIRED THAT THE TENANT, CONTRACTOR, ARCHITECT OR REPRESENTATIVE MUST VISIT THE SITE AND FAMILIARIZE AND VERIFY ALL DIMENSIONS AND SIZES OF MAJOR ITEMS SUCH AS STRUCTURAL ELEMENTS, ELECTRICAL RUNS, PLUMBING LOCATIONS AND ITEMS NOT COVERED BY THIS DRAWING. THIS SHALL BE DONE AT TENANT'S EXPENSE. WHEN EXIT PASSAGEWAYS ARE PRESENT, PROVIDE A SECONDARY EXIT FROM A TENANT'S SPACE, DOORS SHALL BE ONE-HOUR DOORS. SUCH DOORS SHALL BE SELF CLOSING AND BE SO MAINTAINED OR SHALL BE AUTOMATIC CLOSING BY SMOKE DETECTOR ACTUATION. PRIOR TO FINALIZING TERMS AND CONDITIONS, LEASING AND CENTER MANAGEMENT MUST RESOLVE EXISTING PER APPLICABLE CODES. SERVICE AREA, EMPTY ELECTRICAL CONDUIT, SEWER, WATER AND EMPTY TELEPHONE CONDUIT LOCATED WITHIN THE LEASE LINE. TENANT MUST FIELD VERIFY ALL DIMENSIONS AND CONDITIONS.

TENANT'S INITIALS HERE: ____________

POLICE SUB-STATION - 5240
FLOOR PLAN (SHEET 1 OF 2)

N
0 5' 10' 20'
SCALE: 1" = 20'-0" AUGUST 22, 2013

SOCM I, LLC
2751 Park View Court, Suite 261
Oxnard, CA 93036
Phone (805) 988-7641 Fax (805) 988-7315

THE COLLECTION
RIVERPARK
Oxnard, California

B | R | R
architecture

EXHIBIT C

WORK LETTER AGREEMENT
(TURNKEY W/ ALLOWANCE)

1. **TENANT IMPROVEMENTS**. Landlord shall construct and, except as provided below to the contrary, pay for the entire cost of constructing the tenant improvements ("**Tenant Improvements**") described by the plans and specifications identified in Schedule 1 attached hereto (the "**Plans**"). Tenant may request changes to the Plans provided that (a) the changes shall not be of a lesser quality than Landlord's standard specifications for tenant improvements for the Project, as the same may be changed from time to time by Landlord (the "**Standards**"); (b) the changes conform to applicable governmental regulations and necessary governmental permits and approvals can be secured; (c) the changes do not require building service beyond the levels normally provided to other tenants in the Project; (d) the changes do not have any adverse effect on the structural integrity or systems of the Premises; (e) the changes will not, in Landlord's opinion, unreasonably delay construction of the Tenant Improvements; and (f) Landlord has determined in its sole discretion that the changes are of a nature and quality consistent with the overall objectives of Landlord for the Premises. If Landlord approves a change requested by Tenant, then, as a condition to the effectiveness of Landlord's approval, Tenant shall pay to Landlord upon demand by Landlord the increased cost attributable to such change, as reasonably determined by Landlord. To the extent any such change results in a delay of completion of construction of the Tenant Improvements, then such delay shall constitute a delay caused by Tenant as described below.

2. **ALLOWANCE; EXCESS COSTS**. Landlord hereby grants to Tenant an allowance in the amount of $76,320.00 (calculated at a rate of $60.00 per square foot of Floor Area within the Premises) (the "**Allowance**"), which Allowance shall be applied toward the cost of completing the Tenant Improvements. Tenant shall pay all costs of completing the Tenant Improvements in excess of the Allowance (collectively, "**Excess Costs**"), including the costs of any changes or additions to the Tenant Improvements (as referenced in Section 1 above), which changes or additions shall be subject to Landlord's written approval. Tenant shall pay to Landlord the entire amount of any Excess Costs upon demand by Landlord. Tenant shall not be entitled to receive any cash payment or credit against rent or otherwise for any unused portion of the Allowance which is not used to pay for the Tenant Improvements.

3. **CONSTRUCTION OF TENANT IMPROVEMENTS**. Upon Tenant's payment to Landlord of the total amount of the cost of any changes to the Plans, if any, Landlord's contractor shall commence and diligently proceed with the construction of the Tenant Improvements, subject to Tenant Delays (as described in Section 5 below) and Force Majeure Delays (as described in Section 6 below). Promptly upon the commencement of the Tenant Improvements, Landlord shall furnish Tenant with a construction schedule letter setting forth the projected completion dates therefor and showing the deadlines for any actions required to be taken by Tenant during such construction, and Landlord may from time to time during construction of the Tenant Improvements modify such schedule.

4. **COMMENCEMENT DATE AND SUBSTANTIAL COMPLETION**.

(a) **Commencement Date**. The Term of the Lease shall commence on the date (the "**Commencement Date**") which is the earlier of:

(i) the date Tenant moves into the Premises to commence operation of its business in all or any portion of the Premises; or

(ii) the date the Tenant Improvements have been "substantially completed" (as defined below); provided, however, that if substantial completion of the Tenant Improvements is delayed as a result of any Tenant Delays described in Section 5 below, then the Commencement Date as would otherwise have been established pursuant to this Section 4(a)(ii) shall be accelerated by the number of days of such Tenant Delays.

(b) **Substantial Completion; Punch-List**. For purposes of Section 4(a)(ii) above, the Tenant Improvements shall be deemed to be "**substantially completed**" when Landlord: (a) is able to provide Tenant reasonable access to the Premises; (b) has substantially completed the Tenant Improvements in accordance with the Plans, other than decoration and minor "punch-list" type items and adjustments which do not materially interfere with Tenant's access to or use of the Premises; and (c) has obtained a temporary certificate of occupancy or other required equivalent approval from the local governmental authority permitting occupancy of the Premises. Within ten (10) days after such substantial completion, Tenant shall conduct a walk-through inspection of the Premises with Landlord and provide to Landlord a written punch-list specifying those decoration and other punch-list items which require completion, which items Landlord shall thereafter diligently complete; provided, however, that Tenant shall be responsible, at Tenant's sole cost and expense, for the remediation of any items on the punch-list caused by Tenant's acts or omissions.

(c) **Delivery of Possession**. Landlord agrees to deliver possession of the Premises to Tenant when the Tenant Improvements have been substantially completed in accordance with Section (b) above. The parties estimate that Landlord will deliver possession of the Premises to Tenant and the Term of this Lease will commence on or before December 15, 2013 (the "**Estimated Commencement Date**"). Landlord shall use its commercially reasonable efforts to cause the Premises to be substantially completed on or before the Estimated Commencement Date. Tenant agrees that if Landlord is unable to deliver possession of the Premises to Tenant on or prior to the Estimated Commencement Date, the Lease shall not be void or voidable, nor shall Landlord be liable to

Tenant for any loss or damage resulting therefrom, nor shall the expiration date of the Term be in any way extended, unless such late delivery is due solely to the gross negligence or willful misconduct of Landlord. If Landlord is delayed in delivering possession of the Premises due to Landlord's gross negligence or willful misconduct, then, as Tenant's sole remedy, the Commencement Date and the expiration date of the Term shall be extended one (1) day for each day Landlord is delayed in delivering possession of the Premises to Tenant.

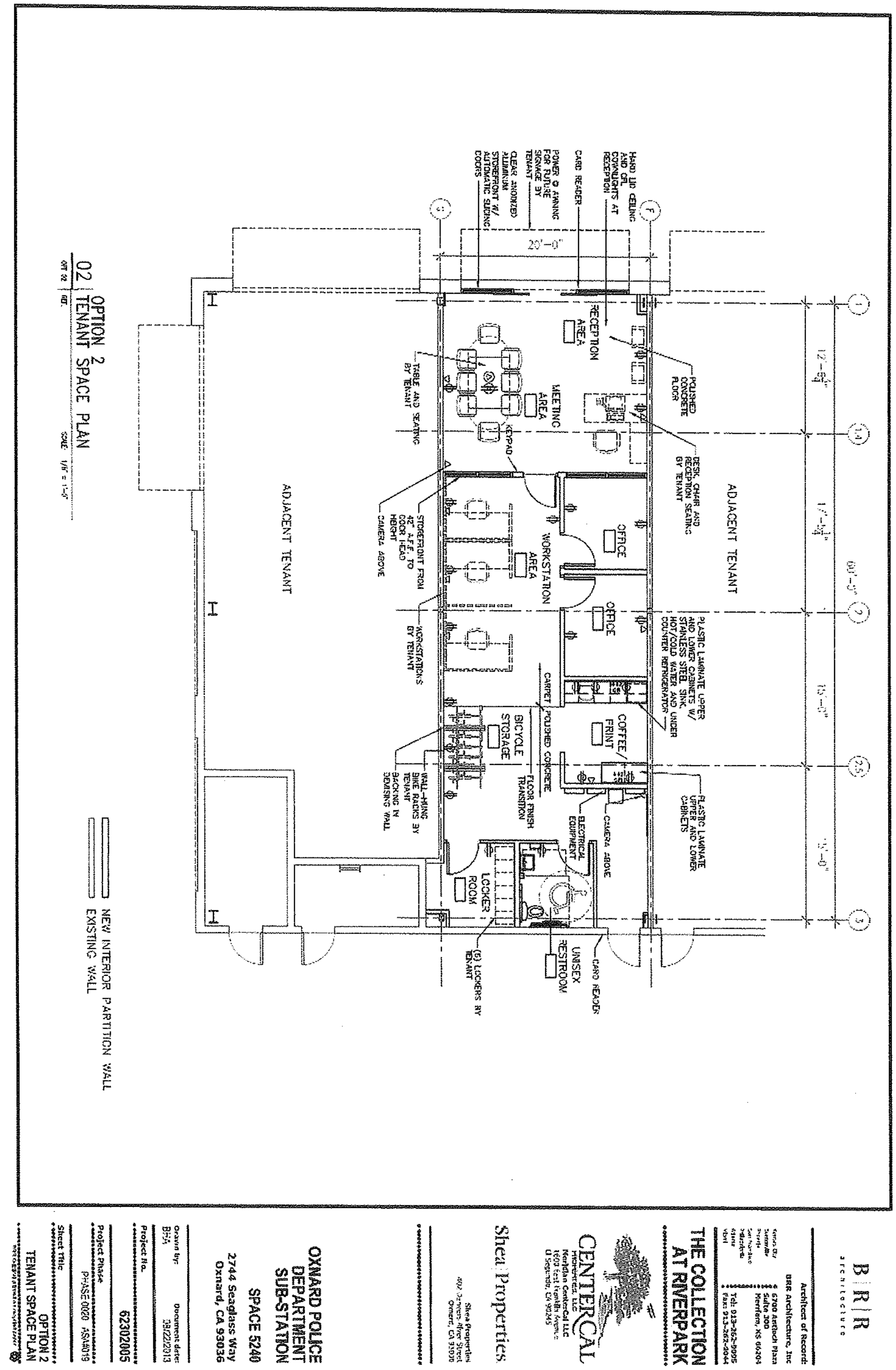
5. **TENANT DELAYS**. For purposes of this Work Letter Agreement, "**Tenant Delays**" shall mean any delay in the completion of the Tenant Improvements resulting from any or all of the following: (a) Tenant's failure to timely perform any of its obligations pursuant to this Work Letter Agreement, including any failure to complete, on or before the due date therefor, any action item which is Tenant's responsibility pursuant to the work schedule or any schedule delivered by Landlord to Tenant pursuant to this Work Letter Agreement; (b) Tenant's changes to the Plans; (c) Tenant's request for materials, finishes, or installations which are not readily available or which are incompatible with the Project standards; (d) any delay of Tenant in making payment to Landlord for Tenant's share of any costs in excess of the Allowance; or (e) any other act or failure to act by Tenant, Tenant's employees, agents, architects, independent contractors, consultants and/or any other person performing or required to perform services on behalf of Tenant.

6. **FORCE MAJEURE DELAYS**. For purposes of this Work Letter, "**Force Majeure Delays**" shall mean any actual delay beyond the reasonable control of Landlord in the construction of the Tenant Improvements, which is not a Tenant Delay and which is caused by many of the causes described in Section 20.4 of the Lease.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

SCHEDULE 1 TO EXHIBIT C

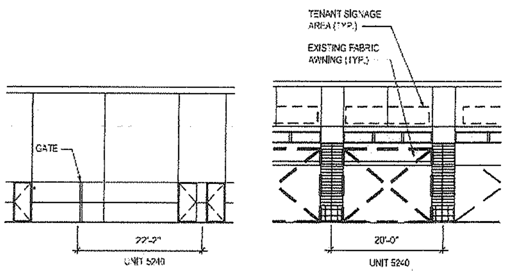
PLANS



TENANT'S INITIALS HERE: ________________

LEASE OUTLINE DRAWINGS
POLICE SUB-STATION
5240

TENANT DESIGN AREA



2. EAST ELEVATION

1. WEST ELEVATION

NOTE:
LEASE LINE SHOWN IS FOR PLANNING PURPOSES ONLY. FINAL LEASE LINE WILL BE DETERMINED BY FINAL CONFIGURATION OF BUILDING.

SIGNAGE LOCATION AND SIZE WILL BE DETERMINED BY TENANT HANDBOOK.

LANDLORD, AT ANY TIME, MAY CHANGE THE SHAPE, SIZE, LOCATION, NUMBER, AND EXTENT OF THE IMPROVEMENTS SHOWN ON THIS SITE PLAN AND ELIMINATE, ADD OR RELOCATE ANY IMPROVEMENTS TO ANY PORTION OF THE PROJECT, AND MAY ADD LAND TO AND/OR WITHDRAW LAND FROM THE PROJECT.

REQUIRED DOORS AND FRAMES SHALL BE PROVIDED AND INSTALLED BY EACH TENANT (AND DOORS SHOWN IN PLANS ARE SUGGESTED ONLY; FINAL DETERMINATION IS BY TENANT). IT IS REQUIRED THAT THE TENANT, CONTRACTOR, ARCHITECT OR REPRESENTATIVE MUST VISIT THE SITE AND FAMILIARIZE AND VERIFY ALL DIMENSIONS AND SIZES OF MAJOR ITEMS SUCH AS STRUCTURAL ELEMENTS, ELECTRICAL RUNS, PLUMBING LOCATIONS AND ITEMS NOT COVERED BY THIS DRAWING. THIS SHALL BE DONE AT TENANT'S EXPENSE. WHEN EXIT PASSAGEWAYS ARE PRESENT, PROVIDE A SECONDARY EXIT FROM A TENANT'S SPACE. DOORS SHALL BE ONE-HOUR DOORS. SUCH DOORS SHALL BE SELF CLOSING AND BE SO MAINTAINED OR SHALL BE AUTOMATIC CLOSING BY SMOKE DETECTOR ACTUATION. PRIOR TO FINALIZING TERMS AND CONDITIONS, LEASING AND CENTER MANAGEMENT MUST RESOLVE EXISTING PER APPLICABLE CODES, SERVICE AREA, EMPTY ELECTRICAL CONDUIT, SEWER, WATER AND EMPTY TELEPHONE CONDUIT LOCATED WITHIN THE LEASE LINE. TENANT MUST FIELD VERIFY ALL DIMENSIONS AND CONDITIONS.

TENANT'S INITIALS HERE: ____________

POLICE SUB-STATION - 5240
ELEVATIONS (SHEET 2 OF 2)

0 5' 10' 20'
SCALE: 1" = 20'-0" AUGUST 22, 2013

SOCM I, LLC
2751 Park View Court, Suite 261
Oxnard, CA 93036
Phone (805) 988-7641 Fax (805) 988-7815

THE COLLECTION
RIVERPARK
Oxnard, California

B|R|R
architecture

EXHIBIT D

COMMENCEMENT DATE LETTER

TO: ______________________________
____
____

DATE: ___________________________

RE: Lease; Date of Lease _____________ ("Lease"); between ______________________________ ("Tenant") and SOCM I, LLC, a Delaware limited liability company ("Landlord").

Kindly acknowledge the following:

1. In accordance with Section 1.13 of the Lease, the Commencement Date of the Term is ___________, 20__ and the expiration date is _________________, unless the Option is properly and timely exercised by Tenant.

2. In accordance with Article 2 of the Lease:

(a) The Floor Area of the Premises is ______________ square feet; and

(b) The Rent is ____________________ Dollars ($__________) per month.

3. Tenant has accepted possession of the Premises described in the Lease.

4. The Lease is in full force and effect and has not been modified or amended.

5. Landlord has Substantially Completed all of Tenant Improvements, and satisfied any other conditions precedent to Tenant's acceptance of the Premises and the effectiveness of this Lease.

If Tenant fails to return this notice within ten 10 days of the date set forth above, Tenant shall conclusively be deemed to have approved the above.

Very truly yours,

SOCM I, LLC, a Delaware limited liability company

By: Shea Properties Management Company, Inc., a Delaware corporation, its Manager

By: ______________________________
Name: ______________________________
Title: ______________________________

By: ______________________________
Name: ______________________________
Title: ______________________________

Tenant hereby confirms the foregoing.

TENANT:

______________________________,
a ______________________________

By: ______________________________
Its: ______________________________
Date: ______________________________

EXHIBIT E

(Intentionally Omitted)

EXHIBIT F

RULES AND REGULATIONS

Tenant shall comply with the following rules and regulations:

1. Tenant shall keep the Premises in a neat and clean condition, free from any objectionable noises, odors or nuisances, shall operate its business without unreasonable noise or vibration emanating from the Premises, and shall comply with all applicable health, safety and police laws, ordinances and regulations of any governmental authority having jurisdiction over the Premises or the Project; provided, however, the foregoing shall not be construed to require Tenant to perform any repairs which are the obligation of Landlord pursuant to this Lease. In addition, Tenant shall, at its sole cost and expense, keep Tenant's installation and/or pick-up areas adjacent to the Premises in a neat and clean condition, and shall be responsible for removing from the Project any litter or debris resulting from Tenant's use of such installation and/or pick-up areas.

2. Tenant shall not sell merchandise from vending machines or allow any coin or token operated vending machine on the Premises, except those provided for the convenience of Tenant's employees and pay telephones provided for the convenience of its customers.

3. Tenant shall deposit trash and rubbish only within receptacles approved by Landlord and at locations designated by Landlord.

4. Tenant shall not display or sell merchandise or allow carts, signs or any other object to be stored or to remain outside the Premises.

5. Tenant shall not erect any aerial or antenna on the roof, exterior walls or any other portion of the Premises.

6. Tenant shall not solicit or distribute materials in the Common Area.

7. Tenant shall neither conduct on the Premises, nor advertise with respect to the Premises, any liquidation, "going out of business", distress, "lost our lease" or similar sale.

8. No advertising medium shall be utilized by Tenant which can be heard or seen outside the Premises including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions; provided, however, Tenant shall be permitted to use music and video within the Premises as part of its merchandising so long as the volume of same is maintained at levels which do not cause disturbance of other tenants of the Project. Tenant shall not display, paint or place any handbill, bumper sticker or other advertising device on any vehicle parked in the Common Area. Tenant shall not distribute any handbills or other advertising matter in the Project.

9. Tenant shall adequately staff the Premises with sufficient employees to handle the maximum business and carry sufficient stock of merchandise of such amount, character and quality to accomplish this purpose.

10. Tenant shall keep the display windows and signs, if any, well lighted during the hours of sundown to 11:00 p.m.

11. Tenant shall keep the Premises and exterior and interior portions of windows, doors and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition.

12. Tenant shall warehouse, store or stock at the Premises only such merchandise as Tenant intends to offer for sale at retail.

13. Tenant shall use for office or other non-selling purposes only such space as is reasonably required for Tenant's business.

14. Tenant shall not use or suffer or permit to be used the Premises or any part thereof in any manner that will constitute a nuisance or unreasonable annoyance to the public, to other occupants of the Project or to Landlord, or that will injure the reputation of the Project, or for any hazardous purpose or in any manner that will impair the structural strength of the building.

15. Tenant's employees and agents shall not loiter in the parking area or in the landscaped areas or other driveways, entrances and exits to the Project, and they shall use the same only as passageways to and from their respective work area.

16. Tenant shall not mark, drive nails, screw or drill into, paint or in any way deface the exterior walls, roof, foundations, bearing walls or pillars without the prior written consent of Landlord. The expense of repairing any breakage, stoppage or damage resulting from a violation of this rule shall be borne by Tenant. No boring or cutting of wires shall be allowed, except with the consent of Landlord.

17. No awning or shade shall be affixed or installed over or in the show windows or the exterior of the Premises by Tenant, except with the prior written consent of Landlord. If Tenant desires window drop curtains in the show windows of the Premises, the same must be of such uniform shape, color, material and make as may be prescribed by Landlord and must be put up as directed by Landlord (and shall be paid for by Tenant).

18. Tenant shall not use any machinery within the Premises, even though its installation may have been permitted, which may cause any unreasonable noise or jar, or tremor to the floors or walls, or which by its weight might injure the floors of the Premises.

19. Except for customary office equipment or trade fixtures or package handling equipment, no machinery of any kind will be allowed in the Premises without the written consent of Landlord. Landlord may limit weight, size and position of all safes, fixtures and other equipment used in the Premises. In the event Tenant shall require heavy equipment in the Premises, Tenant shall notify Landlord of such fact and shall pay the cost of structural bracing to accommodate same. All damage done to the Premises or the Project by delivering, installing, removing or maintaining heavy equipment shall be repaired at the expense of Tenant.

20. Tenant's agents and employees shall not interfere in any way with other tenants or patrons of the Project, nor bring into nor keep within the boundaries of the Project any animal or bird, or any bicycle or other vehicle, except such vehicles as are permitted to park in the parking area, and shall park in the areas designated from time to time for employee parking generally.

21. All freight must be moved into, within and out of the Premises only during such hours as may be prescribed by applicable governmental rules, regulations and ordinances, and according to such reasonable rules as may be promulgated from time to time by Landlord.

22. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of the rules and regulations of the Project.

23. During emergency conditions, and after normal business hours, Landlord reserves the right to close and keep locked any and all entrances and exit doors of the Project and gates or doors closing the parking areas.

24. Landlord reserves the right at any time to change or rescind any one or more of these rules or regulations or to make such other and further reasonable rules and regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises and Project, and for the preservation of good order therein, as well as for the convenience of occupants, tenants and patrons of the Project. Tenant shall abide by any such additional rules or regulations. No waiver of any rule or regulation by Landlord shall be effective unless expressed in writing and signed by Landlord.

25. In no event shall the Tenant: (i) permit to be installed at the Premises any gaming machines, (ii) permit the Premises to be used as a sports or other entertainment viewing facility (except that single or multiple television and "big screen" television units within restaurants shall be permitted), (iii) permit the Premises to be used as a billiard room or pool hall, or for the placement of any pool tables (except that pool tables may be included within certain restaurants in the Project provided that Landlord has consented in writing to the same), (iv) permit the Premises to be used as an off-track betting parlor, massage parlor, discotheque, dance hall, banquet hall, night club, lounge, bar or tavern (except that bars or the service of alcoholic beverages and/or dancing, music and other forms of entertainment may be included within restaurants in the Project provided that Landlord has consented in writing to the same), a pornographic or adult store or entertainment venue, (v) conduct any use at the Premises that creates a nuisance or materially increases noise or the emission of dust, odor, smoke or gases, or materially increases fire, explosion, or radioactive hazards, (vi) conduct its business with drive-up or drive-through lanes except as expressly agreed to by Landlord in writing, and (vii) permit any use at the Premises involving Hazardous Materials (except as may be customary in first class shopping centers in the metropolitan area in which the Project is located).

PARKING RULES AND REGULATIONS

In addition to the foregoing rules and regulations and the parking provisions contained in the Lease to which this Exhibit F is attached, the following rules and regulations shall apply with respect to the use of the Project's parking areas.

1. Every parker is required to park and lock his/her own vehicle. All responsibility for damage to or loss of vehicles is assumed by the parker and Landlord shall not be responsible for any such damage or loss by water, fire, defective brakes, the act or omissions of others, theft, or for any other cause.

2. Tenant shall not leave vehicles in the parking areas overnight nor park any vehicles in the parking areas other than automobiles, motorcycles, motor driven or non motor driven bicycles or four wheeled trucks.

3. No overnight or extended term storage of vehicles shall be permitted; provided, however, a vehicle may be parked overnight if and only if such overnight parking is registered with security (if any) and the reason for such overnight parking is (a) the vehicle has broken down and needs to be towed, or (b) the owner of the vehicle is an employee of a tenant of the Project and is traveling overnight for business purposes. The vehicle owner must provide the following information to security (if any) for overnight parking registration: (i) owner's name, company name, space number and telephone number; (ii) vehicle year, make and model; (iii) vehicle license number; (iv) location of vehicle; and (v) the dates the vehicle will be left in the parking areas. Notwithstanding the foregoing, if any vehicle registered with security has been reported as stolen to the police, such vehicle will be immediately towed.

4. Vehicles must be parked entirely within painted stall lines of a single parking stall.

5. All directional signs and arrows must be observed.

6. The speed limit within all parking areas shall be five (5) miles per hour.

7. Parking is prohibited: (a) in areas not striped for parking; (b) in aisles; (c) where "no parking" signs are posted; (d) on ramps; (e) in cross hatched areas; and (f) in such other areas as may be designated by Landlord.

8. Washing, waxing, cleaning or servicing of any vehicle in any area not specifically reserved for such purpose is prohibited.

9. Landlord may refuse to permit any person who violates these rules to park in the parking areas, and any violation of the rules shall subject the vehicle owner to one (1) warning and thereafter the vehicle shall be subject to removal, at such vehicle owner's expense, except that a violation of rules 2 or 3 shall be subject to the immediate removal of the vehicle without warning, at such vehicle owner's expense.

EXHIBIT G

FORM OF ESTOPPEL CERTIFICATE

TENANT: ____________________

PROJECT: The Collection at Riverpark, Oxnard, California

TENANT ESTOPPEL CERTIFICATE

To: [Landlord's Lender or Agent], its successors and assigns

Re: Lease Pertaining to the project commonly known as The Collection at Riverpark in Oxnard, California (the "Project")

Ladies and Gentlemen:

The undersigned, as tenant ("Tenant"), hereby states and declares as follows:

1. Tenant is the lessee under that certain lease (the "Lease") pertaining to the Project which is dated ______________.

2. The name of the current Landlord is: ________________________.

3. The Lease is for the following portion of the Project: ________________________ (the "Demised Premises").

4. The Lease has not been modified or amended except by the following documents (if none, so state): ____________________.

5. The initial term of the Lease commenced on ________, 2____ and shall expire on ______, 2_____, unless sooner terminated in accordance with the terms of the Lease. **[Alterative if term has not commenced:** The initial term of the Lease has not yet commenced.] Tenant has no option to renew or extend the term of the Lease, except as follows (if none, so state): ____________________.

6. The Rent Commencement Date is ________________________.

7. The Lease, as it may have been modified or amended, contains the entire agreement of Landlord and Tenant with respect to the Demised Premises, and is in full force and effect.

8. As of the date hereof, Tenant is occupying the Demised Premises and is paying rent on a current basis under the Lease.

   (a) The minimum monthly or base rent currently being paid by Tenant for the Demised Premises pursuant to the terms of the Lease is $______ per month.

   (b) Percentage rent ("Percentage Rent"), if any, due under the Lease has been paid through ________ and the amount of Percentage Rent for the last period paid was $________.

   (c) Common area maintenance, taxes, insurance and other charges (the "Reimbursables"), if any, due under the Lease have been paid through ______________.

   [Alterative if occupancy and rent payment have not commenced: 7. (Intentionally omitted)]

9. Tenant has accepted possession of the Demised Premises, and all items of an executory nature relating thereto to be performed by Landlord have been completed, including, but not limited to, completion of construction thereof (and all other improvements required under the Lease) in accordance with the terms of the Lease and within the time periods set forth in the Lease. Landlord has paid in full any required contribution towards work to be performed by Tenant under the Lease, except as follows (if none, so state): ______________.

   [Alterative if possession not delivered: 8. (Intentionally omitted)]

10. The Demised Premises shall be expanded by the addition of the following space on the dates hereinafter indicated (if none, so state): ________________.

11. No default or event that with the passage of time or notice would constitute a default (hereinafter collectively a "Default") on the part of Tenant exists under the Lease in the performance of the terms, covenants and conditions of the Lease required to be performed on the part of Tenant.

12. To the best of Tenant's knowledge, no Default on the part of Landlord exists under the Lease in the performance of the terms, covenants and conditions of the Lease required to be performed on the part of Landlord.

13. Tenant has no option or right to purchase all or any part of the Project.

14. Tenant has not assigned, sublet, transferred, hypothecated or otherwise disposed of its interest in the Lease and/or the Premises, or any part thereof.

15. Neither the Lease nor any obligations of Tenant thereunder have been guaranteed by any person or entity, except as follows (if none, so state): ______________________.

16. No hazardous substances are being generated, used, handled, stored or disposed of by Tenant on the Demised Premises or on the Project in violation of any applicable laws, rules or regulations or the terms of the Lease.

17. No rentals are accrued and unpaid under the Lease, except for Percentage Rent, if any, or Reimbursables, if any, which are not yet due and payable.

18. No prepayments of rentals due under the Lease have been made for more than one month in advance. No security or similar deposit has been made under the Lease, except for the sum of $_____ which has been deposited by Tenant with Landlord pursuant to the terms of the Lease.

19. Tenant has no defense as to its obligations under the Lease and asserts no setoff, claim or counterclaim against Landlord.

20. Tenant has not received notice of any assignment, hypothecation, mortgage or pledge of Landlord's interest in the Lease or the rents or other amounts payable thereunder, except as follows (if none, so state): ______________.

21. Tenant understands and acknowledges that you are about to make a loan to Landlord and receive as part of the security for such loan (i) a Deed of Trust, Security Agreement and Fixture Filing encumbering Landlord's fee interest in the Property and the rents, issues and profits of the Lease (the "Security Instrument"), and (ii) an Assignment of Leases and Rents ("Assignment of Leases") which affects the Lease, and that you (and persons or entities to whom the Security Instrument and/or Assignment of Leases may subsequently be assigned) are relying upon the representations and warranties contained herein in making such loan. Further, Tenant has received notice that the Lease and the rent and all other sums due thereunder have been assigned or are to be assigned to you as security for the aforesaid loan secured by the Security Instrument. In the event that you (or any person or entity to whom the Security Instrument and/or Assignment of Leases may subsequently be assigned) notify Tenant of a default under the Security Instrument or Assignment of Leases and demand that Tenant pay its rent and all other sums due under the Lease to you (or such future lender), Tenant shall honor such demand without inquiry and pay its rent and all other sums due under the Lease directly to you (or such future lender) or as otherwise required pursuant to such notice and shall not thereby incur any obligation or liability to Landlord.

22. The undersigned is authorized to execute this Tenant Estoppel Certificate on behalf of Tenant.

23. This Tenant Estoppel Certificate may be executed in any number of separate counterparts, each of which shall be deemed an original, but all of which, collectively and separately, shall constitute one and the same instrument.

Very truly yours,

TENANT:

____,
a____
By:____
Name:____
Its:____

ROOFTOP SPACE RIDER

[**AS OF THE DATE OF EXECUTION OF THIS LEASE TENANT HAS ELECTED NOT TO INSTALL ANY ROOFTOP EQUIPMENT. IF TENANT INTENDS TO INSTALL ROOFTOP EQUIPMENT IN THE FUTURE, LANDLORD AND TENANT SHALL EXECUTE A ROOFTOP SPACE RIDER TO THIS LEASE, IN SUBSTANTIALLY THE FORM ATTACHED HERETO PRIOR TO THE INSTALLATION OF ANY ROOFTOP EQUIPMENT.**]

This Rider is made and entered into by and between **SOCM I, LLC**, a Delaware limited liability company ("**Landlord**"), and **CITY OF OXNARD** ("**Tenant**"), as of the day and year of the Lease between Landlord and Tenant to which this Rider is attached. Landlord and Tenant hereby agree that, notwithstanding anything contained in the Lease to the contrary, the provisions set forth below shall be deemed to be part of the Lease and shall supersede any inconsistent provisions of the Lease. All references in the Lease and in this Rider to the "Lease" shall be construed to mean the Lease (and all exhibits and Riders attached thereto), as amended and supplemented by this Rider. All capitalized terms not defined in this Rider shall have the same meaning as set forth in the Lease.

1. **Right to Install Rooftop Equipment**. During the Term, and, subject to Tenant's compliance with all applicable Laws (defined below) and covenants, conditions and restrictions, and Landlord's prior review and approval of plans and specifications for all such installation, Tenant and Tenant's contractors (which shall first be reasonably approved by Landlord) shall have the right to access, install, replace, remove, operate and maintain, subject to the terms of the Lease and this Rooftop Space Rider, a satellite antenna and/or microwave dish measuring no more than _________ (___) **[*TO BE PROVIDED*]** inches in diameter (the "**Tenant Roof Equipment**") on the rooftop of the Premises at the location (which location has been mutually agreed upon by Landlord and Tenant) more specifically shown on the diagram attached hereto as Schedule 1 (or if no location is shown on Schedule 1, at a location approved by Landlord in writing), including the cabling and connecting equipment (collectively, the "**Connecting Equipment**"), provided that Tenant shall not be entitled to use more than its fair prorata share of space on the rooftop. The Tenant Roof Equipment and the Connecting Equipment are collectively referred to as the "**Rooftop Equipment**".

2. **Fee**. No fee shall be charged for Tenant's maintenance of the Rooftop Equipment on the rooftop during the initial Term of the Lease. Following the initial Term, Landlord shall be entitled to charge a market rate fee for use of the rooftop, consistent with fees charged at comparable buildings in the vicinity.

3. **Conditioned Upon Lease**. This Rooftop Space Rider is contingent upon the Lease being in effect and compliance by Tenant with all of the terms and provisions hereof. If the Lease terminates or expires for any reason, Tenant's rights under this Rooftop Space Rider shall also terminate concurrently therewith unless otherwise agreed in writing by Landlord in its sole and absolute discretion.

4. **No Assignment**. Tenant's rights under this Rooftop Space Rider may not be assigned, transferred to or used by any other person or entity.

5. **Installation**. Tenant's installation and operation of the Rooftop Equipment shall be governed by the following terms and conditions:

   a. Installation shall be conducted by licensed contractors approved by Landlord. If any roof penetration is required, unless Landlord elects to perform such penetrations at Tenant's sole cost and expense, Tenant shall retain Landlord's designated roofing contractor to make any necessary penetrations and associated repairs to the roof in order to preserve Landlord's roof warranty.

   b. All plans and specifications for the Rooftop Equipment shall be subject to Landlord's prior review and approval and the prior review and approval of all other tenants or occupants of the Premises maintaining or operating rooftop equipment and related equipment at the Premises. Upon Landlord's request, Tenant shall prepare and submit a detailed set of plans and specifications for the proposed Rooftop Equipment, methods of installation and proposed locations thereof to all tenants and occupants having a right to review Tenant's proposed Rooftop Equipment.

   c. Tenant, at Tenant's sole cost and expense, shall be responsible for any modifications to the rooftop, risers, utility areas or other facilities or portions of the Premises which may be necessary to accommodate the Rooftop Equipment.

   d. It is expressly understood that Landlord retains the right to use the roof of the Premises for any purpose whatsoever (including granting rights to third parties to utilize any portion of the roof not utilized by Tenant).

   e. For the purposes of determining Tenant's obligations with respect to its use of the roof of the Premises herein provided, all of the provisions of the Lease relating to compliance with requirements as to insurance, indemnity, and compliance with Laws shall apply to the installation, use and maintenance of the Rooftop Equipment. Landlord shall not have any obligations with respect to the Rooftop Equipment. Landlord makes no representation that the Rooftop Equipment will function properly and Tenant agrees that Landlord shall not be liable to Tenant therefor.

f. Tenant shall (i) be solely responsible for any damage caused as a result of the Rooftop Equipment, (ii) promptly pay any tax, license or permit fees charged pursuant to any Laws in connection with the installation, maintenance or use of the Rooftop Equipment and comply with all Laws pertaining to the use of the Rooftop Equipment, and (iii) pay for all necessary repairs, replacements to or maintenance of the Rooftop Equipment.

g. To the extent not installed by Tenant in accordance with the terms and conditions of the Work Letter attached to the Lease, the installation of the Rooftop Equipment shall constitute alterations and shall be performed in accordance with and subject to the provisions of the Lease, including, without limitation, Tenant's obligation to obtain Landlord's prior consent to the size and other specifications of the Rooftop Equipment, which consent shall not be unreasonably withheld, conditioned or delayed.

6. **<u>Design Considerations</u>**.

a. All Rooftop Equipment shall be properly screened from view for aesthetic reasons, and must not be visible from street level.

b. The Tenant Roof Equipment may not protrude above a height equal to the highest point of the Premises structure.

c. Tenant, at Tenant's sole cost and expense, shall install and maintain such fencing and other protective equipment and/or visual screening on or about the Rooftop Equipment as Landlord may reasonably determine.

d. The Rooftop Equipment shall be clearly marked to show the name, address, telephone number of the person to contact in case of emergency.

e. The Rooftop Equipment must be properly secured and installed so as not to be affected by high winds or other elements.

f. The weight of the Rooftop Equipment shall not exceed the load limits of the Premises.

7. **<u>Compliance with Laws</u>**. Tenant's rights set forth in this Rooftop Space Rider shall be subject to all applicable laws, rules and regulations, including, without limitation, zoning rules, health and safety rules (including OSHA requirements), and applicable building and fire codes, including any required conditional use permit (collectively, "**Laws**"). Landlord makes no representation that any such Laws permit such installation and operation, and Tenant shall be solely responsible to determine the feasibility and legality of installing the Rooftop Equipment. Without limiting the generality of the foregoing, if any testing, sampling or disclosures relating to rooftop equipment at the Premises are required to satisfy OSHA or other governmental agencies (including for radio frequency [RF] or electromagnetic field [EMF] emissions), Tenant shall pay the costs of any such required tests and studies (or its prorata share thereof if the cost is properly shared by other rooftop users). Landlord shall have no liability or responsibility for the maintenance or compliance with laws of any towers, antennas or structures, including, without limitation, compliance with Part 17 of the Federal Communications Commissions' Rules.

8. **<u>No Interference</u>**.

a. The Rooftop Equipment and operations shall not interfere with the communications configurations, frequencies or operating equipment of any existing users on the rooftop (collectively, "**Existing Users**"), including any equipment which the Existing Users have the right to install or operate but have not yet installed. Further, the Rooftop Equipment and operations shall comply with all non-interference rules of the Federal Communications Commission ("**FCC**"). Upon receipt of written notice of apparent interference by Tenant with Existing Users, Tenant shall have the responsibility to promptly terminate such interference or to demonstrate with competent information that the apparent interference in fact is not caused by Tenant's Rooftop Equipment or operations. Subsequent to the date Tenant commences the operation of the Rooftop Equipment, Landlord shall not knowingly install or permit the installation of new equipment at the Project if such new equipment is likely to cause interference with the operation of the Rooftop Equipment, it being acknowledged that Landlord shall have no right or responsibility to prevent the installation of equipment any party has the right to install under the terms of its lease or occupancy agreement, or pursuant to applicable laws or regulations. With respect to equipment which the installing party has no right to install, Landlord shall require the installing party to first provide Tenant with notice of the equipment to be installed and Tenant shall then have the reasonable opportunity to meet with the party wishing to install the additional equipment so that any potential interference can be resolved to the satisfaction of Tenant. If in the future equipment is installed at the Project which interferes with the operation of the Rooftop Equipment, Tenant agrees to reasonably cooperate with such other user to resolve such interference in a mutually acceptable manner, subject to and in accordance with the rules of the FCC and the terms of any rights of Existing Users to operate new or revised equipment at the Premises. Notwithstanding anything to the contrary herein, in no event shall Landlord have any liability with respect to interference with Tenant's operations or any loss of business or profits, and Tenant's sole remedy in the event of a breach of this provision shall be to pursue an action for injunctive relief.

b. In no event shall the Tenant Roof Equipment or any Connecting Equipment damage or adversely affect or interfere with the normal operation of the Premises (including, but not limited to mechanical, electrical, life-safety, structural systems, window washing or other maintenance functions of the Premises). Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against any and all claims, costs, damages, expenses and liabilities (including reasonable attorneys' fees) arising out of Tenant's failure to comply with the provisions of this Rooftop Space Rider, provided that Tenant's indemnification obligation hereunder shall not apply to the extent same is caused by the gross negligence or willful misconduct of Landlord or its employees, agents or contractors. Should the use of the Rooftop Equipment by Tenant interfere with systems of the Premises or telecommunications systems of any tenant, Tenant shall make such adjustments to the Rooftop Equipment or its related equipment as may be reasonably required by Landlord.

9. **Access**. Subject to the terms of this Rooftop Space Rider, Tenant shall have the right to access its Rooftop Equipment during Building Service Hours as referenced in the Lease. In exercising its right of access to the roof, Tenant agrees to cooperate and comply with any reasonable security procedures, access requirements and rules and regulations utilized by Landlord for the Premises and further agrees not to unduly disturb or interfere with the business or other activities of Landlord or of other tenants or occupants of the Project. Notwithstanding the foregoing, Tenant shall have the right to provide to Landlord a list of authorized representatives and approved maintenance contractors who are entitled to access the roof immediately and without any prior notification or delay (each an "**Authorized Roof Access Party**" and, collectively, from time to time, "**Authorized Roof Access Parties**"). Landlord shall provide such list to Building security and shall direct Building security to provide the Authorized Roof Access Parties with roof access during Building Service Hours upon checking with Building security on duty. With respect to any parties other than Authorized Roof Access Parties, at least one (1) Authorized Roof Access Party must accompany such parties seeking access to the roof, and such Authorized Roof Access Party shall remain with them until all such parties have left the roof and the Premises.

10. **Costs**. Tenant shall be solely responsible for and shall pay all costs, expenses and taxes incurred in connection with the ownership, installation, operation, maintenance, use and removal of the Rooftop Equipment and the appurtenant equipment located in or on the Premises, plus an administrative fee of ten percent (10%).

11. **Insurance**. Tenant shall cause the insurance policies maintained by Tenant pursuant to the Lease to include the Rooftop Equipment and all related equipment and materials as part of Tenant's insured property.

12. **Indemnity**. Tenant specifically agrees that the indemnification of Landlord by Tenant in accordance with the Lease is deemed to include any claims arising from the installation, operation, use, maintenance or removal of the Rooftop Equipment, and the provisions of Article 9 of the Lease are incorporated herein by reference.

13. **Relocation**. Landlord shall have the right, at its option and from time to time, upon not less than thirty (30) days prior notice to Tenant, to relocate the Rooftop Equipment to another location in the Premises adequate to afford equivalent service to Tenant. Landlord shall pay the costs of relocation reasonably incurred by Tenant in connection with such substituted location, subject to adequate substantiation of such costs.

14. **Removal and Restoration**. Upon the expiration or earlier termination of the Lease, the Tenant Roof Equipment and the Connecting Equipment shall be removed from the Premises by Tenant, at Tenant's sole cost and expense, and Tenant shall pay to repair any damage caused by such removal. If Tenant fails to remove the Tenant Roof Equipment (if requested by Landlord to be removed) and any related Connecting Equipment (to the extent applicable) and repair the Premises upon the expiration or earlier termination of the Lease, Landlord, upon thirty (30) days' written notice to Tenant, may do so at Tenant's expense. The provisions of this Section 14 of the Rooftop Space Rider shall survive the expiration or earlier termination of the Lease. If any tenant of the Project under a lease in effect on the date hereof has a right to an antenna, or any tenant leasing more space than the Premises under the Lease requires an antenna, and Landlord is unable to accommodate such antenna (for any reason, including without limitation, physical or technical limitations regarding the use and operability thereof and any restrictions imposed by any governmental authority), but would be able to do so if the Tenant Roof Equipment is removed, then Landlord shall have the right, at its option, upon not less than fifteen (15) days prior notice to Tenant, to require the removal of the Tenant Roof Equipment by Tenant. Upon such removal, the rights contained in this Rooftop Space Rider shall terminate, except for any accrued and unperformed obligations and liabilities hereunder.

15. **Termination**. Landlord shall have the right to terminate this Rooftop Space Rider and the rights of Tenant hereunder (i) upon three (3) months prior written notice in the event Landlord determines that due to a change of use or any redevelopment of the Project or the Premises, the Rooftop Equipment can no longer be operated (provided that any election to terminate in such event shall be made on a non-discriminatory basis); or (ii) Tenant's use unreasonably interferes with an essential Building system or function, which interference cannot be remedied; or (iii) the operation of the Rooftop Equipment interferes with the equipment or operations of any of the existing tenants, licensees, or occupants of the Project. This Rooftop Space Rider shall also terminate upon any destruction or condemnation affecting the use or operation of the Rooftop Equipment hereunder, unless otherwise agreed in writing by Landlord and Tenant. If this Rooftop Space Rider is terminated as set forth herein, no amounts will be refunded or otherwise paid to Tenant and Tenant shall remain responsible for removing Tenant's Rooftop Equipment and restoring the Premises in accordance with the terms of this Rooftop Space Rider.

16. **Default**. If any of the conditions set forth in this Rooftop Space Rider are not complied with by Tenant, then such failure shall constitute a default by Tenant under the Lease. Except to the extent modified or superseded by the terms and provisions of this Rooftop Space Rider, the terms and provisions of the Lease are incorporated by reference herein.

[SIGNATURE ON NEXT PAGE]

"**Landlord**"

SOCM I, LLC,
a Delaware limited liability company

By: Shea Properties Management Company, Inc., a Delaware corporation, its Manager

By: ______________________
Name: ______________________
Title: ______________________

By: ______________________
Name: ______________________
Title: ______________________

CA Broker's License #01382566

"**Tenant**"

CITY OF OXNARD

By: ______________________
Name: ______________________
Its: City Manager

ATTEST:

By: ______________________
Name: ______________________
Its: City Clerk

APPROVED AS TO FORM:

By: ______________________
Name: ______________________
Its: City Attorney

APPROVED AS TO INSURANCE:

By: ______________________
Name: ______________________
Its: Risk Manager

APPROVED AS TO CONTENT:

By: ______________________
Name: ______________________
Its: Police Chief

SCHEDULE 1 TO ROOFTOP SPACE RIDER

PLAN

[to be attached, if applicable]

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/12

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: Anthony Emmert, Water Resources Manager AE Agenda Item No. S-8

Reviewed By: City Manager KRD City Attorney SMF Finance JL Other Public Works

DATE: October 7, 2012

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director
Public Works Department

SUBJECT: **Purchase Order No. 4195 with Aqua-Metric Sales Company**

RECOMMENDATION

That City Council approve and authorize the Mayor to increase the purchase order with Aqua-Metric Sales Company in the amount of $800,000 for Fiscal Year 2013-14 and $800,000 for Fiscal Year 2014-15 for the purchase of water meters and related parts (Purchase Order No. 4195) to cover the costs of the second and third year of the agreement.

DISCUSSION

The City's Automated Meter Reading (AMR) System collects water usage data from the City's approximately 41,000 customers. The AMR System includes meters with wireless transmitters, portable wireless radio meter reading equipment, and associated computer software applications. The AMR system is faster than manually reading meters and entering numbers into a hand-held computer, thus it has freed staff members to perform other customer-related duties. The AMR system has also reduced the number of reading and data entry errors.

The City researched and piloted several meter reading systems prior to initiating the AMR System, and subsequently established a standard specification. The City's standard is the Sensus system.

In order to maintain a high level of accuracy in data collection, the City must make sure that the entire AMR System is functioning properly. Due to equipment failures, normal wear and tear, and necessary upgrades, system equipment must be replaced, repaired or upgraded on an ongoing basis. In order to make necessary ongoing equipment repairs and replacements to the AMR system, and to install new equipment to serve new water customers, the City budgets for staff time, repair parts, and technical and software support in its operating budget.

On June 11, 2012, the City distributed a Request for Bid (RFB) package for the purchase of water meters, related parts and technical support to the only regional Sensus-authorized water flow meter supply firm as well as Sensus, the manufacturer, for price comparison. Aqua Metric Sales Company was the lowest responsive and responsible bidder of the two (2) bids received by the closing date of

June 26, 2012. The RFB stated that the City desired to enter into a one-year purchase agreement with the option to renew for three (3) additional one-year periods with the vendor, upon agreement of all parties.

FINANCIAL IMPACT

The estimated cost for purchases of water metering system parts and support is $800,000 for Fiscal Years 2013-14 and $800,000 for Fiscal Year 2014-15. Funds are available in Water Operations Account No. 601-6003-843-8121 to meet the requirements for Fiscal Year 2013-14. Funds for the third year of the agreement will be recommended in the annual appropriation for Fiscal Year 2014-15.

AAE:jh

Attachment #1 - Purchase Order No. 4195

CITY OF
OXNARD
CALIFORNIA

PURCHASE ORDER

CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

PURCHASE ORDER NO.
004195

DATE: 10/7/2013

VENDOR PHONE: (951)637-1400
VENDOR FAX: (951)637-1500
VENDOR #: 9782
VENDOR ADDRESS: AQUA METRIC SALES COMPANY
4050 FLAT ROCK DRIVE
RIVERSIDE, CA 92505

SHIP TO: WATER DIVISION
251 S. HAYES AVENUE
OXNARD, CA 93030

Our P.O. # MUST Appear on ALL Invoices, Packages and Correspondence

DELIVER BY	REQUISITION #	REQUISITION DATE	CONFIRMED BY
10/31/2013	A1	10/07/2013	SOLE SOURCE FOR COLD WATE
FOB	**ACCOUNT NUMBER**		**AUTHORIZED BY**
	Multiple Accounts		PATRICIA GARCIA

ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE	UNIT COST	EXTENDED COST
		CHANGE ORDER		
1	800,000.00 / DL	WATER METERS AND MISC REPAIR PARTS	1.0000	800,000.00
2	800,000.00 / DL	FY 2013-2014 ENCUMBRANCE	1.0000	800,000.00

BY ACCEPTING THIS PURCHASE ORDER YOU ARE ACCEPTING THE CITY OF OXNARDS TERMS AND CONDITIONS.

APPROVED AS TO AMOUNT:

Karen R Burnham

Karen R. Burnham, Interim City Manager

TOTAL PURCHASE AMOUNT **$1,600,000.00**

Send Original and One Copy of Invoice to:
PURCHASING
300 W. THIRD ST, #202
OXNARD, CA 93030

AUTHORIZED SIGNATURE ____________________
Tim Flynn, Mayor

ATTEST:

____
Daniel Martinez, City Clerk

PURCHASE ORDER

CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

PURCHASE ORDER NO.
004195

DATE: 10/7/2013

VENDOR PHONE: (951)637-1400
VENDOR FAX: (951)637-1500
VENDOR #: 9782
VENDOR ADDRESS: AQUA METRIC SALES COMPANY
4050 FLAT ROCK DRIVE
RIVERSIDE, CA 92505

SHIP TO: WATER DIVISION
251 S. HAYES AVENUE
OXNARD, CA 93030

Our P.O. # MUST Appear on ALL Invoices, Packages and Correspondence

DELIVER BY		REQUISITION #	REQUISITION DATE	CONFIRMED BY	
10/31/2013		A1	10/07/2013	SOLE SOURCE FOR COLD WATE	
FOB		ACCOUNT NUMBER		AUTHORIZED BY	
		Multiple Accounts		PATRICIA GARCIA	
ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE		UNIT COST	EXTENDED COST

Account	Project	Amount
60160038438121		1,600,000.00

PURCHASE ORDERS
TERMS AND CONDITIONS

The City Purchasing Officer and the Vendor agree as follows:

1. Vendor shall furnish to City the labor, materials, equipment, supplies and/or services described in the Purchase Order on the reverse side hereof.
2. City shall pay to Vendor the price, or prices, specified in the Purchase Order upon delivery of the labor, materials, equipment, supplies and/or services, and acceptance thereof by the City Purchasing Officer, or upon the completion of the services to be performed and acceptance thereof.
3. If the Purchase Order is continuing in nature, City shall pay to Vendor the amount due Vendor for labor, materials, equipment or supplies furnished, or services completed and accepted.
4. Vendor shall deliver the labor, materials, equipment or supplies, or cause the services to be performed, within the time and in the manner specified in the Purchase Order. Vendor shall be excused in performance for delays resulting from causes beyond the control of Vendor.
5. If services are performed or labor furnished to City under the Purchase Order, Vendor agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf would be held strictly liable. Vendor's obligation to defend shall arise when a claim, demand or action is made or filed, whether or not such claim, demand or action results in a determination of liability or damages as to which Vendor is obligated to indemnify and hold harmless.
6. Insurance
   a) Vendor shall obtain and maintain during the performance of any services under this Agreement the following insurance coverage issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Vendor obtain and maintain such insurance coverage.
      i. Commercial general liability insurance, including a contractual liability endorsement, in an amount not less than $1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability coverage (Occurrence Form CG0001ED, November 1988);
      ii. Business automobile liability insurance in an amount not less than $1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Auto Liability Insurance Services Office coverage (Occurrence Form CA000TED, June 1992) covering Code No. 1, "any auto";
      iii. Workers' compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount not less than $1,000,000 per claimant.
7. Vendor, in the performance of any services or the furnishing of any labor under this Purchase Order, shall be considered an independent contractor, and Vendor and Vendor's agents and employees shall not be considered officers or employees of the City.
8. Vendor, without the written consent of the City Purchasing Officer, shall not:
   a) Assign the Purchase Order, or any interest therein, or any money due thereunder; or
   b) Make any changes, alterations or variations in the terms of the Purchase Order.
9. The cost of inspection on deliveries, or offers to make deliveries that do not meet specifications, will be paid by Vendor or deducted by City from amounts due Vendor.
10. Vendor shall indemnify and hold harmless City, its officers and employees, from liability, claims, loss or expense of any kind or nature on account of any copyrighted or uncopyrighted composition, patented or unpatented process or invention, article or appliance furnished or used under this Purchase Order.
11. Vendor shall comply with all applicable federal, state and local ordinance, laws and regulations and shall obtain and pay for all required licenses and permits, including a City of Oxnard business license.
12. Return or exchange of materials, equipment or supplies will not be permitted without written approval by the City Purchasing Officer.
13. All materials, supplies and equipment furnished under the Purchase Order shall, where applicable, be in full compliance with the Safety Orders and Regulations of the Division of Industrial Safety of the State of California and the Williams-Steiger Federal Occupational Health and Safety Act of 1970.
14. City may terminate this Purchase Order at any time by giving written notice of termination to Vendor. If termination is for cause, termination shall become effective on the date of the notice or at a later date, specified in the notice. If termination is without cause, termination shall become effective five days after the date of the notice or at a later date specified in the notice.
15. Vendor shall comply with all applicable equal employment opportunity requirements of the California Department of Fair Employment and Housing in performing or contracting for any services under this Purchase Order.
16. For public projects, Vendor shall pay prevailing wages in accordance with Labor Code Sections 1720 et seq.

ADDITIONAL REQUIREMENTS FOR GRANT-FUNDED PROJECTS

17. The following requirements apply to any Purchase Order funded in whole or in part by federal grant funds.
   a) Upon expiration of the time specified on the reverse side, this Purchase Order shall terminate unless City and Vendor have mutually agreed in writing to an extension of time.
   b) If legal action is brought by either party because the other has failed to comply with terms or conditions of this Purchase Order, the prevailing party shall be awarded its attorney's fees and costs in addition to its damages and/or equitable relief.
   c) Vendor shall comply with all applicable requirements of Executive Order 11246 as amended by Executive Order 11375 and the regulations adopted pursuant thereto (41 CFR Chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin.
   d) Vendor shall insure that the grantee (City), the Federal Grantor Agency, the Comptroller General of the United States, or any duly authorized representative, shall have access to any books, records, documents and papers, specifically relating to this Purchase Order, for the purpose of making audit, examination, excerpts and transcriptions for not less than three years after completion of the project and/or until the completion of the final project audit as required by the Federal Grants Agency.

CITY OF
OXNARD
CALIFORNIA

Meeting Date: 10/15/13

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). ______	☐ Report
☐ Res. No(s). ______	☐ Public Hearing (Info/consent)
☐ Other ______	☐ Other ______

Prepared By: Todd Housley, Environmental Resources Superintendent TH Agenda Item No. S-9

Reviewed By: City Manager KRP City Attorney SMF Finance JC Public Works

DATE: September 11, 2013

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director
Public Works

SUBJECT: **Second Amendment to Agreement for Trade Services with Ecology Auto Parts, Inc. for Supplemental Waste Transfer Hauling Services (Agreement No. A-7380)**

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute the Second Amendment to the Agreement with Ecology Auto Parts, Incorporated to increase the amount by $1,300,000 from an agreement value of $1,650,000 to $2,950,000 and to extend the expiration date from February 15, 2014 to February 15, 2015, for supplemental waste transfer hauling services (Agreement No. A-7380).

2. Approve a Special Budget Appropriation of $300,000 from the Solid Waste Operating Fund Balance to provide sufficient funding in 2013-14 for supplemental waste transfer hauling service.

DISCUSSION

For the past several years the Environmental Resources Division has used waste transfer haulers to supplement hauling for the City's fleet at the Del Norte Facility. During operations when there are not enough City drivers and trucks to provide necessary hauling of waste, supplemental haulers are called upon to meet this need. This is especially evident during increased fluctuations of solid waste generated at the Del Norte Facility. Additionally, when needed City drivers for waste transfer hauling are called upon to collect and haul refuse from the residential and commercial collection programs, thus creating a greater need for outsourcing waste transfer hauling service. Waste transfer haulers have hauled up to approximately 100,000 tons per year from the Del Norte Facility to designated landfills.

On October 14, 2010 the City issued a Request for Proposal (RFP) for Supplemental Solid Waste Transfer Hauling Service. Among the haulers that submitted proposals, Ecology provided the best overall proposal for waste transfer hauling. On February 15, 2011, the City Council approved the Agreement for Trade Services with Ecology for one year period through February 15, 2012 for an amount not to exceed $500,000 with an option to extend for one two-year period through February 15, 2014 for an amount not to exceed $1,000,000, if a two-year term extension was agreed upon, for a total value of $1,500,000. On December 6, 2012, the City Council approved the First Amendment to execute the option of a two-year term extension from February 15, 2012 through February 15, 2014 and increased the agreement value by $150,000 from $1,500,000 to $1,650,000.

The Second Amendment extends the term one additional year from February 15, 2014 to February 15, 2015 and increases the value of the Agreement from $1,650,000 to $2,950,000. Ecology performs effective, dependable and safe waste transfer hauling from the Del Norte Facility to designated landfills. Ecology has agreed to maintain pricing consistent with the original agreement.

FINANCIAL IMPACT

The value of the Second Amendment is $1,300,000 through the term of February 15, 2015. An appropriation of $300,000 from the Solid Waste Operating Fund is needed to supplement the existing budget in FY 2013-14 to cover the cost of waste transfer hauling service by Ecology.

Attachment #1 - Second Amendment to Agreement No. A-7380
#2 - Special Budget Appropriation

Agreement No. A-7380

SECOND AMENDMENT TO AGREEMENT FOR TRADE SERVICES

This Second Amendment ("Second Amendment") to the Agreement for Trade Services ("Agreement") is made and entered into in the County of Ventura, State of California, this 24th day of September, 2013, by and between the City of Oxnard, a municipal corporation ("City"), and Ecology Auto Parts, Incorporated ("Vendor"). This Second Amendment amends the Agreement entered into on February 15, 2011, by City and Ecology Auto Parts, Incorporated. The Agreement previously has been amended on December 6, 2011, by a First Amendment.

City and Vendor agree as follows:

1. In Section 3 of the Agreement, the date "February 15, 2014" in the first sentence is deleted and replaced with the date "February 15, 2015" and the second sentence is amended to read as follows: "City and Vendor agree that the Agreement may be renewed for one (1) two year period upon written approval of both City and Vendor executed no later than February 15, 2012, and one (1) one year period upon written approval of both City and Vendor executed no later than February 15, 2014."
2. In Section 4(a) of the Agreement, the first sentence is amended to read as follows: "City shall pay Vendor an amount not to exceed $650,000 for supplemental waste hauling services for the first one year term and not to exceed $1,300,000 for the two year extension term from for a total not to exceed $1,950,000. For the period of February 15, 2014 through February 15, 2015, the City shall pay Vendor in an amount not to exceed $1,000,000 for supplemental waste hauling services. The total value of this Agreement is not to exceed $2,950,000."
3. As so amended, the Agreement remains in full force and effect.

CITY OF OXNARD	VENDOR
Tim Flynn, Mayor	Aaron Siroonian, Chief Operations Officer Ecology Auto Parts, Incorporated
ATTEST:	APPROVED AS TO INSURANCE:
	James Cameron
Daniel Martinez, City Clerk	James Cameron, Risk Manager
APPROVED AS TO FORM:	APPROVED AS TO AMOUNT:
	Karen R Burnham
Stephen M. Fischer, Acting City Attorney	Karen R. Burnham, Interim City Manager

APPROVED AS TO CONTENT:

Rob Roshanian, Interim Public Works Director

Todd Housley, Environmental Resources Superintendent

REQUEST FOR SPECIAL BUDGET APPROPRIATION

Department: Public Works **Date:** October 1, 2013

Project/Program Manager: Rob Roshanian **Phone:** 8281

Reason for Appropriation:

To provide funding for supplemental waste transfer hauling service

Accounts and Descriptions		**AMOUNT**
Fund: SOLID WASTE OPERATING (631)		
Expenditures/Transfers Out		
Solid Waste Operating Fund		
631-6304-842-8281	Solid Waste - Contractual Svs - Supplemental Waste Hauling	300,000
	Sub-total Expenditures	300,000
	Net Change to Fund Balance	**(300,000)**

Approvals

Department Director ____________________

Chief Financial Officer James Cameron

City Manager ____________________

REQUIRES CITY COUNCIL AUTHORIZATION

SBA# (Finance Use Only)____________

BA Doc# (Finance Use Only)____________

Revised : 2/23/2012