



**CITY COUNCIL/SUCCESSOR AGENCY/  
FINANCING/POWER/  
CALIFORNIA CHOICE ENERGY AUTHORITY  
REGULAR MEETING  
AGENDA**

**Tuesday**

**September 25, 2018**

Regular Meeting – **5:00 p.m.**

Council Chambers – Lancaster City Hall

The City Clerk/Agency/Authority Secretary hereby declares the agenda was posted  
by 5:00 p.m. on Friday, September 21, 2018

at the entrance to the Lancaster City Hall Council Chambers.

44933 Fern Avenue, Lancaster, CA 93534

***LEGISLATIVE BODY***

***City Council/Successor Agency/Financing/Power/ California Choice Energy Authority***

Mayor/Chair R. Rex Parris

Vice Mayor/Vice Chair Marvin Crist

Council Member/Agency Director/Authority Member Raj Malhi

Council Member/Agency Director/Authority Member Ken Mann

Council Member/Agency Director/Authority Member Angela Underwood-Jacobs

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**AGENDA ITEMS TO BE REMOVED**

Sometimes it is necessary to remove items from the agenda. We apologize for any inconvenience this may cause you.

**PUBLIC BUSINESS FROM THE FLOOR - AGENDIZED ITEMS**

Any person who would like to address the Legislative Bodies on any agendized item is requested to complete a speaker card for the City Clerk/Agency/Authority Secretary and identify the agenda item you would like to discuss. Each person will be given an opportunity to address the Legislative Body at the time such item is discussed. Speaker cards are available at the rear of the Council Chambers and your speaker card must be filled out *prior* to the agenda item being called. We respectfully request that you fill the cards out completely and print as clearly as possible. Following this procedure will allow for a smooth and timely process for the meeting and we appreciate your cooperation. *Individual speakers are limited to three (3) minutes each.*

Consent Calendar items under the Legislative Body may be acted upon with one motion, a second and the vote. If you desire to speak on an item or items on the Consent Calendar, you may fill out one speaker card for the Consent Calendar. You will be given three minutes to address your concerns before the Legislative Body takes action on the Consent Calendar.

**CALL TO ORDER**

City Council/Successor Agency/Financing/Power/ California Choice Energy Authority

**ROLL CALL**

City Council Members /Agency Directors /Authority Members: Malhi, Mann, Underwood-Jacobs; Vice Mayor/Vice Chair Crist, Mayor/Chair Parris

**INVOCATION**

**PLEDGE OF ALLEGIANCE**

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**PRESENTATION**

1. Presentation to Fulton & Alsbury Academy's robotics team captain, Valerie Castillo  
Presenter: Mayor Parris

**COUNCIL ACTIONS**

**MINUTES**

- M 1.** Approve the City Council/Successor Agency/Financing/ Power/ California Choice Energy Authority Regular Meeting Minutes of September 11, 2018.

**CONSENT CALENDAR**

- CC 1.** Waive further reading of any proposed ordinances. (This permits reading the title only in lieu of reciting the entire text.)

- CC 2.** Approve the Check and Wire Registers for August 26, 2018, through September 8, 2018 in the amount of \$7,951,953.06.

At each regular City Council Meeting, the City Council is presented with the financial claims (invoices) against the City for purchase of materials, supplies, services, and capital projects for checks and Automated Clearing House (ACH) payments issued the prior two to three weeks. This process provides the City Council the opportunity to review the expenses of the City. The justifying backup information for each expenditure is available in the Finance Department.

- CC 3.** Accept and approve the August 2018, Monthly Report of Investments as submitted.

Each month, the Finance Department prepares a report listing the investments for all separate entities under the jurisdiction of the City as identified in the City's Comprehensive Annual Financial Report.

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**CC 4.** Adopt **Ordinance No. 1047**, amending the City zoning plan for 73 acres bounded by Avenue K-4, Avenue K-8, 70<sup>th</sup> Street West and 75<sup>th</sup> Street West (Assessor's Parcel Numbers 3204-001-184 and 3204-001-195) and 12.8 acres of a 234-acre site bounded by Avenue L, Avenue K-8, 62<sup>nd</sup> Street West, and 70<sup>th</sup> Street West (Assessor's Parcel Numbers 3204-008-045 and 3204-008-047), known as Zone Change No. 16-01.

The applicant, Royal Investors Group, LLC, submitted applications for a General Plan Amendment (GPA), Zone Change (ZC), Specific Plan (SP), Tentative Tract Map (TTM) and Development Agreement (DA) for a master planned development. At full build-out, the proposed project would consist of a total of 1,700 residential dwelling units (including 175 age-targeted units, 256 active adult units and 325 multi-family units), 213,600 square feet of commercial uses, 31.5-acres parks/open space, a 12.8-acre school site, 1.3-acre fire station site, and 38.4 acres of internal streets. These uses would be located on 307.7 acres divided into two subareas: 1) Avanti West: approximately 73 acres bounded by Avenue K-4, Avenue K-8, 70<sup>th</sup> Street West, and 75<sup>th</sup> Street West, and 2) Avanti South: approximately 234 acres bounded by Avenue L, Avenue K-8, 62<sup>nd</sup> Street West, and 70<sup>th</sup> Street West.

**CC 5.** Adopt **Ordinance No. 1048**, amending Title 8 of the Lancaster Municipal Code by adding Chapter 8.62, relating to shopping cart containment, retrieval and abatement.

The proposed ordinance incorporates the provisions of the California Business & Professions Code related to shopping carts, including the prohibitions on unauthorized removal or possession of a cart off of the retailer's premises, as well as the provisions that establish the procedures for impounding a cart that is discovered off premises, notifying the cart owner of such discovery, and recovering the City's costs of impounding and storing an off-premises cart. Additionally, the proposed ordinance establishes standards outside of the scope of the state law, including requirements for cart identification and store premises signage. It further requires new shopping cart owners to submit to the City a cart containment and retrieval plan.

**CC 6.** Adopt **Ordinance No. 1049**, repealing chapter 9.44 of the Lancaster Municipal Code ("Chapter 9.44") relating to regulation of registered sex offenders.

Chapter 9.44 was originally adopted in 2012 and contained four distinct restrictions applicable to registered sex offenders. On December 18, 2012, litigation known as *John Doe, et al. v. City of Lancaster*, Case No. CV-12-10808 SJO (RZx) was filed against the City of Lancaster ("City") in the United States District Court for the Central District of California challenging the constitutionality of Chapter 9.44. The City settled that action in March of 2013. As part of the settlement, the City agreed to amend Chapter 9.44. On March 26, 2013, the City adopted Ordinance No. 988, which ordinance amended Chapter 9.44. Subsequent to the litigation known as *John Doe, et al. v. City of Lancaster* and the City's adoption of Ordinance No. 988 amending Chapter 9.44, the California Courts of Appeal announced decisions in certain cases (*People v. Nguyen* (2014) 222 Cal.App.4th 1168 and *People v. Godinez* (2014) Cal. App. Unpub. LEXIS 99188), that found local laws applicable to registered sex offenders are preempted by state law. Based on the decisions of the California Courts of Appeal, Chapter 9.44 is likely preempted by state law and, therefore unconstitutional. On August 22, 2018, the City Attorney's office received a letter from the Law Office of Janice M. Bellucci asserting that Chapter 9.44 is unconstitutional for the reasons stated above.



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**CC 7.** Adopt **Resolution No. 18-48**, establishing an Electronic Signatures Policy.

This Policy authorizes the City to accept and approve electronic signatures, in lieu of written signatures, on documents requiring signatures, in compliance with the legal requirements of California Government Code section 16.5 (the California Uniform Electronic Transaction Act, “UETA”), 15 United States Code Service section 7001 (the United States Electronic Signatures in Global and National Commerce Act, “ESIGN Act”), and all other applicable laws and regulations.

**CC 8.** Award **Public Works Construction Project No. 17-003, 2017 Pavement Management Program (Review 25)**, to Hardy & Harper, Inc., of Santa Ana, California, in the amount of \$1,839,000.00 Base Bid, plus Additive Alternate A1 in the amount of \$888,000.00 for a total bid of \$2,727,000.00, plus a 10% contingency, to repair and resurface approximately 22 lane-miles of streets as part of the City’s REVIVE 25 program. Authorize the City Manager, or his designee, to sign all documents. This contract is awarded to the lowest responsible bidder per California Public Code Section 22038(b).

As part of the REVIVE 25 program, this project will repair and resurface approximately 22 lane-miles of City streets. The project areas include (1) Neighborhood bounded by West Avenue K-4 to Avenue K-8, 25<sup>th</sup> Street West to 30<sup>th</sup> Street West (2) Neighborhood bounded by Norberry Street to West Avenue J, 12<sup>th</sup> Street West to 15<sup>th</sup> Street West; (3) 5<sup>th</sup> Street East from Avenue H-8 to Avenue J. Road construction is anticipated to be completed within forty-five calendar days after the issuance of the notice to proceed. The project is also expected to be completed prior to the City’s Holiday Construction Moratorium period.

**CC 9.** Approve the following developer installed sanitary sewer and accept this sewer for maintenance by the City and for public use:

<u>Project No.</u>	<u>Private Contract No.</u>	<u>Location/Owner:</u>
Site Plan Review 16-06	17-01	In Public Easement at the Northwest Corner of 10 <sup>th</sup> Street West and Avenue K and Avenue J-15 Owner: Clutter Family Trust

The listed sanitary sewer has been constructed and completed by the developer according to the approved plans and specifications. The work has been inspected and found to be satisfactory to the Development Services Director.

**CC 10.** Approve the developer constructed streets on the following project. In addition, accept the streets for maintenance by the City and for public use.

<u>Project</u>	<u>Location/Owner</u>
Site Plan Review 16-06	Northwest Corner of 10 <sup>th</sup> Street West and Avenue K Owner: Clutter Family Trust

The existing streets have been improved and repaired by the developer according to the approved plans and specifications. The work has been inspected and found to be satisfactory to the Development Services Director.

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**CC 11.** Approve the completed water system installed by the developer for the following project:

<u>Project</u>	<u>Location/Owner</u>
Site Plan Review 16-06	Northwest Corner of 10 <sup>th</sup> Street West and Avenue K Owner: Clutter Family Trust

The water system for this project has been constructed and completed to the satisfaction of the local water purveyor, Los Angeles County Waterworks District No. 40, Antelope Valley, and was constructed according to the approved plans and specifications. Additionally, the work has been inspected and found to be satisfactory to the Development Services Director.

**CC 12.** Approve the map and accept the dedications as offered on the map for Tract Map No. 61535-01; make findings that this project will not violate any of the provisions of Sections 66473.5, 66474.1, and 66474.6 of the Subdivision Map Act; and instruct the City Clerk to endorse on the face of the map the certificate which embodies the approval of said map and the dedications shown thereon.

The Final Map is in substantial conformance with the approved tentative map. Tract Map No. 61535-01 has been examined by the City Engineer, and is ready for Council approval.

**CC 13.** Approve the Operating Agreement with Team 211 Entertainment, LLC for the management and operation of Zelda’s 750 West and the concessions at the east end of the Lancaster Performing Arts Center (LPAC).

The City has received a proposal from Team 211 Entertainment, LLC for the operation and management of Zelda’s 750 West and the concessions at the east end of LPAC. In the best interests of the venue and to provide for its ongoing management, staff recommends that the City utilize the services and experience of Team 211 Entertainment, LLC by approving the Operating Agreement.

**CC 14.** Authorize the City Manager to enter into a subscription services agreement between the City of Lancaster by and through Lancaster Choice Energy (“LCE”) and Google, LLC through its Division X (“X”) for data energy services in an amount not to exceed \$528,000.

In March 2018, California Choice Energy Authority Members approved an agreement between California Choice Energy Authority (“CCEA”) and X. CCEA provides implementation and operational support services to its associate member cities, all of which have formed Community Choice Aggregation (“CCA”) programs. The agreement between LCE and X will use the developed platform and apply specifically to LCE customers and its energy load for the purpose of reducing costs for LCE and its customers. The platform will be offered as a subscription service to all CCEA associate member cities’ CCA programs upon successful completion of this agreement

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**CC 15.** Adopt **Resolution No. 18-49**, approving the application for grant funds from the State of California's Habitat Conservation Fund Program.

The City of Lancaster recently purchased a 20.3-acre parcel adjacent to the Prime Desert Woodland Preserve. Staff is applying for grant funds from the State of California's Habitat Conservation Fund Program to add trails on this additional acreage. If approved, this grant will provide funds for the development of an additional 4,500 linear feet of recreational walking trails within the Preserve. Direct benefits of the trail development include safer walking routes to Nancy Cory Elementary School, Rawley Duntley Park, Antelope Valley College and Marauder Stadium, which hosts multiple events throughout the year for the youth in the area. The grant application requests approximately \$400,000 for the Prime Desert Woodland Preserve Trails Expansion Project with the City matching 50% (\$200,000) from existing General and CIP funds.

**NEW BUSINESS**

**NB 1.** Small Business Direct Installation Program Services

Recommendation:

Award Request for Proposal No. 693-18 to FESS Energy, Inc. for Small Business Direct Installation Program Services; and authorize the City Manager, or designee, to sign all documents.

From July 27, 2018 to August 24, 2018, the City solicited bids from licensed firms for the direct installation of energy efficiency measures in small commercial buildings. On August 24, 2018, at 5:00 p.m., the City recorded three (3) sealed bid packages received. Sealed bids were given to an evaluation committee for review to establish each respondent not only met the minimum requirements, but also met specific criteria as stated in the proposal document. Fess Energy, Inc. received the highest evaluation score and has been selected as the recommended vendor for the Direct Install program. The services to be performed under the contract will include program design and implementation, including program goal and performance measuring, marketing and outreach, preparation of standard program procedures manual, and scheduling and coordinating customer enrollment in the program. The consultant will conduct an annual review of program design and assumptions and recommend adjustments that ensure electricity savings goals are met within contractual budget.

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**NB 2.** Disposition and Development Agreements with Cornerstone Investment Group, LLC

Recommendation:

Approve two Disposition and Development Agreements with Cornerstone Investment Group, LLC for the sale and subsequent development of two commercial parcels located in the Front Row Center area; and authorize the City Manager, or his designee, to execute all related documents.

If approved, the sale of the parcels will take place under two separate disposition and development agreements (DDAs), which will bind Cornerstone Investment Group to develop them as hotels. The City acquired these properties for the express purpose of future development. Each hotel will feature 90-120 rooms and is anticipated to create 25-30 full-time jobs, as well as approximately 35 part-time jobs. Together with two existing Hilton properties, Hampton Inn & Suites and Homewood Suites, these new properties will form a “hotel row” located adjacent to Lancaster Municipal Stadium.

**NB 3.** Lancaster Homeless Impact Commission Vision/Mission/Goals Presentation

Recommendation:

Receive presentation regarding the Lancaster Homeless Impact Commission Vision/Mission/Goals

**NB 4.** Lancaster Community Homeless Plan Update

Recommendation:

Receive update regarding Lancaster Community Homeless Plan

**COUNCIL REPORTS**

**CR 1.** Report on the Activities of the Board of Directors for the Antelope Valley Transit Authority  
Presenter: Vice Mayor Crist

**CR 2.** Council Reports

**COUNCIL AGENDA**

**CA 1.** Nomination and appointment of Silvia Donovan to the Planning Commission  
Presenter: Mayor Parris

**CA 2.** Nomination and appointment of Gordon DeSpain to the Architectural and Design Commission  
Presenter: Mayor Parris

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**CALIFORNIA CHOICE ENERGY AUTHORITY**

No action required at this time.

**LANCASTER HOUSING AUTHORITY**

No action required at this time.

**LANCASTER FINANCING AUTHORITY**

No action required at this time.

**LANCASTER POWER AUTHORITY**

No action required at this time.

**LANCASTER SUCCESSOR AGENCY**

No action required at this time.

**CITY MANAGER / EXECUTIVE DIRECTOR ANNOUNCEMENTS**

**CITY CLERK /AGENCY/AUTHORITY SECRETARY ANNOUNCEMENT**

**PUBLIC BUSINESS FROM THE FLOOR - NON-AGENDIZED ITEMS**

This portion of the agenda allows an individual the opportunity to address the Legislative Bodies on any item ***NOT ON THE AGENDA*** regarding City/Agency/Authority business and speaker cards must be submitted ***prior*** to the beginning of this portion of the Agenda. Please complete a speaker card for the City Clerk/Agency/Authority Secretary and identify the subject you would like to address. We respectfully request that you fill the cards out completely and print as clearly as possible. Following this procedure will allow for a smooth and timely process for the meeting and we appreciate your cooperation. State law prohibits the Legislative Body from taking action on items not on the agenda and your matter may be referred to the City Manager/Executive Director. ***Individual speakers are limited to three (3) minutes each.***

**COUNCIL / AGENCY/ AUTHORITY COMMENTS**

**CITY OF LANCASTER, CALIFORNIA  
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**CLOSED SESSION**

1. Conference with Legal Counsel – Anticipated Litigation: significant exposure to litigation pursuant to Government Code Section 54956.9(d) (2) – two potential cases.
2. Conference with Legal Counsel – Anticipated Litigation: consideration of initiation of litigation pursuant to Government Code Section 54956.9(d) (4) - two potential cases.
3. Conference with Legal Counsel--Existing Litigation - Government Code Section 54956.9(d) (1)
4. Estarella v. City of Lancaster, LASC Case No.BC527749
5. Adams v. Thomas, LASC Case No MC027683
6. Simmons v. City of Lancaster, LASC Case No. BC 615471
7. Celebron v. City of Lancaster, LASC Case No. BC 615587
8. Bootleggers 2 v. City of Lancaster, LASC Case No. BS169660
9. Byrd v. City of Lancaster, LASC Case No. MC 026025
10. Smith v. Lancaster, LASC Case No. MC 027485
11. Adams v. Thomas, LASC MC 027683
12. Parker v. Lancaster, LASC MC 027827
13. Antelope Valley Groundwater Cases  
Included Actions:  
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.  
Superior Court of California, County of Los Angeles, Case No. BC325201;  
Los Angeles County Waterworks District No. 40 v. Diamond Farming Co.  
Superior Court of California, County of Kern, Case No. S-1500-CV-254-348  
Wm. Bolthouse Farms, Inc. v. City of Lancaster, Diamond Farming Co. v. City of Lancaster,  
Diamond Farming Co. v. Palmdale Water District  
Superior Court of California County of Riverside, consolidated actions;  
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

**ADJOURNMENT**

Next Regular Meeting:

**Tuesday, October 9, 2018 - 5:00 p.m.**

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**MEETING ASSISTANCE INFORMATION**

In compliance with the Americans with Disabilities Act, this meeting will be held at a location accessible to persons with disabilities; if you need special assistance to participate in this meeting, please contact the City Clerk at (661)723-6020. Services such as American Sign Language interpreters, a reader during the meeting, and/or large print copies of the agenda are available. To ensure availability, you are advised to make your request at least 72 hours prior to the meeting/event you wish to attend. Due to difficulties in securing sign language interpreters, five or more business days notice is strongly recommended. For additional information, please contact the City Clerk at (661)723-6020.

**AGENDA ADDENDUM INFORMATION**

On occasion items may be added after the agenda has been mailed to subscribers. Copies of the agenda addendum item will be available at the City Clerk Department and are posted with the agenda on the windows of the City Council Chambers. For more information, please call the City Clerk Department at (661) 723-6020.

All documents available for public review are on file with the City Clerk Department.

M 1
09/25/18
MVB

**LANCASTER  
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FINANCING/HOUSING/POWER/  
CALIFORNIA CHOICE ENERGY AUTHORITY  
MINUTES  
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**CALL TO ORDER**

Vice Mayor/Vice Chair Crist called the meeting of the Lancaster City Council/Successor Agency/Financing/ Housing/ Power/California Choice Energy Authority to order at 5:03 p.m.

**ROLL CALL**

PRESENT: City Council Members /Agency Directors /Authority Members: Malhi, Mann, Underwood-Jacobs; Vice Mayor/Vice Chair Crist

ABSENT: Mayor/Chair Parris

**ROLL CALL**

PRESENT: Housing Authority Members: Malhi, Mann; Vice Chair Crist; Chair Szeto

ABSENT: Authority Member Harvey

**STAFF MEMBERS:**

City Manager/Executive Director; Deputy City Manager/Deputy Executive Director; City Attorney/Agency/Authority Counsel; City Clerk/Agency/Authority Secretary; Administrative and Community Services Director, Development Services Director; Parks, Recreation and Arts Director; Public Safety Director, Finance Director; Housing Director

**INVOCATION**

John Irving

**PLEDGE OF ALLEGIANCE**

Council Member Malhi



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**HA CONSENT CALENDAR**

On a motion by Vice Chair Crist and seconded by Authority Member Mann, the Lancaster Housing Authority approved Item No. HA CC 1, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Crist, Szeto; NOES: None; ABSTAIN: None; ABSENT: Harvey

**HA CC 1.**

**LOAN AGREEMENT WITH WHEN LIFE HANDS YOU MORE LEMONS, LP, A CALIFORNIA LIMITED PARTNERSHIP**

Approved the Loan Agreement between the Lancaster Housing Authority and When Life Hands You More Lemons, LP, a California Limited Partnership for the construction of the proposed Kensington II Multifamily Residential Project located at the proposed 32<sup>nd</sup> Street West and Avenue I.

**M 1. MINUTES**

On a motion by Council Member Mann and seconded by Council Member Underwood-Jacobs the City Council/Successor Agency/Financing/Power/California Choice Energy Authority approved the City Council/Successor Agency/Financing/Power/California Choice Energy Authority Regular Meeting Minutes of August 14, 2018, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

**CITY COUNCIL CONSENT CALENDAR**

Item No.'s CC 4 and CC 5 were removed for separate discussion.

Vice Mayor Crist stated he needs to recuse himself from Item No. CC 5 due to the proximity of the project to his residence.

Addressing the City Council on Item No. CC 4:

Fran Sereseres – discussed the expenses associated with this project and the ‘grand opening’ of the remodeled center.

On a motion by Council Member Underwood-Jacobs and seconded by Council Member Malhi, the City Council approved the Consent Calendar with the exception of Item No. CC 5, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

Vice Mayor Crist left the dais at this time.

Addressing the City Council on Item No. CC 5:

Fran Sereseres – discussed the accidents at this intersection and slowing the flow of traffic from 20<sup>th</sup> Street West to 10<sup>th</sup> Street West on Lancaster Blvd.

On a motion by Council Member Malhi and seconded by Council Member Underwood-Jacobs, the City Council approved Item No. CC 5, by the following vote: 3-0-1-1; AYES: Malhi, Mann, Underwood-Jacobs; NOES: None; RECUSED: Crist; ABSENT: Parris

Vice Mayor Crist returned to the dais at this time.

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**CC 1. ORDINANCE WAIVER**

Waived further reading of any proposed ordinances. (This permits reading the title only in lieu of reciting the entire text.)

**CC 2. CHECK REGISTERS**

Approved the Check and Wire Registers for July 29, 2018, through August 25, 2018 in the amount of \$27,852,132.03.

**CC 3. INVESTMENT REPORT**

Accepted and approved the July 2018, Monthly Report of Investments as submitted.

**CC 4. PUBLIC WORKS CONSTRUCTION PROJECT NO. 16-003, ANTELOPE VALLEY SENIOR CENTER RENOVATION PROJECT, BUILD PHASE**

- a. Approved Change Order No.s' 1 and 2, and increase the total amount of the contract with Sawyer Construction & Associates of Mojave, California, for Public Works Construction Project No. 16-003, Antelope Valley Senior Center Renovation Project, Build Phase, by \$51,452.04, for a total revised contract amount of \$1,262,823.73.
- b. Accepted the work constructed by Sawyer Construction & Associates for Public Works Construction Project No. 16-003, Antelope Valley Senior Center Renovation Project, Build Phase, and directed the City Clerk to file the Notice of Completion for the project. Retention on this project has been disbursed in accordance with California Public Contract Code.

**CC 5. PUBLIC WORKS CONSTRUCTION PROJECT NO. 17-006 – LANCASTER BOULEVARD AND 15TH STREET WEST ROUNDABOUT, HSIPL-5419(043)**

Rejected all bids for **Public Works Construction Project No. 17-006 – Lancaster Boulevard and 15<sup>th</sup> Street West Roundabout, HSIPL-5419(043)**. All bids significantly exceeded the project budget and included bid schedule anomalies resulting in technical response irregularities. Project will be reviewed, re-scoped, and re-solicited in the Fall of 2018.

**CC 6. PUBLIC WORKS CONSTRUCTION PROJECT NO. 17-007 – LANCASTER BOULEVARD AND 15TH STREET EAST ROUNDABOUT HSIPL-5419(047)**

Rejected all bids for **Public Works Construction Project No. 17-007 – Lancaster Boulevard and 15<sup>th</sup> Street East Roundabout HSIPL-5419(047)**. All bids exceeded the project budget and included bid schedule anomalies resulting in technical response irregularities. Project will be reviewed, re-scoped, and re-solicited in the Fall of 2018.

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**PH 1. ENVIRONMENTAL IMPACT REPORT NO. 16-01, GENERAL PLAN AMENDMENT NO. 16-01, ZONE CHANGE NO. 16-01, SPECIFIC PLAN NO. 15-02, TENTATIVE TRACT MAP NO. 74312, DEVELOPMENT AGREEMENT NO. 18-01 (AVANTI WEST SUBAREA: ±73 ACRES BOUNDED BY AVENUE K-4, AVENUE K-8, 70TH STREET WEST AND 75TH STREET WEST; AVANTI SOUTH SUBAREA: ±234 ACRES BOUNDED BY AVENUE L, AVENUE K-8, 62ND STREET WEST, AND 70TH STREET WEST)**

It was the consensus of the City Council to waive the Staff Report for this item.

On a motion by Council Member Mann, and seconded by Council Member Malhi, the City Council adopted **Resolution No. 18-47**, certifying Environmental Impact Report No. 16-01 (SCH #2016071067) and adopting the findings and statement of overriding considerations; approving General Plan Amendment No. 16-01 to amend the General Plan land use designation on portions of the subject property from NU (Non-Urban Residential) and UR (Urban Residential) with a Specific Plan (SP) overlay to UR with an SP Overlay and Mixed-Use (MU) with an SP Overlay; approving Specific Plan No. 15-02; approving Tentative Tract Map No. 74312 to subdivide the subject property into 44 lots for financial and conveyance purposes; and approving Development Agreement No. 18-01 to establish specific development rights by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

On a motion by Council Member Mann, and seconded by Council Member Malhi, the City introduced **Ordinance No. 1047**, amending the City zoning plan for 73 acres bounded by Avenue K-4, Avenue K-8, 70th Street West and 75th Street West (Assessor's Parcel Numbers 3204-001-184 and 3204-001-195) and 12.8 acres of a 234-acre site bounded by Avenue L, Avenue K-8, 62nd Street West, and 70th Street West (Assessor's Parcel Numbers 3204-008-045 and 3204-008-047), known as Zone Change No. 16-01, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

**NB 1. ECONOMIC DEVELOPMENT UPDATE**

The Economic Development Manager presented the update for this item.

Received and filed the Economic Development Update.

LANCASTER CITY COUNCIL/ SUCCESSOR AGENCY/  
FINANCING/POWER/CALIFORNIA CHOICE ENERGY AUTHORITY  
**MINUTES**

September 11, 2018

**NB 2. RING DOORBELL AND CAMERA REBATE PROGRAM**

The Energy Manager presented the staff report regarding this item.

Discussion between the City Council and staff included discussion of the simplicity to install the product, the range of vision for the cameras and associated fees.

Council Member Mann thanked Vice Mayor Crist for bringing the idea to staff to start the process for this program and thanked the Sheriff Booster's for their contribution for the program.

On a motion by Council Member Underwood-Jacobs and seconded by Council Member Mann, the City Council approved a professional services agreement with Ring Inc. (Ring) for the Ring Doorbell and Camera Rebate Program (Rebate Program), by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

On a motion by Council Member Underwood-Jacobs and seconded by Council Member Mann, the City Council approved the use of \$50,000 in City funds from account 101-4200-301 to subsidize the program for 1,000 Lancaster households, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

On a motion by Council Member Underwood-Jacobs and seconded by Council Member Mann, the City Council approved a one-week initial program launch to include neighborhoods within the boundaries of Avenue H to Avenue K and 20th Street West to 30th Street East, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

**NB 3. AMENDMENT TO TITLE 8 OF THE LANCASTER MUNICIPAL CODE RELATING TO SHOPPING CART CONTAINMENT, RETRIEVAL AND ABATEMENT**

The Assistant City Attorney presented the staff report regarding this item.

Addressing the City Council on this item:

David Paul – discussed the blight associated with shopping carts around town.

On a motion by Council Member Mann and seconded by Council Member Underwood-Jacobs, the City Council introduced **Ordinance No. 1048**, amending Title 8 of the Lancaster Municipal Code by adding Chapter 8.62, relating to shopping cart containment, retrieval and abatement, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

LANCASTER CITY COUNCIL/ SUCCESSOR AGENCY/  
FINANCING/POWER/CALIFORNIA CHOICE ENERGY AUTHORITY  
**MINUTES**  
September 11, 2018

**NB 4. REVISED PROFESSIONAL CONSULTING SERVICES AGREEMENT WITH FRONTIER ENERGY**

It was the consensus of the City Council to waive the Staff Report for this item.

On a motion by Council Member Mann and seconded by Council Member Underwood-Jacobs, the City Council approved revised Professional Consulting Services Agreement with Frontier Energy amending the scope of work to include Energy Advisor program support, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

**NB 5. ORDINANCE NO. 1049, REPEALING CHAPTER 9.44 OF THE LANCASTER MUNICIPAL CODE RELATING TO REGULATION OF REGISTERED SEX OFFENDERS**

It was the consensus of the City Council to waive the Staff Report for this item.

On a motion by Council Member Underwood-Jacobs and seconded by Council Member Malhi, the City Council introduced **Ordinance No. 1049**, repealing chapter 9.44 of the Lancaster Municipal Code relating to regulation of registered sex offenders, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

**CA 1. NOMINATION AND APPOINTMENT OF DREW MERCY TO THE CRIMINAL JUSTICE COMMISSION**

On a motion by Council Member Mann and seconded by Underwood-Jacobs, the City Council approved the appointment of Drew Mercy to the Criminal Justice Commission, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

**CA 2. NOMINATION AND APPOINTMENT OF RUTGER PARRIS TO THE LANCASTER PLANNING COMMISSION.**

On a motion by Council Member Malhi and seconded by Council Member Mann, the City Council approved the appointment of Rutger Parris to the Lancaster Planning Commission, by the following vote: 4-0-0-1; AYES: Malhi, Mann, Underwood-Jacobs, Crist; NOES: None; ABSTAIN: None; ABSENT: Parris

**Mayor Parris arrived at the meeting at this time.**

LANCASTER CITY COUNCIL/ SUCCESSOR AGENCY/  
FINANCING/POWER/CALIFORNIA CHOICE ENERGY AUTHORITY  
**MINUTES**

September 11, 2018

**CA 3. REWARD OF \$10,000**

Approve a reward of \$10,000 for information leading to the apprehension and conviction of the person or persons responsible for the fatal hit and run of 21-year-old Rodney Tyrone Richard, who was struck by a truck in the eastbound lane of Lancaster Boulevard on August 4, 2018 at approximately 2:00 a.m.

On a motion by Vice Mayor Crist and seconded by Council Member Mann the City Council approved a reward of \$10,000 for information leading to the apprehension and conviction of the person or persons responsible for the fatal hit and run of 21-year-old Rodney Tyrone Richard, who was struck by a truck in the eastbound lane of Lancaster Boulevard on August 4, 2018 at approximately 2:00 a.m., by the following vote: 5-0-0-0; AYES: Malhi, Mann, Underwood-Jacobs, Crist, Parris; NOES: None; ABSTAIN: None; ABSENT: None

Discussion of the status of cameras being placed on The Blvd took place.

**CR 1. REPORT ON THE ACTIVITIES OF THE BOARD OF DIRECTORS FOR DISTRICT NO. 14 OF THE COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY**

Vice Mayor Crist discussed the Sanitation's District's review of conflicts of interest and the audit of the billing for District 14 and District 20. Discussion took place regarding water adjudication and the familial relationship between the Sanitation District and the Law Firm providing the billing for the Sanitation Districts.

**CR 2. COUNCIL REPORTS**

Vice Mayor Crist discussed a recent meeting with Antelope Valley Transit Authority (AVTA) and BYD regarding AVTA's goal of having a 100% electric fleet in 2018; BYD is working to meet that goal and is selling more buses than they're producing translating to a possibility of meeting the goal a few months into 2019.

Mayor Parris discussed and requested each City Commission adopt a Code of Conduct for the members of each Commission.

Mayor Parris stated discussions are taking place regarding creating a group comprised of two Council Members from Palmdale and two Council Members from Lancaster and one additional member to discuss issues impacting each city.

**CALIFORNIA CHOICE ENERGY AUTHORITY**

No action required at this time.

**LANCASTER FINANCING AUTHORITY**

No action required at this time.

**LANCASTER POWER AUTHORITY**

No action required at this time.

LANCASTER CITY COUNCIL/ SUCCESSOR AGENCY/  
FINANCING/POWER/CALIFORNIA CHOICE ENERGY AUTHORITY  
**MINUTES**  
September 11, 2018

**LANCASTER SUCCESSOR AGENCY**

No action required at this time.

**CITY MANAGER / EXECUTIVE DIRECTOR ANNOUNCEMENTS**

Los Angeles County Assistant Fire Chief Sullivan discussed the 9-11 Remembrance event.

Two videos highlighting work being done in the City and the Lancaster Cemetery District were shown.

**CITY CLERK /AGENCY/AUTHORITY SECRETARY ANNOUNCEMENT**

The City Clerk provided the public with the procedure to address the City Council/Successor Agency/Authority regarding non-agendized item.

**PUBLIC BUSINESS FROM THE FLOOR - NON-AGENDIZED ITEMS**

Addressing the City Council at this time:

Amaka Donn – apologized to the City for missing Council Member Mann in her classroom and discussed the communication issues she has experienced relating to her email.

Fran Sereseres – stated she supports the Ring Doorbell Program, discussed fees associated with using shopping carts.

Richard Wainwright – discussed his business being removed from the Downtown PBID.

Garth Erdrich – discussed his concerns regarding the Kensington Campus.

Judith Hendrickson – discussed negligence at a specific care center in Lancaster.

Donna Young – discussed a specific mobile home park and fees being instituted by the owner.

David Paul – discussed his feelings surrounding 9-11.

**ADJOURNMENT**

Mayor/Chair Parris adjourned the meeting at 6:54 p.m. and stated the next City Council/Successor Agency/Financing/Power/California Choice Energy Authority meeting will be held on Tuesday, September 25, 2018 at 5:00 p.m.

LANCASTER CITY COUNCIL/ SUCCESSOR AGENCY/  
FINANCING/POWER/CALIFORNIA CHOICE ENERGY AUTHORITY  
**MINUTES**  
September 11, 2018

PASSED, APPROVED and ADOPTED this 25<sup>th</sup> day of September, 2018, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
BRITT AVRIT, MMC  
CITY CLERK  
AGENCY/AUTHORITY SECRETARY

\_\_\_\_\_  
R. REX PARRIS  
MAYOR/CHAIRMAN

STATE OF CALIFORNIA            }  
COUNTY OF LOS ANGELES       }ss  
CITY OF LANCASTER             }

CERTIFICATION OF MINUTES  
CITY COUNCIL/SUCCESSOR AGENCY/FINANCING/POWER/CALIFORNIA CHOICE  
ENERGY AUTHORITY

I, \_\_\_\_\_, \_\_\_\_\_ of the City of Lancaster, CA, do hereby certify that this is a true and correct copy of the original City Council/Successor Agency/Financing/Housing/Power/California Choice Energy Authority Minutes, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, CA on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

\_\_\_\_\_



**STAFF REPORT**  
**City of Lancaster**

Date: September 25, 2018  
To: Mayor Parris and City Council Members  
From: Pam Statsmann, Finance Director  
Subject: **Check Registers – August 26, 2018 through September 8, 2018**

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CC 2
09/25/18
MVB

**Recommendation:**

Approve the Check Registers as presented.

**Fiscal Impact:**

\$ 7,951,953.06 as detailed in the Check Registers.

**Background:**

At each regular City Council Meeting, the City Council is presented with check and ACH/wire registers listing the financial claims (invoices) against the City for purchase of materials, supplies, services, and capital projects issued the prior three to four weeks. This process provides the City Council the opportunity to review the expenditures of the City. Claims are paid via checks, Automated Clearing House (ACH) payments, or federal wires. The justifying backup information for each expenditure is available in the Finance Department.

Check Nos.:	7397824-7398106	\$ 4,820,287.69
ACH/Wire Check Nos.:	101010146-101010156	<u>\$ 3,131,665.37</u>
		\$ 7,951,953.06
Voided Check No.:	N/A	
Voided ACH/Wire No.:	N/A	

PS:sp

**Attachments:**

Check Register  
ACH/Wire Register

# City of Lancaster Check Register



From Check No.: 101010146 - To Check No.: 101010156

From Check Date: 08/26/18 - To Check Date: 09/08/18

Printed: 9/12/2018 9:13

Check No	Supplier	Supplier Name	Invoice Description	Invoice Amt	Charge Code	GL Amount
101010146	07172	ENERGY AMERICA, LLC	06/18-LCE ENERGY CHARGES	2,284,150.38	490 4250301 490 4250653 490 4250653	33,780.09 2,350.00 2,248,020.29
				<u>2,284,150.38</u>		<u>2,284,150.38</u>
101010147	07936	WESTERN ANTELOPE DRY RANCH LLC	07/18-LCE ENERGY CHARGS-SPOWER	147,384.29	490 4250653	147,384.29
101010148	01550	KAISER FOUNDATION HEALTH PLAN	09/18-EMPLOYEE HEALTH INS	222,202.79	101 2166130 101 2166130 109 1101000	1,562.86 202,310.79 18,329.14
				<u>222,202.79</u>		<u>222,202.79</u>
101010149	01708	BLUE CROSS OF CALIFORNIA	09/18-EMPLOYEE HEALTH INS	100,573.29	101 2166110 101 2166115 101 2166120 109 1101000	64,928.03 12,702.10 15,463.32 7,479.84
				<u>100,573.29</u>		<u>100,573.29</u>
101010150	01708	BLUE CROSS OF CALIFORNIA	09/18-RETIREE HEALTH INS	62,229.68	109 1101000	62,229.68
101010151	08721	MASSMUTUAL LIFE INSURANCE CO	08/18-EMPLOYEE WHOLE LIFE INS	1,392.42	101 2170218	1,392.42
101010152	05228	METLIFE	08/18-VISION INSURANCE	6,326.12	101 2166150 101 2166150 101 2166155 101 2166155 109 1101000	(2.24) 4,071.57 (0.25) 444.50 1,812.54
				<u>6,326.12</u>		<u>6,326.12</u>
101010153	08557	SILICON VALLEY POWER	11/18-ENERGY PROCUREMENT	1,151.50	490 4250653	1,151.50
101010154	07732	3 PHASES RENEWABLES INC	LCE-04/18-ENERGY/RECS LCE-03/18-ENERGY/RECS LCE-07/18-ENERGY/RECS	131,700.98 72,470.65 98,100.00	490 4250653 490 4250653 490 4250653	131,700.98 72,470.65 98,100.00
				<u>302,271.63</u>		<u>302,271.63</u>
101010155	08722	COMBINED INS CO OF AMERICA	08/18-EMPLOYEE CHUBB	3,183.27	101 2170217 101 4410121	3,183.58 (0.31)
				<u>3,183.27</u>		<u>3,183.27</u>
101010156	00370	CITY OF LANCASTER/PETTY CASH	PETTY CASH DRAW	800.00	101 1020000	800.00

Chk Count 11

Check Report Total 3,131,665.37

# City of Lancaster Check Register



From Check No.: 7397824 - To Check No.: 7398106  
 From Check Date: 08/26/18 - To Check Date: 09/08/18

Printed: 9/12/2018 9:17

Check No	Supplier	Supplier Name	Invoice Description	Invoice Amt	Charge Code	GL Amount
7397824	D1507	A B C-ALCOHOL BEVERAGE CONTROL SOL-BEVERAGE PERMIT		100.00	101 4649568	100.00
7397825	00107	A V PRESS	PAC-07/18 ADVERTISING	550.00	101 4650205	550.00
7397826	00107	A V PRESS	07/18-ADVERTISING	550.00	101 4649225	550.00
7397827	00107	A V PRESS	06/18-ADVERTISING	1,478.10	101 4649562	1,478.10
7397828	03353	BOZIGIAN, MARK	MB-PR DM-PCFC GRVE-09/05-07/18	185.00	490 4250201	185.00
7397829	08754	CA MUNICIPAL COMPLNCE CNSLTNTS 08/18-PS-CONSULTING SVCS		10,789.00	101 4820301	10,789.00
7397830	09035	CA SPECIALIZED TRAINING INST	FIRST RESPNDR CERTIFICATES(22)	80.00	101 4220301	80.00
7397831	D0775	CAUDLE, JASON	JC-PR DM-PCFC GRVE-09/05-07/18	185.00	490 4250201	185.00
7397832	D3792	DEFALCO, CATHY	CD-PR DM-MONTEREY-09/04-07/18	259.00	490 4250201	259.00
7397833	08386	FERRIN, ALICE	AF-PR DM-PACIFC GROVE-9/5-8/18	259.00	490 4250201	259.00
7397834	08117	FIGUEROA, ERIKA	EF-PR DM-PACIFC GROVE-9/4-8/18	259.00	490 4250201	259.00
7397835	D0315	FREGOSO, PHYLLIS	09/18-STANDARD RETAINER	8,300.00	101 4600301	8,300.00
7397836	06602	HEWITT, DAVID M	CS-PERF-MUSIC-09/06/18	3,000.00	101 4680225	3,000.00
7397837	08247	ICM PARTNERS	DEP-DAVID SPADE-09/08/18	15,000.00	101 4650318	15,000.00
7397838	C8814	LAZAR, MICHAEL	ML-PR DM-ORANGE CO-08/27-28/18	96.00	484 4755201	96.00
7397839	D2513	LEAN MEAN FIGHTING MACHINE LP	RFND-SEWER CHARGES	11,700.00	480 3100100	11,700.00
7397840	07458	MAXX ENTERTAINMENT	PAC-MONITOR MIXING CONSOLES	38,758.93	101 1101600 101 4650750	8,212.50 30,546.43
				<u>38,758.93</u>		<u>38,758.93</u>
7397841	08986	PEARCEY, STACI	SP-MILAGE-GLENDALE-08/22/18	70.63	101 4410203	70.63
7397842	03154	SO CA EDISON	04/04/18-08/23/18 ELECTRIC SVC	653.45	483 4785652 484 4755652 490 4250652	292.67 35.01 325.77
				<u>653.45</u>		<u>653.45</u>
7397843	03154	SO CA EDISON	07/17/18-08/22/18 ELECTRIC SVC	17,446.47	101 4632652 101 4633652 203 4636652 321 15ST026924	11,943.33 4,817.43 97.94 27.06

# City of Lancaster Check Register



From Check No.: 7397824 - To Check No.: 7398106

From Check Date: 08/26/18 - To Check Date: 09/08/18

Printed: 9/12/2018 9:17

Check No	Supplier	Supplier Name	Invoice Description	Invoice Amt	Charge Code	GL Amount
					482 4636652	420.88
					483 4785652	32.13
					483 4785660	107.70
				17,446.47		17,446.47
7397844	1907	SO CA GAS COMPANY	07/18/18-08/22/18 GAS SVC	254.04	101 4631655	148.77
					101 4633655	42.58
					101 4634655	30.61
					101 4635655	32.08
				254.04		254.04
7397845	07617	UNITED TALENT AGENCY, LLC	DEP-KENNY G-09/22/18	20,000.00	101 4650318	20,000.00
7397846	C5424	URBAN RENUAL LP	RFND-SEWER CHARGES	4,134.00	480 3100100	4,134.00
7397847	D3370	VERIZON WIRELESS	07/18-IPAD SERVICE	2,618.56	101 4315651	2,618.56
7397848	D3174	WELCH, RYAN	RW-PR DM-ORNG CNTY-08/27-28/18	96.00	480 4755201	96.00
7397849	C6406	WELLS, KATHY	KW-PR DM-PCFC GRVE-09/05-07/18	185.00	490 4250201	185.00
7397850	06694	WORLD ENTMNT ASSOC OF AMERICA	DEP-ALAN PARSONS-09/14/18	6,000.00	101 4650318	6,000.00
7397851	08290	4WALL ENTERTAINMENT INC	PAC-LAMPS(72)	1,436.27	101 4650251	1,436.27
7397852	02071	A G SOD FARMS INC	NSC-SOD	1,200.00	101 4635404	1,200.00
7397853	06043	A V 4-H LEADERS COUNCIL	07/18-CAKE D?COR INSTRUCTION 08/18-HORSEMANSHIP INSTRUCTION	59.40 226.10	101 4643308 101 4643308	59.40 226.10
				285.50		285.50
7397854	C0077	A V E K	NSC-07/18-BACTERIOLOGICAL TEST	20.00	101 4635301	20.00
7397855	A5389	A V FAIR	06/18-WATCH & WAGER COMM	3,210.97	101 2189000	3,210.97
7397856	03854	A V JANITORIAL SUPPLY	PBP-JANITORIAL SUPPLIES LMS-TOWELS(8 CASES) LMS-JANITORIAL SUPPLIES	767.60 459.90 601.16	101 4631406 101 4632406 101 4632406	767.60 459.90 601.16
				1,828.66		1,828.66
7397857	02357	A V TRANSIT AUTHORITY	JULY 18-ANNUAL SENIOR PASSES	5,000.00	204 4430770 207 4430301	2,500.00 2,500.00
				5,000.00		5,000.00
7397858	06294	A V WEB DESIGNS	NSC-08/18-MONTHLY HOSTING CHGS PAC-08/18-MONTHLY HOSTING CHGS	99.95 99.95	101 4645301 101 4650301	99.95 99.95
				199.90		199.90
7397859	06123	ACE AIR CONDITIONING & HEATING	LMS-OFFICE HVAC REPAIR	425.00	101 4632402	425.00
7397860	09069	ACTON ICE DELIVERY	PAC-ICE	147.83	101 4650251	147.83

# City of Lancaster Check Register



From Check No.: 7397824 - To Check No.: 7398106

From Check Date: 08/26/18 - To Check Date: 09/08/18

Printed: 9/12/2018 9:17

Check No	Supplier	Supplier Name	Invoice Description	Invoice Amt	Charge Code	GL Amount
7397861	08894	ADHERENCE COMPLIANCE	MEDICAL CANNABIS SUPPORT SVCS	5,333.00	101 4230301	5,333.00
			MEDICAL CANNABIS SUPPORT SVCS	3,150.00	101 4230301	3,150.00
				<u>8,483.00</u>		<u>8,483.00</u>
7397862	C8745	ADVANCE ELECTRIC	TBP-TROUBLESHOOT WIRING	330.00	101 4631402	330.00
7397863	06352	AGILITY RECOVERY SOLUTIONS	08/18-READYSUITE	665.00	101 4315302	665.00
7397864	D1663	AMERICAN IRON WORK	TBP-LIGHT POLE REPAIRS	800.00	101 4631404	800.00
			LMS-FENCE REPAIR	650.00	101 4632402	650.00
			PDW-GATE CHAIN REPAIR	200.00	101 4634402	200.00
				<u>1,650.00</u>		<u>1,650.00</u>
7397865	A2217	AMERICAN PLANNING ASSOCIATION	10/18-09/19 APA MEMBERSHIP	294.00	101 4770206	294.00
7397866	D3147	AMERICAN PLUMBING SERVICES, INC	EDP-DRINKING FOUNTAIN REPAIR	975.00	101 4631402	975.00
			AHP-DRINKING FOUNTAIN REPAIR	993.00	101 4631402	993.00
			AHP-DRINKING FOUNTAIN REPAIR	662.00	101 4631402	662.00
			LMS-PLUMBING REPAIRS	447.50	101 4632402	447.50
				<u>3,077.50</u>		<u>3,077.50</u>
7397867	D3517	AMERICASPRINTER.COM	PAC-AFY BROCHURES(1000)	506.72	101 4650205	506.72
7397868	04190	AMERIPRIDE SERVICES	UNIFORM CLEANINGS	76.50	101 4753209	76.50
			UNIFORM CLEANINGS	51.34	101 4753209	51.34
				<u>127.84</u>		<u>127.84</u>
7397869	02693	ANDY GUMP, INC	OMP-FENCE RNTL-08/06-09/02/18	44.68	101 4634602	44.68
			RDP-FENCE RNTL-08/10-09/06/18	33.51	101 4634602	33.51
				<u>78.19</u>		<u>78.19</u>
7397870	08701	APPLE VALLEY CHOICE ENERGY	02/18-CAPACITY PRODUCT	2,000.00	490 4250653	2,000.00
			08/18-CAPACITY PRODUCT	2,000.00	490 4250653	2,000.00
				<u>4,000.00</u>		<u>4,000.00</u>
7397871	08992	ARC DOCUMENT SOLUTIONS LLC	DOCUMENT COPYING SERVICES	532.75	206 12ST036924	532.75
			DOCUMENT COPYING SERVICES	59.72	203 4752253	59.72
				<u>592.47</u>		<u>592.47</u>
7397872	08130	ARTAROUND STUDIO	08/18-KIDSWORK INSTRUCTION	231.00	101 4643308	231.00
7397873	05187	ATKINSON MASONRY	62ND W/AVE K-WALL REPAIR	1,175.00	482 4636462	1,175.00
7397874	09071	AZTECA RESTAURANT FAMILY INC	SAFETY FAIR-CATERING	2,463.75	101 4220301	2,463.75
7397875	01580	BASS, LYNNETTE	08/18-JRP PLAY BRIGDE INSTRCTR	728.00	101 4643308	728.00
			08/18-JRP PRESCHOOL INSTRUCTOR	2,442.05	101 4643308	2,442.05
				<u>3,170.05</u>		<u>3,170.05</u>
7397876	06176	C S TECH GROUP, INC	CH-TV INSTALLATIONS(3)	1,229.44	101 4315301	1,229.44

# City of Lancaster Check Register



From Check No.: 7397824 - To Check No.: 7398106

From Check Date: 08/26/18 - To Check Date: 09/08/18

Printed: 9/12/2018 9:17

Check No	Supplier	Supplier Name	Invoice Description	Invoice Amt	Charge Code	GL Amount
7397877	A9249	CA DEPT OF CORRCTNS/REHAB	07/18-CUSTODY SUPRVSN AGREEMNT	6,583.00	203 4752308	4,834.00
					224 4752308	1,749.00
				6,583.00		6,583.00
7397878	09072	CARROLL, DANIELLE	RFND-RNTL OVPYMT-MOAH-08/16/18	44.00	101 2182001	44.00
7397879	04636	CAYENTA/N HARRIS COMPUTER CORP	08/18-CMS	4,007.15	101 4315302	4,007.15
7397880	06225	CPACINC.COM	FY18/19 BARRACUDA RENEWAL	10,769.00	101 4315302	10,769.00
7397881	03790	CRAFCO	ASPHALT COLD PATCH	2,496.62	203 4752410	2,496.62
7397882	C5109	D'S CERAMICS	08/18-CHILDRENS ART INSTRUCTN	140.00	101 4643308	140.00
			08/18-POTTERS WHEEL INSTRUCTN	91.00	101 4643308	91.00
				231.00		231.00
7397883	C7625	DAPEER,ROSENBLIT & LITVAK, LLP	07/18-SPECIALIZED LGL SVCS	1,039.00	101 4545303	1,039.00
7397884	06809	DEAR LIFE ENTERPRISES	ZELDAS-PERF-MUSIC-08/18/18	300.00	101 4652251	300.00
7397885	08803	DEDMAN, LENARDO	08/18-FRENCH INSTRUCTOR	144.00	101 4643308	144.00
7397886	09073	DEL CID, YAJAIRA	RFND-CLASS REGISTRATION	90.00	101 2182001	90.00
7397887	03311	DELTA LIQUID ENERGY	PROPANE-EQ3409	41.49	203 4752207	41.49
7397888	00432	DEPT OF JUSTICE	07/18-FINGERPRINT APPS	836.00	101 4220301	836.00
7397889	D4053	DEPT OF PUBLIC HEALTH	TBP-SPLASH PAD PERMIT	88.00	101 4631311	88.00
7397890	A0925	DESERT HAVEN ENTERPRISES	CH-SECURE BROKEN WINDOWS/DOORS	760.00	101 4545940	760.00
7397891	00414	DESERT LOCK COMPANY	TBP-LOCK REPAIRS	184.21	101 4631403	184.21
			LMS-KEYS	47.09	101 4632403	47.09
			LMS-DOOR REPAIRS	72.50	101 4632402	72.50
			LMS-DOOR REPAIRS	60.00	101 4632402	60.00
			OMP-FILING CABINET KEYS(5)	8.21	101 4634403	8.21
			STP-LOCK REPAIRS	438.69	101 4631402	438.69
			PDW-FRONT DOOR SERVICE	60.00	101 4634402	60.00
			LMS-SERV TRIP-REPAIR DOOR LOCK	75.00	101 4632402	75.00
				945.70		945.70
7397892	07159	DIAZ, BRANDON	07/18-TENNIS INSTRUCTOR	280.00	101 4643308	280.00
			07/18-TENNIS INSTRUCTOR	120.00	101 4643308	120.00
			07/18-TENNIS INSTRUCTOR	360.00	101 4643308	360.00
			07/18-TENNIS INSTRUCTOR	520.00	101 4643308	520.00
			07/18-TENNIS INSTRUCTOR	40.00	101 4643308	40.00
			07/18-TENNIS INSTRUCTOR	240.00	101 4643308	240.00
			07/18-TENNIS INSTRUCTOR	640.00	101 4643308	640.00
			07/18-TENNIS INSTRUCTOR	760.00	101 4643308	760.00
			07/18-TENNIS INSTRUCTOR	640.00	101 4643308	640.00

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			07/18-TENNIS INSTRUCTOR	760.00	101 4643308	760.00
				4,360.00		4,360.00
7397893	D4068	DIXON, FRANK	08/18-DRAWING INSTRUCTOR	450.00	101 4643308	450.00
7397894	08329	E C S IMAGING INC	LASERFICHE USERS/MAINTENANCE	32,722.00	101 4315302	32,722.00
7397895	08643	EARTH SYSTEMS PACIFIC	AVE I/DIVISION IN-FILL PROJECT	10,350.00	361 4541900	10,350.00
			MED CRRDR-GEO TECH ENG RPRT	8,720.00	306 4542901J	8,720.00
			MED CRRDR-SKILLED NURSING FAC	12,600.00	306 4542901J	12,600.00
				31,670.00		31,670.00
7397896	07937	FARRELL, ANTHONY R	ZELDAS-PERF-MUSIC-08/16/18	200.00	101 4652251	200.00
7397897	00617	FEDERAL EXPRESS CORPORATION	EXPRESS MAILING	114.00	101 4770212	67.16
					101 4783212	20.54
					217 16TS029924	26.30
				114.00		114.00
7397898	08308	GET HOOKED CRANE SERVICE INC	OMP-LIGHT POLE REMOVAL	340.00	101 4634402	340.00
7397899	00822	H W HUNTER, INC	PANEL-EQ5856	63.38	101 4631207	63.38
			MODULE-EQ6817	959.44	101 4545207	959.44
				1,022.82		1,022.82
7397900	09074	HALEY, LIONEL	RFND-RNTL DEP-OMP-08/18/18	100.00	101 2182001	100.00
7397901	04852	IMAGE 2000	COPIES-CNTRCT 2803-01-08/08/18	86.76	101 4800254	86.76
7397902	D3842	INNOVATION EDUCATION	07/18-SUMMER WORKSHOP INSTRCTN	18.00	101 4643308	18.00
			07/18-SUMMER WORKSHOP INSTRCTN	6.00	101 4643308	6.00
			08/18-ITALIAN INSTRUCTION	168.00	101 4643308	168.00
			08/18-SUMMER WORKSHOP INSTRCTN	84.00	101 4643308	84.00
			08/18-SUMMER WORKSHOP INSTRCTN	84.00	101 4643308	84.00
			08/18-LEGO ROBOTICS INSTRUCTN	84.00	101 4643308	84.00
				1,200.00		1,200.00
7397903	D1903	KERN MACHINERY INC-LANCASTER	LMS-MOWER BLADES(3)	86.66	101 4632207	86.66
			LMS-MOWER REPAIR PARTS	37.81	101 4632207	37.81
			NSC-INPUT SHAFT	673.80	101 4635404	673.80
				798.27		798.27
7397904	06059	KRAZAN & ASSOCIATES, INC	CP17020-AVE I CORRDR IMPRVMENTS	2,515.00	209 15ST042924	2,515.00
7397905	1214	L A CO SHERIFF'S DEPT	07/18-SPECL EVNT-4TH OF JULY	4,730.45	101 4820355	4,280.95
					101 4820357	449.50
				4,730.45		4,730.45
7397906	D2287	LANCASTER CODE ENFRMNT ASSN	UNION DUES-PP 17-2018	330.00	101 2171000	330.00
7397907	09075	LANCASTER HOUSING PARTNERS	RFND- CODE ENF HEARING FEE	100.00	101 3102401	100.00

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7397908	D1736	LEVEL 3 COMMUNICATIONS LLC	08/18-INTERNET/DATA-#50041351	3,931.67	101 4315651	3,931.67
7397909	08202	LOS ANGELES TIMES	HOUSING-CLASSIFIED LISTINGS	1,617.61	361 4541263	1,617.61
7397910	06873	MAHER ACCOUNTANCY	CCEA-07/18-ACCOUNTING SVCS	2,500.00	491 4370003P	2,500.00
			CCEA-07/18-ACCOUNTING SVCS	2,500.00	491 4370002P	2,500.00
			CCEA-07/18-ACCOUNTING SVCS	2,500.00	491 4370001P	2,500.00
			CCEA-07/18-ACCOUNTING SVCS	2,500.00	491 4370004P	2,500.00
				<u>10,000.00</u>		<u>10,000.00</u>
7397911	08106	MARTINEZ, CRISTINA A	07/18-BALLET INSTRUCTOR	678.00	101 4643308	678.00
7397912	02270	MELDON GLASS	MOAH-DOOR REPAIRS	50.00	101 4633402	50.00
7397913	06966	MICHAEL BAKER INT'L INC	CP16008-PED GAP CLSR IMPRVMTS	1,156.50	204 15SW016924	1,156.50
			CP16008-PED GAP CLSR IMPRVMTS	1,273.50	204 15SW016924	1,273.50
			CP13020-AVE G INTERCHANGE	35,309.28	210 15BR006924	35,309.28
				<u>37,739.28</u>		<u>37,739.28</u>
7397914	06673	MILLER, JACK C	08/18-TENNIS INSTRUCTOR	27.00	101 4643308	27.00
			08/18-TENNIS INSTRUCTOR	51.30	101 4643308	51.30
			08/18-TENNIS INSTRUCTOR	78.30	101 4643308	78.30
				<u>156.60</u>		<u>156.60</u>
7397915	07980	MOORE, JACK T	08/18-EQUIPMENT MAINTENANCE	95.00	101 4633402	95.00
7397916	05773	MORRISON WELL MAINTENANCE	NSC-06/18-BACTERIOLOGICAL TEST	985.00	101 4635301	985.00
7397917	C9177	MUNISERVICES, LLC	1ST QTR 2018-SUTA SERVICES	16,766.86	101 4410301	16,766.86
			1ST QTR 2018-SALES TAX RPRTING	1,768.38	101 4410301	1,768.38
				<u>18,535.24</u>		<u>18,535.24</u>
7397918	08562	NAPA AUTO PARTS	ALTERNATOR/COR DEP-EQ4360	166.82	203 4785207	166.82
			AIR FILTERS(6)-EQ3828	74.50	484 4752207	74.50
			SERP BELT/THERMOSTAT-EQ5856	179.04	101 4631207	179.04
			AIR FILTERS-EQ1715	21.57	101 4640207	21.57
			BRAKE PADS-EQ5703	139.24	101 4634207	139.24
			LAMP/BULBS-EQ4337	17.91	203 4785207	17.91
			COIN CELLS(2)-EQ1516	10.31	101 4800207	10.31
			SENSOR-EQ4330	52.90	483 4785207	52.90
			DRUMS-EQ3783	239.87	203 4752207	239.87
			SCREWS-EQ3831	9.24	203 4752207	9.24
				<u>911.40</u>		<u>911.40</u>
7397919	D2822	NATIONAL CINEMEDIA, LLC	PS-THEATER ADS-07/13-08/09/18	433.33	101 4800205	433.33
7397920	03762	OFFICE DEPOT	SELF INKING STAMP	24.63	101 4761259	24.63
7397921	05509	P A R S	06/18-REP FEES	4,958.57	101 4220301	4,958.57
7397922	A7221	P E R S LONG TERM CARE PROGRAM	LONG TERM CARE PREM-PP 17-2018	1,542.69	101 2170200	1,542.69



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7397923	05741	P P G ARCHITECTURAL FINISHES	LMS-FIELD PAINT	66.36	101 4632404	66.36
7397924	05998	PAVING THE WAY FOUNDATION	CMMNTY SPPRT/GOOD CTZNSHP PRGM	500.00	101 4820301	500.00
			CMMNTY SPPRT/GOOD CTZNSHP PRGM	5,500.00	101 4820301	5,500.00
			CMMNTY SPPRT/GOOD CTZNSHP PRGM	576.00	101 4820301	576.00
				<u>6,576.00</u>		<u>6,576.00</u>
7397925	08967	PIONEER ATHLETICS	OMP/RDP-FIELD PAINT	1,986.77	101 4634404	1,986.77
7397926	07287	PRINTING BOSS	LMS-POSTERS(5)	164.25	101 4632403	164.25
7397927	05864	QUINN COMPANY	COUPLER/BELT SET-EQ3777	126.18	203 4752207	126.18
			CAP SCREWS/NUTS-EQ3840	26.75	484 4752207	26.75
			COUPLINGS/HOSES-EQ3394	79.03	203 4752207	79.03
				<u>231.96</u>		<u>231.96</u>
7397928	09076	RAMIREZ, IVAN	RFND-CLASS REGISTRATN(PARTIAL)	65.00	101 2182001	65.00
7397929	D3160	RAULSTON, DAVID	LMS-PARKING LOT MAINTENANCE	700.00	101 4632402	700.00
7397930	07002	READYREFRESH BY NESTLE	07/18-WTR COOLER RENTAL	17.50	101 4650251	17.50
7397931	05943	ROBERTSON'S	CONCRETE	204.66	203 4752410	204.66
			CONCRETE	122.79	203 4752410	122.79
				<u>327.45</u>		<u>327.45</u>
7397932	09077	ROBINS, CHELSEA	RFND-RNLT DEP-CDR ST-08/18/18	100.00	101 2182001	100.00
7397933	04337	RUIZ, LINDA	08/18-TENNIS INSTRUCTOR	428.40	101 4643308	428.40
			08/18-TENNIS INSTRUCTOR	249.90	101 4643308	249.90
				<u>678.30</u>		<u>678.30</u>
7397934	D3947	S G A CLEANING SERVICES	LMS-IRRIGATION REPAIRS	385.00	101 4632402	385.00
			LMS-RESTROOM REPAIRS	433.00	101 4632402	433.00
			OMP-FENCE REPAIR	510.00	101 4634402	510.00
			AV FAIR-PARKING LOT LINES	585.00	101 4649225	585.00
			LMS-FAUCET/PLUMBING REPAIRS	396.00	101 4632402	396.00
				<u>2,309.00</u>		<u>2,309.00</u>
7397935	03962	SAFETY KLEEN	HAZ WASTE PARTS WASHER	141.41	101 4753657	141.41
7397936	A8260	SAGE STAFFING	SB-FINANCE STFF-07/30-08/03/18	930.00	101 4410308	930.00
			AM-PBLC SFTY STAFF-08/06-10/18	714.40	101 4820308	714.40
			AT-LCE STAFF-08/06-10/18	1,011.40	490 4250308	1,011.40
				<u>2,655.80</u>		<u>2,655.80</u>
7397937	D2568	SEQUOIA PACIFIC SOLAR I, LLC	CH-07/18(99630.08 KWH)	9,963.01	101 4633652	9,963.01
			LMS-07/18(64213.6 KWH)	6,421.36	101 4632652	6,421.36
			MTNC YD-07/18(57840.6 KWH)	5,784.06	101 4633652	5,784.06
			OMP-07/18(6052.4 KWH)	605.24	101 4634652	605.24
			PAC-07/18(40372.8 KWH)	4,037.28	101 4650652	4,037.28

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				26,810.95		26,810.95
7397938	06174	SHAWNS PAINTING	CH-EXTERIOR PAINTING	22,250.00	104 11BS019924	22,250.00
7397939	1894	SIGNS & DESIGNS	DM-NAMEPLATE	13.14	101 4761253	13.14
			PAC-SIGN	71.18	101 4650205	71.18
				<u>84.32</u>		<u>84.32</u>
7397940	01816	SMITH PIPE & SUPPLY INC	OMP-VALVE BOXES/LIDS	145.39	101 4634404	145.39
			LMS-IRRIGATION PARTS	63.66	101 4632404	63.66
			NSC-POP UPS(24)	611.01	101 4635404	611.01
			TBP-IRRIGATION PARTS	486.44	101 4631404	486.44
			OMP-PIPE	10.86	101 4634404	10.86
				<u>1,317.36</u>		<u>1,317.36</u>
7397941	08988	SMITH, CHRISTINA	07/18-08/18 CONSULTING SRVCS	6,000.00	101 4300308	6,000.00
7397942	06429	STANTEC CONSULTING SRVCS INC	CP1406-10W/I-ROAD DIET DESIGN	1,485.00	209 15ST042924	1,485.00
			CP1406-10W/I-ROAD DIET DESIGN	1,210.00	209 15ST042924	1,210.00
				<u>2,695.00</u>		<u>2,695.00</u>
7397943	D3733	STOTZ EQUIPMENT	LMS-TINES	202.86	101 4634207	202.86
			LMS-THATCHING KNIFE/POWER BAND	450.69	101 4635207	450.69
			OMP-MOWER REPAIR PARTS	217.12	101 4635207	217.12
				<u>870.67</u>		<u>870.67</u>
7397944	08725	STREAMLINE SYSTEM DESIGN	QSC TOUCHSCREEN	1,684.77	101 4315291	1,684.77
7397945	A8398	SWANK MOTION PICTURES, INC	BOO-MOVIE RENTALS	455.00	101 4649561	455.00
7397946	06220	T R C SOLUTIONS, INC	CP13018-AVE K/SR14 INTERCHANGE	14,482.48	210 15BR004924	14,482.48
			CP13018-AVE K/SR14 INTERCHANGE	16,158.75	210 15BR004924	16,158.75
				<u>30,641.23</u>		<u>30,641.23</u>
7397947	2007	TARGET SPECIALTY PRODUCTS	LMS-FIELD FERTILIZERS	445.22	101 4632404	445.22
7397948	08177	TEKWERKS	09/18-REMOTE MONITORING/MNGMNT	1,355.00	101 4315402	1,355.00
7397949	08087	THE BAYSHORE CONSULTING GROUP	07/18-CCEA-RMEA SUPPORT	2,669.93	491 4250004P	2,669.93
			07/18-CCEA-SJP SUPPORT	2,500.00	491 4250001P	2,500.00
			07/18-CCEA-PRIME CONSULTING	2,558.53	491 4250002P	2,558.53
			CCEA-HANFORD IMPLEMENTATION	2,500.00	491 4370008T	2,500.00
			CCEA-SANTA PAULA-TECHNCL STUDY	2,500.00	491 4250011T	2,500.00
				<u>12,728.46</u>		<u>12,728.46</u>
7397950	2009	THE TIRE STORE	TIRES(4)-EQ1516	415.06	101 4800207	415.06
7397951	C5522	THOMSON REUTERS-WEST PMT CENT	07/18-INFORMATION CHARGES	278.61	101 4820301	278.61
			07/18-INFORMATION CHARGES	794.69	101 4545301	794.69
				<u>1,073.30</u>		<u>1,073.30</u>
7397952	04239	TIM WELLS MOBILE TIRE SERVICE	MNTS/DSMNTS-EQ5848	14.00	101 4635207	14.00

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			SVC CALL/RPR-EQ3832	130.00	203 4752207	130.00
			REPAIR-EQ5857	15.00	101 4640207	15.00
			RDP/PDW-TIRE REPAIRS	30.00	101 4634207	30.00
			REPAIR-EQ1517	15.00	101 4800207	15.00
				<u>204.00</u>		<u>204.00</u>
7397953	2003	TIP TOP ARBORISTS, INC	45522 10TH ST W-TREE REMOVAL	1,949.00	306 4542682	1,949.00
7397954	D4202	U S BANK	08/18-07/19 ADMIN FEES	450.00	991 4240962	450.00
			08/18-07/19 ADMIN FEES	1,500.00	991 4240962	1,500.00
			08/18-07/19 ADMIN FEES	1,500.00	991 4240962	1,500.00
			08/18-07/19 ADMIN FEES	1,500.00	830 4300301	1,500.00
			08/18-07/19 ADMIN FEES	1,500.00	830 4300301	1,500.00
			08/18-07/19 ADMIN FEES	450.00	991 4240962	450.00
			08/17-07/18 ADMIN FEES	1,500.00	830 4300301	1,500.00
				<u>8,400.00</u>		<u>8,400.00</u>
7397955	08783	UNIFIRST CORPORATION	UNIFORM CLEANINGS	110.49	480 4755209	110.49
7397956	31009	UNIVERSAL ELECTRONIC ALARMS	LMS-FIRE ALARM TESTING	1,155.00	101 4632301	1,155.00
7397957	2228	VALLEY CONSTRUCTION SUPPLY INC	LUMBER/CONCRETE/STAKES/HOSE	946.99	203 4752410	946.99
7397958	05834	VENCO WESTERN, INC	AVE K RAMP-GRADING	1,550.00	203 4636264	1,550.00
			08/18-LMD MAINTENANCE	37,320.00	101 4631402	18,750.00
					101 4634402	9,570.00
					101 4635402	9,000.00
				<u>38,870.00</u>		<u>38,870.00</u>
7397959	04496	VULCAN MATERIAL WESTERN DIV	COLD MIX	179.71	203 4752410	179.71
			COLD MIX	103.59	203 4752410	103.59
			COLD MIX	160.42	203 4752410	160.42
			COLD MIX	218.67	203 4752410	218.67
				<u>662.39</u>		<u>662.39</u>
7397960	06209	WAGeworks	08/18-FSA ADMIN FEES	471.97	101 2100000	28.15
					101 2100000	443.82
				<u>471.97</u>		<u>471.97</u>
7397961	05087	WALSMA OIL COMPANY	NSC-PUMP OIL	106.76	101 4635404	106.76
7397962	D2816	WASTE MANAGEMENT OF A V	07/18-615 W H(TIRE)-TRASH SVC	1,046.55	330 4542656	1,046.55
7397963	31026	WAXIE SANITARY SUPPLY	OMP-JANITORIAL SUPPLIES	1,376.84	207 4634406	1,376.84
			OMP-JANITORIAL SUPPLIES	1,275.05	101 4634406	1,275.05
				<u>2,651.89</u>		<u>2,651.89</u>
7397964	09068	YRC FREIGHT	FREIGHT	120.00	104 11BS019924	120.00
			FREIGHT	120.00	104 11BS019924	120.00
				<u>240.00</u>		<u>240.00</u>
7397965	1214	L A CO SHERIFF'S DEPT	07/18 LAW ENFORCEMENT SVCS	2,170,612.84	101 4820354	1,970,032.23

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				2,170,612.84	101 4820357	200,580.61
						2,170,612.84
7397966	1215	L A CO WATERWORKS	06/12/18-08/21/18 WATER SVC	88,643.11	101 4631654	11,670.45
					101 4633654	136.57
					101 4634654	35,087.81
					101 4636402	1,792.61
					203 4636654	14,715.79
					482 4636654	25,239.88
				88,643.11		88,643.11
7397967	07101	CALPINE ENERGY SOLUTIONS LLC	07/18-LCE-BACK OFFICE SERVICES	131,301.25	491 4250001D	19,042.50
					491 4250002D	22,212.50
					491 4250003D	69,648.75
					491 4250004D	20,397.50
				131,301.25		131,301.25
7397968	00781	GRANITE CONSTRUCTION CO.	CP17008-10TH ST W GAP CLOSURE	260,412.10	220 15ST026924	177,699.58
					232 15ST026924	34,266.44
					321 15ST026924	48,446.08
				260,412.10		260,412.10
7397969	06984	PACIFIC DESIGN & INTEGRATION	COUNCIL CHAMBRs HIGH DEF UPGRD	59,960.90	101 4305753	59,960.90
7397970	06681	PACIFIC ENERGY ADVISORS, INC	07/18-CCEA CONSULTING SERVICES	10,000.00	491 4370008T	10,000.00
			07/18-CCEA CONSULTING SERVICES	10,000.00	491 4250011T	10,000.00
			07/18-LCE CONSULTING SERVICES	18,000.00	491 4250003P	18,000.00
			07/18-CCEA CONSULTING SERVICES	18,000.00	491 4250002P	18,000.00
			07/18-CCEA CONSULTING SERVICES	18,000.00	491 4250004P	18,000.00
			07/18-CCEA CONSULTING SERVICES	18,000.00	491 4250001P	18,000.00
				92,000.00		92,000.00
7397971	06313	R C BECKER & SON, INC	CP17020-AVE I CORRDR IMPRVMNTS	287,430.24	206 15ST042924	207,129.47
					209 15ST042924	40,150.39
					321 15ST042924	40,150.38
				287,430.24		287,430.24
7397972	D1507	A B C-ALCOHOL BEVERAGE CONTROL	LMS-ABC PERMIT-FIELD OF DRAFTS	50.00	101 4649563	50.00
7397973	00163	AMERICAN PUBLIC WORKS ASSN	APWA MEMBERSHIP RENEWALS	3,300.00	101 4700206	206.25
					101 4761206	1,031.25
					101 4783206	206.25
					101 4785206	825.00
					203 4752206	618.75
					480 4755206	412.50
				3,300.00		3,300.00
7397974	C4080	AVRIT, BRITT	BA-PR DM-SACRAMNTO-09/11-14/18	224.00	101 4220256	224.00
7397975	03353	BOZIGIAN, MARK	MB-PR DM-LONG BEACH-9/12-14/18	160.00	101 4200201	160.00
7397976	D1872	CA WATER ENVIRONMENTAL ASSN	BS-CWEA CERTIFICATION RENEWAL	87.00	101 4220311	87.00

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7397977	D1872	CA WATER ENVIRONMENTAL ASSN	RW-CWEA CERTIFICATION RENEWAL	92.00	101 4220311	92.00
7397978	D0775	CAUDLE, JASON	JC-PR DM-LONG BEACH-9/12-14/18	160.00	101 4200201	160.00
7397979	08693	DESERT RAT INC	PAC-PERF-DAVID SPADE-09/08/18	15,500.00	101 4650318	15,500.00
7397980	07715	E C M C	LEVY PROCEEDS	78.28	101 2159000	78.28
7397981	08551	EMPLOYMENT DEVELOPMENT DEPT	EARNINGS WITHHOLDING ORDER	50.00	101 2159000	50.00
7397982	02108	FRANCHISE TAX BOARD	TAX WITHHOLDING ORDER	81.28	101 2159000	81.28
7397983	02108	FRANCHISE TAX BOARD	TAX WITHHOLDING ORDER	240.00	101 2159000	240.00
7397984	02108	FRANCHISE TAX BOARD	TAX WITHHOLDING ORDER	302.24	101 2159000	302.24
7397985	07635	HOGAN, JEFF	JH-PR DM-LNG BEACH-09/12-14/18	160.00	101 4220256	160.00
7397986	1296	L A CO CLERK-ENVIRO FILINGS	NOE:DIRECTOR'S REVIEW 17-58	75.00	101 4770361	75.00
7397987	C5747	L A CO FIRE DEPT	HAZ MAT DSCLSR-AR0051605	319.00	480 4755311	319.00
7397988	C5747	L A CO FIRE DEPT	HAZ MAT DSCLSR-AR0071090	1,186.00	101 4755355	1,186.00
7397989	C5747	L A CO FIRE DEPT	HAZ MAT DISCLOSURE-AR0001672	4,559.00	480 4755311	4,559.00
7397990	05422	L A CO SHERIFF'S DEPT	CASE #M-1502-CL-20260	82.05	101 2159000	82.05
7397991	D3448	L A CO SHERIFF'S DEPT	FILE #3631804180048	95.63	101 2159000	95.63
7397992	D3448	L A CO SHERIFF'S DEPT	FILE #3631104150058	125.00	101 2159000	125.00
7397993	D3448	L A CO SHERIFF'S DEPT	FILE #3631801190021	300.00	101 2159000	300.00
7397994	1214	L A CO SHERIFF'S DEPT	07/18-SPECIAL INVESTIGATIONS	424.64	101 4820355	384.29
					101 4820357	40.35
				<u>424.64</u>		<u>424.64</u>
7397995	1214	L A CO SHERIFF'S DEPT	07/18-SPECL EVNTS-PRTY SPPRSSN	1,727.12	101 4820355	1,563.00
					101 4820357	164.12
				<u>1,727.12</u>		<u>1,727.12</u>
7397996	1215	L A CO WATERWORKS	04/13/18-08/28/18 WATER SVC	17,903.12	203 4636654	517.19
					363 4542770	45.34
					482 4636654	17,340.59
				<u>17,903.12</u>		<u>17,903.12</u>
7397997	D0852	MALHI, RAJ	RM-PR DM-LONG BEACH-9/12-14/18	160.00	101 4100201	160.00
7397998	C8786	PEREZ, RONDA	RP-PR DM-LONG BEACH-9/12-14/18	160.00	101 4600201	160.00

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7397999	09081	SALCEDO, KARINA B	MAYOR'S STUDENT AWARD-08/18	5,000.00	106 4430200	5,000.00
7398000	09031	SLIFE, CATHERINE	CASE #BD455957	475.00	101 2159000	475.00
7398001	03154	SO CA EDISON	07/06/18-08/21/18 ELECTRIC SVC	228.28	363 4542770 482 4636652 484 4755652	29.09 174.08 25.11
				<u>228.28</u>		<u>228.28</u>
7398002	03154	SO CA EDISON	06/04/18-08/06/18 ELECTRIC SVC	13,265.85	483 4785652 483 4785660	13,191.54 74.31
				<u>13,265.85</u>		<u>13,265.85</u>
7398003	03154	SO CA EDISON	04/04/18-08/28/18 ELECTRIC SVC	14,043.94	101 4240902 101 4634652 101 4650652 363 4542770 482 4636652 483 4785652 483 4785660 484 4755652 490 4250652	531.28 5,266.31 7,120.56 29.09 360.86 292.67 57.28 60.12 325.77
				<u>14,043.94</u>		<u>14,043.94</u>
7398004	1907	SO CA GAS COMPANY	07/24/18-08/23/18 GAS SVC	859.15	101 4631655 101 4633655 101 4650655 101 4651655	14.79 668.53 161.04 14.79
				<u>859.15</u>		<u>859.15</u>
7398005	C8046	U S DEPT OF EDUCATION	LEVY PROCEEDS	286.40	101 2159000	286.40
7398006	02605	A V COLLISION REPAIRS, INC	LABOR/REPAIRS-EQ2300	735.19	101 4641207	735.19
7398007	03854	A V JANITORIAL SUPPLY	CPC-JANITORIAL SUPPLIES	1,472.92	101 4631406	1,472.92
7398008	A1310	A V UNION HIGH SCHOOL DISTRICT	BACKBOARD REPLACEMENT	2,134.87	101 4641251	2,134.87
7398009	06123	ACE AIR CONDITIONING & HEATING	MTNC YD-PLUMBING REPAIRS LMS-SUITE LEVEL HVAC REPAIRS NSC-NEW COMPRESSOR JRP-REPAIR AC UNIT	775.00 125.00 2,200.00 575.00	203 4752402 101 4632402 101 4635403 101 4631402	775.00 125.00 2,200.00 575.00
				<u>3,675.00</u>		<u>3,675.00</u>
7398010	05445	ADELMAN BROADCASTING, INC	PS-08/18-ADVERTISING	120.00	101 4800205	120.00
7398011	C8745	ADVANCE ELECTRIC	CH-EXTERIOR LIGHTING	29,700.00	101 4633402 228 4633402	18,202.00 11,498.00
				<u>29,700.00</u>		<u>29,700.00</u>
7398012	00127	ALL GLASS & PLASTICS LLC	AHP-WINDOW REPAIR	290.89	101 4631402	290.89

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7398013	C6143	AMERICAN BUSINESS MACHINES	IMAGE RUNNER ADV COPIER	3.94	101 4410254	3.94
			PRINTER STAPLE CARTRIDGE	74.46	101 4410254	74.46
			01/18-07/18-PROPERTY TAX	1,355.58	101 4410254	1,355.58
				<u>1,433.98</u>		<u>1,433.98</u>
7398014	06586	AMERICAN DATA PLATES	CUSTOM PLAQUES(11)	176.00	101 4649225	176.00
7398015	D3147	AMERICAN PLUMBING SERVICES, INC	MP-DRINKING FOUNTAIN REPAIRS	169.98	101 4631404	169.98
			MP-DRINKING FOUNTAIN REPAIR	985.25	101 4631402	985.25
				<u>1,155.23</u>		<u>1,155.23</u>
7398016	04190	AMERIPRIDE SERVICES	ZELDAS-LINEN RENTALS	118.49	101 4652251	118.49
			ZELDAS-LINEN RENTALS	118.49	101 4652251	118.49
			ZELDAS-LINEN RENTALS	118.49	101 4652251	118.49
			ZELDAS-LINEN RENTALS	118.49	101 4652251	118.49
			ZELDAS-LINEN RENTALS	118.49	101 4652251	118.49
			ZELDAS-LINEN RENTALS	118.49	101 4652251	118.49
			ZELDAS-LINEN RENTALS	123.43	101 4652251	123.43
			ZELDAS-LINEN RENTALS	112.27	101 4652251	112.27
				<u>946.64</u>		<u>946.64</u>
7398017	06738	ASPEN ENVIRONMENTAL GROUP	01-03/18-PRFSSNL SVC-N SOLAR	12,781.88	101 2185719	12,781.88
7398018	06440	AUTRY, SHAKIRA	08/18-SPORTS OFFICIAL	125.00	101 4641308	125.00
7398019	04151	AXES FIRE INC	PDW-FIRE CERT/INSPECTION	74.00	101 4634402	74.00
7398020	D0879	B'S EMBROIDERY ETC	CPC-WORK UNIFORMS	1,531.91	101 4631209	1,531.91
			OMP-UNIFORMS	1,966.62	101 4634209	1,966.62
				<u>3,498.53</u>		<u>3,498.53</u>
7398021	03485	BAKERSFIELD TRUCK CENTER	VISOR CLIP-EQ3779	198.37	480 4755207	198.37
7398022	01863	BAVCO	BACKFLOW REPAIR KITS(3)	442.13	482 4636404	442.13
7398023	08902	BUILDERS UNLIMITED CONSTRUCTRS	MOAH-CORE HOLE	1,100.00	101 4633403	1,100.00
			MOAH-ELECTRICAL CIRCUIT	1,835.00	101 4633403	1,835.00
			CH-STRIP/SEAL EXTERIOR BEAMS	24,800.00	104 11BS019924	24,800.00
				<u>27,735.00</u>		<u>27,735.00</u>
7398024	00341	C P R S	RG-CPRS-MEMBERSHIP RENEWAL	145.00	101 4631256	145.00
			RP/JC-CPRS-MEMBERSHIP RENEWALS	620.00	101 4600206	620.00
				<u>765.00</u>		<u>765.00</u>
7398025	C0914	CAMPBELL II, EDWARD LEE	08/18-SPORTS OFFICIAL	636.00	101 4641308	636.00
7398026	06020	CANON FINANCIAL SERVICES, INC	09/18 COPIER LEASE	12,246.52	101 4310254	12,246.52
7398027	08940	CARQUEST	BRK SH ST-EQ6815	31.31	101 4631207	31.31
7398028	04636	CAYENTA/N HARRIS COMPUTER CORP	PS INSTALL	1,000.00	101 4410301	1,000.00

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7398029	08932	CEVALLOS, PABLO ESTEBAN	LTV LOGO DESIGNS(2)	550.00	101 4305301	550.00
7398030	08680	CHARLES, RAWLSTON	08/18-SPORTS OFFICIAL	525.00	101 4641308	525.00
7398031	08218	CHERRY, KEVIN	08/18-SPORTS OFFICIAL	225.00	101 4641308	225.00
7398032	03475	CLARK AND HOWARD	TOWING FEE-EQ5787	50.00	101 4631207	50.00
7398033	C0054	COLE-ROUS, JOHN	08/18-SPORTS OFFICIAL	450.00	101 4641308	450.00
7398034	A0925	DESERT HAVEN ENTERPRISES	LGC-GOLF CENTER CLEAN UP	600.00	101 4240340	600.00
7398035	00414	DESERT LOCK COMPANY	WCP-REPLACE DOOR HARDWARE	95.30	101 4631403	95.30
			OMP-DOOR LOCK REPAIR	80.00	101 4634402	80.00
			PBP-KEYS(10)	38.33	101 4631403	38.33
			LOCKS(18)	318.51	482 4636404	318.51
			LMS-PM PADLOCKS	82.13	101 4632403	82.13
				<u>614.27</u>		<u>614.27</u>
7398036	03072	DONNELL PRINTING	FALSE ALARM WARNING NOTICES	1,813.34	101 4800253	1,813.34
7398037	05665	EGGERTH, DARRELL	08/18-SPORTS OFFICIAL	414.00	101 4641308	414.00
7398038	07197	ESPRITT, JA VAUGHN	08/18-SPORTS OFFICIAL	525.00	101 4641308	525.00
7398039	C9406	ESTES, MAURICE (WH)	08/18-SPORTS OFFICIAL	253.00	101 4641308	253.00
			FTB ORDER TO WITHHOLD	(63.25)	101 2177001	(63.25)
			W/H ORDER FEE	(2.50)	101 3601100	(2.50)
				<u>187.25</u>		<u>187.25</u>
7398040	00617	FEDERAL EXPRESS CORPORATION	EXPRESS MAILINGS	99.97	101 4410212	38.62
			EXPRESS MAILING	25.56	101 4770212	61.35
				<u>125.53</u>	306 4542212	<u>25.56</u>
						<u>125.53</u>
7398041	02108	FRANCHISE TAX BOARD	W/H ORDER-367746102466805057	63.25	101 2177001	63.25
7398042	08441	FRANKLIN TRUCK PARTS INC	OIL CAP ASSY KT-EQ3837	63.23	480 4755207	63.23
7398043	04721	GET TIRES, INC	TIRES(4)-EQ3838	707.32	203 4752207	707.32
7398044	08536	GIBSON MUSIC STUDIO	ZELDAS-PERF-MUSIC-08/23/18	200.00	101 4652251	200.00
			ZELDAS-PERF-MUSIC-08/25/18	200.00	101 4652251	200.00
				<u>400.00</u>		<u>400.00</u>
7398045	02585	HARRELL, BARON	08/18-SPORTS OFFICIAL	578.00	101 4641308	578.00
7398046	07354	HAWLEY, ROBYN	08/18-AM EXERCISE INSTRUCTOR	35.00	101 4643308	35.00
7398047	A2594	INTERSTATE BATTERY SYS OF A V	BATTERIES(6)-EQ3407	761.22	203 4752207	761.22



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7398048	03366	JAS PACIFIC	PLAN REVIEW/INSPECTION SVCS	2,062.50	251 4783301	2,062.50
7398049	07696	JOHNSON, DONALD	08/18-SPORTS OFFICIAL	400.00	101 4641308	400.00
7398050	08363	KAMBRIAN CORPORATION	MONITOR PRIVACY SCREEN	222.94	101 4200259	222.94
7398051	D1903	KERN MACHINERY INC-LANCASTER	LMS-ECHO POWERBLEND	52.56	101 4632230	52.56
7398052	06096	KERN TURF SUPPLY INC	AHP-PUMP MAINTENANCE	680.00	101 4631301	680.00
7398053	03575	LANCASTER AUTO INTERIORS	LBR/SEAT RPR-EQ4358	550.00	203 4785207	550.00
7398054	1203	LANCASTER PLUMBING SUPPLY	OMP-CLOSET KITS(3)	65.46	101 4634403	65.46
7398055	D3390	LOPEZ, JOE	08/18-SPORTS OFFICIAL	345.00	101 4641308	345.00
7398056	5191	LU'S LIGHTHOUSE, INC	SIGNAL BAR-EQ7607	345.57	480 4755207	345.57
7398057	06663	MASON, MELINDA	SAFETY FIRST-PHOTO SERVICES	150.00	101 4305301	150.00
7398058	05457	MAULDIN JR, LEO	08/18-SPORTS OFFICIAL	1,318.00	101 4641308	1,318.00
7398059	03351	MAULDIN, JOSEPH	08/18-SPORTS OFFICIAL	375.00	101 4641308	375.00
7398060	07458	MAXX ENTERTAINMENT	PAC-MONITOR MIXING CONSOLES	38,758.92	101 1101600	6,787.50
					101 4650750	31,971.42
				<u>38,758.92</u>		<u>38,758.92</u>
7398061	02270	MELDON GLASS	AHP- WINDOW REPAIR	480.00	101 4631402	480.00
7398062	01386	MERRIMAC ENERGY GROUP	UNLEADED(5381)	15,141.97	101 1620000	15,141.97
			DIESEL(1970)	6,388.40	101 1620000	6,388.40
				<u>21,530.37</u>		<u>21,530.37</u>
7398063	06966	MICHAEL BAKER INT'L INC	12/17-AVANTI SOUTH PROF SVCS	1,819.62	101 2185902	1,819.62
			04/18-AVANTI SOUTH PROF SVCS	969.50	101 2185902	969.50
			05/18-AVANTI SOUTH PROF SVCS	3,189.66	101 2185902	3,189.66
			06/18-AVANTI SOUTH PROF SVCS	4,088.50	101 2185902	4,088.50
			07/18-AVANTI SOUTH PROF SVCS	513.80	101 2185902	513.80
			CP16008-PED GAP CLSR IMPRVMTS	2,215.00	204 15SW016924	2,215.00
				<u>12,796.08</u>		<u>12,796.08</u>
7398064	08748	MILLER, KENNETH	08/18-SPORTS OFFICIAL	125.00	101 4641308	125.00
7398065	D3578	MINUTEMAN PRESS	LCE-DART PENS(500)	246.38	490 4250205	246.38
7398066	05773	MORRISON WELL MAINTENANCE	NSC-07/18-BACTERIOLOGICAL TEST	200.00	101 4635301	200.00
7398067	06936	MOSMAN, DESIREA	08/18-AM EXERCISE INSTRUCTOR	595.00	101 4643308	595.00
7398068	06543	MURREN, JAMES	08/18-ADMIN HEARINGS	50.00	101 4545301	50.00

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7398069	08562	NAPA AUTO PARTS	AIR FILTERS-EQ3988	74.50	480 4755207	74.50
			WIPER BLADES(4)-EQ3394	16.25	203 4752207	16.25
			STRUTS(2)-EQ7507	266.06	101 4783207	266.06
			HOSE/HS FTTNGS/SSMBL-EQ3779	295.07	480 4755207	295.07
				<u>651.88</u>		<u>651.88</u>
7398070	06148	NIK-O-LOK, INC	09/18-MONTHLY COIN LOCK LEASE	39.00	101 4633301	39.00
7398071	D3136	ORRIS, WILLIAM D	20 W/AVE K8-FBRCT/INSTLL FENC	800.00	482 4636402	800.00
7398072	05741	P P G ARCHITECTURAL FINISHES	CDR/MOAH-PAINT	237.63	101 4651251	237.63
			NSC-PAINT	1,379.17	101 4635404	1,379.17
				<u>1,616.80</u>		<u>1,616.80</u>
7398073	03307	PARKER, JESSE	08/18-SPORTS OFFICIAL	600.00	101 4641308	600.00
7398074	05998	PAVING THE WAY FOUNDATION	CMMNTY SPRT/GOOD CTZNSHP PRGM	1,000.00	101 4820301	1,000.00
7398075	08051	PEDRINI, BARBARA	08/18-AM EXERCISE INSTRUCTOR	35.00	101 4643308	35.00
7398076	08967	PIONEER ATHLETICS	LMS-FOUL LINE PAINT	1,039.16	101 4632404	1,039.16
			NSC-FIELD PAINT	897.90	101 4635404	897.90
				<u>1,937.06</u>		<u>1,937.06</u>
7398077	C5395	PRO ACTIVE WORK HEALTH SERVICES	PM-DMV DOT PHYSICAL-07/25/18	69.00	101 4220301	69.00
			SC-ESCREEN TEST-07/26/18	40.00	101 4220301	40.00
			WL-ESCREEN TEST-07/26/18	40.00	101 4220301	40.00
			RA-ESCREEN TEST-07/10/18	40.00	101 4220301	40.00
			LE-PHYS/ESCRN/TB TST-07/31/18	100.00	101 4220255	100.00
			MM-ESCREEN TEST-07/31/18	40.00	101 4220301	40.00
			JP-ESCREEN 07/02/18	40.00	101 4220301	40.00
			KG-ESCREEN TEST-07/05/18	40.00	101 4220301	40.00
			ABL-EVALUATION	240.00	101 4220301	240.00
			MS-EVAL/TREATMENT	199.80	101 4220301	199.80
			MS-FOLLOW UP/DISCHARGE	130.00	101 4220301	130.00
			SP-EVALUATION	240.00	101 4220301	240.00
				<u>1,218.80</u>		<u>1,218.80</u>
7398078	05864	QUINN COMPANY	BITS/CUTTING EDGES-EQ3774	2,960.93	203 4752207	2,960.93
			BITS-EQ3774	253.87	203 4752207	253.87
			ELEMENTS/FLTRS-EQ3835	186.33	484 4752207	186.33
			AIR FILTERS-EQ3835	58.47	484 4752207	58.47
			AXLE REPAIR-EQ3774	6,822.51	203 4752207	6,822.51
				<u>10,282.11</u>		<u>10,282.11</u>
7398079	09016	RED HELMET TRAINING	HAZ MAT TRAINING CLASSES	2,400.00	101 4220301	2,400.00
7398080	06712	RICE, BRIAN S.	08/18-SPORTS OFFICIAL	46.00	101 4641308	46.00
7398081	05943	ROBERTSON'S	CONCRETE	122.79	203 4752410	122.79
			CONCRETE	122.79	203 4752410	122.79

# City of Lancaster Check Register



From Check No.: 7397824 - To Check No.: 7398106

From Check Date: 08/26/18 - To Check Date: 09/08/18

Printed: 9/12/2018 9:17

Check No	Supplier	Supplier Name	Invoice Description	Invoice Amt	Charge Code	GL Amount
				245.58		245.58
7398082	D3947	S G A CLEANING SERVICES	LMS-IRRIGATION REPAIR	465.00	101 4632404	465.00
			JRP-RESTROOM CLEANING	485.00	101 4631402	485.00
			AHP-PRESSURE WASH FOR GAZEBO	925.00	101 4631402	925.00
			EDP-GRAFFITI REMOVAL	865.00	101 4631402	865.00
			LMS-SINK REPAIR	330.00	101 4632402	330.00
			LMS-IRRIGATION REPAIRS	495.00	101 4632402	495.00
			MP-SINK REMOVAL/COVER INSTALL	325.00	101 4631402	325.00
			LGC-BOARD DOORS AND WINDOWS	667.50	101 4240340	667.50
			CH-PAINT LIGHT POLE BASES	495.00	104 11BS019924	495.00
			MOAH-SINK REPAIR	473.50	101 4653402	473.50
				<u>5,526.00</u>		<u>5,526.00</u>
7398083	A8260	SAGE STAFFING	SB-FINANCE STAFF-07/23-27/18	964.88	101 4410308	964.88
			SB-FINANCE STAFF-08/06-12/18	930.00	101 4410308	930.00
			AM-PUBLIC SFTY STFF-08/13-17/18	714.40	101 4820308	714.40
			SB-FINANCE STAFF-08/13-17/18	930.00	101 4410308	930.00
				<u>3,539.28</u>		<u>3,539.28</u>
7398084	C3064	SANTOS, RENALDO	08/18-SPORTS OFFICIAL	1,173.00	101 4641308	1,173.00
7398085	06664	SEA SUPPLY	TBP-JANITORIAL SUPPLIES	91.41	101 4631406	91.41
7398086	08790	SECURE TASK	MTNC YD-07/18-SECURITY PATROL	4,707.00	203 4752301	4,707.00
7398087	05149	SIERRA DOOR SYSTEMS	PAC-FIRE DR BRRL RPLCMNTS(3)	15,232.00	227 11BS022924	15,232.00
7398088	1894	SIGNS & DESIGNS	BM-NAMEPLATE	13.14	101 4770259	13.14
7398089	01816	SMITH PIPE & SUPPLY INC	PBP-IRRIGATION SUPPLIES	192.57	101 4631404	192.57
			PBP-VALVE,UNION,TAPE	198.64	101 4631404	198.64
			PBP-IRRIGATION PIPE,GLUE,PRIME	69.05	101 4631404	69.05
			PBP-IRRIGATION SUPPLIES	359.48	101 4631404	359.48
			PBP-BUSHINGS/ADAPTERS	10.41	101 4631404	10.41
			AHP-VALVE BOX LID(10)	101.92	101 4631404	101.92
			PBP-VALVE, UNION, PIPES	238.92	101 4631404	238.92
			PBP-VALVE,ADAPTERS	104.31	101 4631404	104.31
			AHP-IRRIGATION SUPPLIES	69.83	101 4631404	69.83
			NSC-PVC PIPE	319.88	101 4635404	319.88
				<u>1,665.01</u>		<u>1,665.01</u>
7398090	09080	SNOW SHACK SHAVE ICE	SHAVED ICE-08/15/18	476.25	101 4220251	476.25
7398091	09047	SOUTHERN GLAZERS WINE & SPIRIT	ZELDAS-BEVERAGES	1,035.52	101 4652251	1,035.52
7398092	06429	STANTEC CONSULTING SRVCS INC	CP17020-10TH ST W ROAD DIET	330.00	209 15ST042924	330.00
			CP17007-RFQ 646-16 MULTI YR	3,794.70	210 15SW017924	3,794.70
				<u>4,124.70</u>		<u>4,124.70</u>
7398093	06991	SYSCO VENTURA, INC	ZELDAS-SNACKS/CLEANERS	210.30	101 4652251	210.30
			ZELDAS-SNACKS	407.88	101 4652251	407.88

# City of Lancaster Check Register



From Check No.: 7397824 - To Check No.: 7398106

From Check Date: 08/26/18 - To Check Date: 09/08/18

Printed: 9/12/2018 9:17

Check No	Supplier	Supplier Name	Invoice Description	Invoice Amt	Charge Code	GL Amount
				618.18		618.18
7398094	2003	TIP TOP ARBORISTS, INC	45304 5TH ST E-TREE REMOVAL	1,595.00	101 4545940	1,595.00
7398095	C4011	UNITED RENTALS	TRENCHER RENTAL-08/28/18	250.10	101 4646251	250.10
7398096	31009	UNIVERSAL ELECTRONIC ALARMS	NSC-09/18-SECURITY ALARM	37.00	101 4635301	37.00
			NSC-09/18-SECURITY ALARM/RADIO	56.00	101 4635301	56.00
			MTNC YD-09/18-FIRE ALARM	27.00	203 4752301	27.00
			TBP-09/18-SECURITY ALARM	27.00	101 4631402	27.00
			STP-09/18-SECURITY ALARM	27.00	101 4631301	27.00
			NSC-09/18-SECURITY ALARM	27.00	101 4635301	27.00
			MTNC YD-09/18-SECURITY ALARM	27.00	203 4752301	27.00
				228.00		228.00
7398097	05834	VENCO WESTERN, INC	07/18-IRRIGATION REPAIRS	1,203.88	482 4636404	1,203.88
			07/18-IRRIGATION REPAIRS	976.34	482 4636404	976.34
				2,180.22		2,180.22
7398098	C2434	VINSA INSURANCE ASSOCIATES	9/1/18-9/1/19-VOLUNTEER INS	825.00	101 4230260	825.00
7398099	06384	VOYAGER FLEET SYSTEMS INC	VOYAGER FLEET SYSTEMS 08/24/18	1,077.73	101 2602000	1,077.73
7398100	04496	VULCAN MATERIAL WESTERN DIV	COLD MIX	112.79	203 4752410	112.79
			COLD MIX	227.10	203 4752410	227.10
				339.89		339.89
7398101	09066	WAYFAIR LLC	MOAH-OUTDOOR DINING SET	2,981.14	101 4653251	2,981.14
7398102	05806	WEST COAST SAFETY SUPPLY CO	MTNC YD-SENSORS(3)	942.34	480 4755402	942.34
7398103	C5965	WOLF, LAWRENCE	08/18-SPORTS OFFICIAL	414.00	101 4641308	414.00
7398104	D3242	ZIMMER, DANIEL	08/18-SPORTS OFFICIAL	782.00	101 4641308	782.00
7398105	09079	PETERSON LAW GROUP PC	CL #062-15/CLGL-0002A2/0004A2	700,000.00	101 4230303	700,000.00
7398106	C7946	L A CO DEPT ANIMAL CARE&CONTRL	07/18-HOUSING COSTS	128,797.75	101 4820363	128,797.75
Chk Count				283	Check Report Total	4,820,287.69

**STAFF REPORT**  
**City of Lancaster**

CC 3
09/25/18
MVB

Date: September 25, 2018  
 To: Mayor Parris and City Council Members  
 From: Pam Statsmann, Finance Director  
 Subject: **Monthly Report of Investments – August 2018**

---

**Recommendation:**

Accept and approve the August 2018 Monthly Report of Investments as submitted.

**Fiscal Impact:**

None

**Background:**

Each month, the Finance Department prepares a report listing the investments for all separate entities under the jurisdiction of the City as identified in the City’s Comprehensive Annual Financial Report.

Portfolio Recap

Yield:

	<u>August 2018</u>	<u>July 2018</u>
Total Portfolio	1.31%	1.25%
Local Agency Investment Fund	2.00%	1.94%
 Total Portfolio Balance:	 \$63,298,339	 \$65,434,037

The portfolio balance decreased from July to August by \$2,135,698, or 3.3%. Significant revenues for August included \$2,309,389 of Sales & Use Tax, \$1,460,795 from Grants and \$803,364 of Property Taxes. The largest City expenditures were \$1,425,000 to City of Commerce, \$1,396,526 for Capital Projects, \$1,248,386 Debt Service, \$1,078,741 for Property Purchase, \$998,952 to VINSIA Insurance and \$207,795 to LA County Fire Department.

The City’s temporary idle cash, those funds that are not immediately needed to pay current bills and not governed by bond indentures or bond resolutions, is invested in accordance with the City’s adopted Investment Policy. This policy is reviewed regularly by the City Council, with the latest policy adopted February 13, 2018, by Resolution No. 18-06.

The City's cash management system is designed to accurately monitor and forecast expenditures and revenues, thus enabling the City to invest funds to the fullest extent possible within the guidelines of this Investment Policy. The City attempts to achieve the highest yield obtainable through a diversified portfolio only after meeting the criteria established for safety and liquidity in that order. The principal investment objectives of the City are:

1. Preservation of capital and protection of investment principal;
2. Maintenance of sufficient liquidity to meet anticipated cash flows;
3. Attainment of a market rate of return;
4. Diversification to avoid incurring unreasonable market risks, and;
5. Compliance with the City's Municipal Code and with all applicable City resolutions, California statutes and Federal regulations.

The City's portfolio is a short-term and intermediate-term fixed income portfolio. The maximum maturity of any investment is 5 years, with consideration of anticipated cash flow requirements and known future liabilities. The City contracts with an investment advisory service (Insight Investment) to assist in the effort to maximize the returns of the City portfolio. The City's investments include publicly traded Treasury notes, Treasury Bills, Federal Agency Investments, Time Deposits, and Local Agency Investment Fund (LAIF) under the auspices of the State Treasurer for investment. Funds invested in LAIF are available within 24 hours, and other investments are available upon maturity at full face value. These investments enable the City to meet its expenditure requirements for the next six months, as required by state law.

The City's investment procedures are governed by Sections 53600 et. seq. of the California Government Code. Additional requirements have been placed on the City's authorized investments by the Investment Policy (a copy is available in the Finance Department or from the City Clerk), and all investments listed on the attached report adhere to these requirements.

PS:MA

**Attachment:**

Monthly Report of Investments

**ATTACHMENT A  
CITY OF LANCASTER  
MONTHLY REPORT OF INVESTMENTS  
August 31, 2018**

	<b>Interest Rate</b>	<b>Amount</b>	<b>Total</b>
<b><u>City of Lancaster</u></b>			
<b>Wells Fargo Bank</b>			<b>\$8,853,022</b>
City of Lancaster Account (note 1)	0.00%	\$8,753,022	
Certificate of Deposit	0.10%	\$100,000	
<b>Bank of America</b>			<b>\$100,000</b>
Certificate of Deposit	0.05%	\$100,000	
<b>U S Bank - Safekeeping (note 2)</b>			<b>\$39,209,961</b>
Commercial Paper	0.00%	\$0	
US Treasury Notes	0.81%	\$12,805,674	
Federal Government Agencies	1.41%	\$15,134,059	
Corporate Securities	1.95%	\$11,201,683	
Cash & Equivalents	0.00%	\$68,544	
<b>California Bank &amp; Trust</b>			<b>\$100,000</b>
Certificate of Deposit	0.01%	\$100,000	
<b>Chase Bank</b>			<b>\$150,919</b>
Certificate of Deposit	0.01%	\$150,919	
<b>Mission Bank</b>			<b>\$201,478</b>
Certificate of Deposit	0.20%	\$201,478	
<b>Local Agency Investment Fund (L.A.I.F.)</b>	2.00%	\$10,408,815	<b>\$10,408,815</b>
<b>Total City of Lancaster</b>			<b><u>\$59,024,194</u></b>
<b>Successor Agency for the Lancaster Redevelopment Agency</b>			
<b>Local Agency Investment Fund (L.A.I.F.)</b>	2.00%	\$4,274,145	<b>\$4,274,145</b>
<b>Total Lancaster Successor Agency</b>			<b><u>\$4,274,145</u></b>
<b>Total Pooled Portfolio (note 3)</b>			<b><u>\$63,298,339</u></b>
<b>Weighted Average</b>	<b>1.31%</b>		

**ATTACHMENT A  
CITY OF LANCASTER  
MONTHLY REPORT OF INVESTMENTS  
August 31, 2018**

	<b>Interest Rate</b>	<b>Amount</b>	<b>Total</b>
<b>Wilmington Trust</b>			<b>\$5,299,043</b>
Lancaster Choice Energy LockBox Account	0.00%	\$5,299,043	
<b>The Bank of New York Mellon Trust Company, N.A.</b>			<b>\$1,483,822</b>
LRA & LA County Escrow Account - Government Bonds	0.00%	\$1,483,822	
<b>US Bank</b>			<b>\$11,468,699</b>
CFD 89-1 1990 Special Bonds	1.80%	\$342,431	
LFA CFD 89-1 1997 Special Bonds	1.80%	\$15,662	
LFA L O BONDS 1997 SERIES A & B	1.80%	\$370,756	
AD 93-3 1994 Limited Improvement Bonds	1.80%	\$508,375	
LRA Combined 2004 Fire Protection Facilities Project Bonds	1.80%	\$841,787	
LRA Combined 2004 Sheriff Facilities Prjct Refunding Bonds	1.80%	\$1,796,356	
LRA Public Capital Facilities 2010 Project Lease Revenue Bonds	1.80%	\$418,267	
LPA Solar Renewable Energy Issue of 2012A	1.80%	\$2,255,451	
SA Combined Project Areas Refunding Bonds 2015A & B	1.80%	\$462,212	
SA Combined Project Areas Refunding Bonds 2016 A-1 & A-2	1.80%	\$1,040,695	
SA Combined Project Areas Refunding Bonds 2016B	1.80%	\$947,659	
LFA 2016 Assessment Revenue Bonds (Streetlights Acquisition)	1.80%	\$1,170,969	
SA 2017 Tax Allocation Revenue Bonds (TARB)	1.80%	\$1,298,079	
<b>Total Restricted Cash/Investments Held in Trust</b>		<u><u>\$11,468,699</u></u>	
<b>Total Restricted Cash/Investments Held in Trust (note 4)</b>			<u><u>\$18,251,563</u></u>

All investments are authorized pursuant to and consistent with the investment policy of the City of Lancaster. Policy adopted 02/13/18 under resolution number 18-06.

Pam Statsmann  
Finance Director



**ATTACHMENT A  
CITY OF LANCASTER  
MONTHLY REPORT OF INVESTMENTS  
August 31, 2018**

- (1) This is the actual City bank account balance as of 08/31/2018. It only reflects checks that have been presented for payment and deposits received by the bank. The balance on deposit per the City books would reflect reductions for all checks and warrants issued and all deposits transmitted.
- (2) This is the safekeeping account utilized for investing City funds pursuant and consistent with the investment policy adopted 02/13/2018. The current portfolio consists of treasury notes, government agencies, corporates, and CDs.
- (3) Pooled Portfolio:

	<u>% of Portfolio</u>	<u>Policy Limit</u>
Cash	14.95%	None
CDs	1.11%	25% of total portfolio
Commercial Paper	0.00%	25% of total portfolio
US Treasury	21.70%	None
Federal Securities	25.64%	None
Corporate Securities	18.98%	30% of total portfolio
LAIF	17.63%	None

- (4) These are restricted cash and investments are held in trust by the banks indicated. These amounts cannot be pooled for other investing.

City of Lancaster  
Cash Balances by Fund  
August 31, 2018

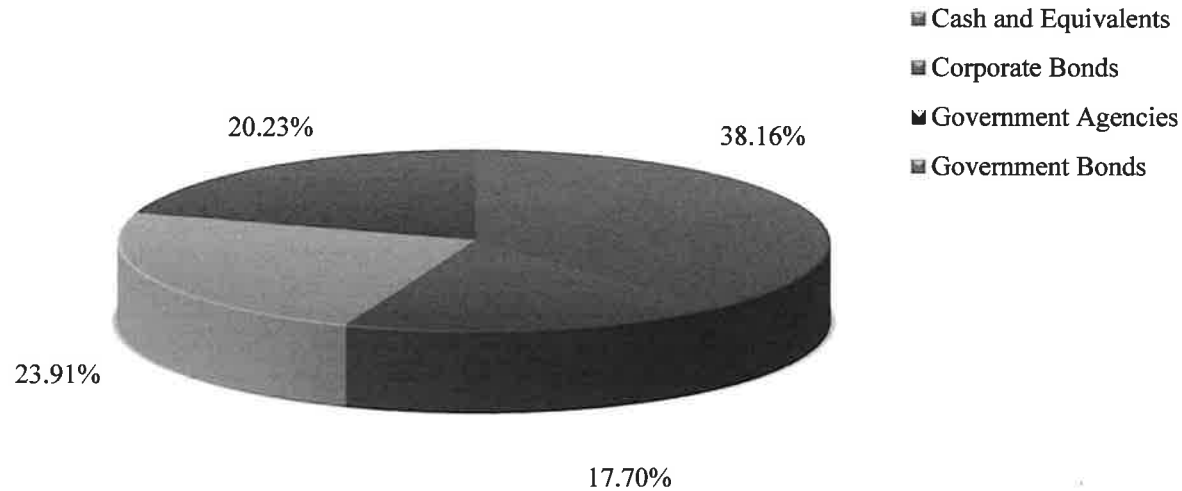
Fund No.	Fund Name	Ending Balance	Fund No.	Fund Name	Ending Balance
101	GENERAL FUND	\$ 19,326,079	323	STATE GRANT - STPL	\$ (663)
104	CAPITAL REPLACEMENT FUND	\$ 2,312,363	324	STATE GRANT - OTS	\$ (3,480)
106	COMMUNITY SERVICES FOUNDATION	\$ 127,746	330	STATE GRANT RECYCLING	\$ 89,975
109	CITY SPECIAL RESERVES FUND	\$ (6,440,944)	331	STATE GRANT - OIL RECYCLING	\$ 20,847
150	CAPITAL PROJECTS FUND - CITY	\$ (6,342,219)	349	MISC STATE GRANTS	\$ (354,768)
203	GAS TAX	\$ (1,605,865)	361	CDBG	\$ (1,061,609)
204	AQMD	\$ 92,236	363	NBRHD STABILIZATION PRGM	\$ 1,778,952
205	PROP 1B	\$ 243,692	364	HPRP-HOMELESS PREV & RAPID REH	\$ (2,522)
206	TDA ARTICLE 8 FUND	\$ (2,340,555)	391	LANCASTER HOME PROGRAM	\$ 746,919
207	PROP "A" TRANSIT FUND	\$ 1,915,110	399	FEDERAL MISCELLANEOUS GRANTS	\$ (369,619)
208	TDA ARTICLE 3 BIKEWAY FUND	\$ (61,465)	401	AGENCY FUND	\$ 712,305
209	PROPOSITION "C" FUND	\$ 3,554,780	402	PERFORMING ARTS CENTER	\$ (838,242)
210	MEASURE R FUND	\$ 5,963,866	404	GRANTS FUND	\$ (291,754)
211	MEASURE M FUND	\$ 1,833,406	408	X-AEROSPACE GRANTS FUND	\$ (86,205)
213	PARKS DEVELOPMENT FUND	\$ 838,408	456	STILL MEADOW LN SWR ASSMNT DST	\$ 13,013
217	SIGNALS - DEVELOPER FEES FUND	\$ 3,570,413	480	SEWER MAINT FUND	\$ 4,433,667
220	DRAINAGE - DEVELOPER FEES FUND	\$ 4,413,547	482	LANDSCAPE MAINTENANCE DISTRICT	\$ 2,346,710
224	BIOLOGICAL IMPACT FEE FUND	\$ 1,530,809	483	LIGHTING MAINTENANCE DISTRICT	\$ (1,593,525)
226	USP - OPERATION	\$ 2,569	484	DRAINAGE MAINTENANCE DISTRICT	\$ 1,849,779
227	USP - PARKS	\$ 1,537,829	485	RECYCLED WATER FUND	\$ (346,717)
228	USP - ADMIN	\$ 21,019	486	LANCASTER POWER AUTHORITY	\$ 3,280,678
229	USP - CORP YARD	\$ 150,961	490	LANCASTER CHOICE ENERGY	\$ 6,971,687
230	MARIPOSA LILY FUND	\$ 62,733	491	CALIFORNIA CHOICE ENERGY AUTH	\$ (1,304,232)
232	TRAFFIC IMPACT FEES FUND	\$ 2,712,844	701	LANCASTER FINANCING AUTHORITY	\$ 5,103
233	DEVELOPER IN LIEU	\$ 66,952	810	ASSESSMENT DISTRICT FUND	\$ 154,596
248	TRAFFIC SAFETY FUND	\$ 276,997	811	AD 93-3	\$ 118,142
251	ENGINEERING FEES	\$ (928,197)	812	AD 92-101	\$ 90,589
252	PROP 42 CONGESTION MANAGEMENT	\$ 649,800	830	CFD 89-1 EASTSIDE WATER FUND	\$ 669,632
261	LOS ANGELES COUNTY REIMB	\$ (159,243)	831	CFD 90-1 (BELLE TIERRA)	\$ 445,503
301	LANCASTER HOUSING AUTH. OPS.	\$ 2,748,211	832	CFD 91-1 (QUARTZ HILL)	\$ 776,760
306	LOW & MOD INCOME HOUSING	\$ 5,828,640	833	CFD 91-2 (LANC BUSINESS PARK)	\$ 444,788
321	MTA GRANT - LOCAL	\$ (753,065)	991	REDEV OBLIGATION RETIREMENT FD	\$ 4,712,793
				<b>Total Cash Balance</b>	<b>\$ 64,558,557</b>

\* Variance from portfolio balance due to deposits in transit and outstanding checks at month end

**City of Lancaster  
Recap of Securities Held  
August 31, 2018**

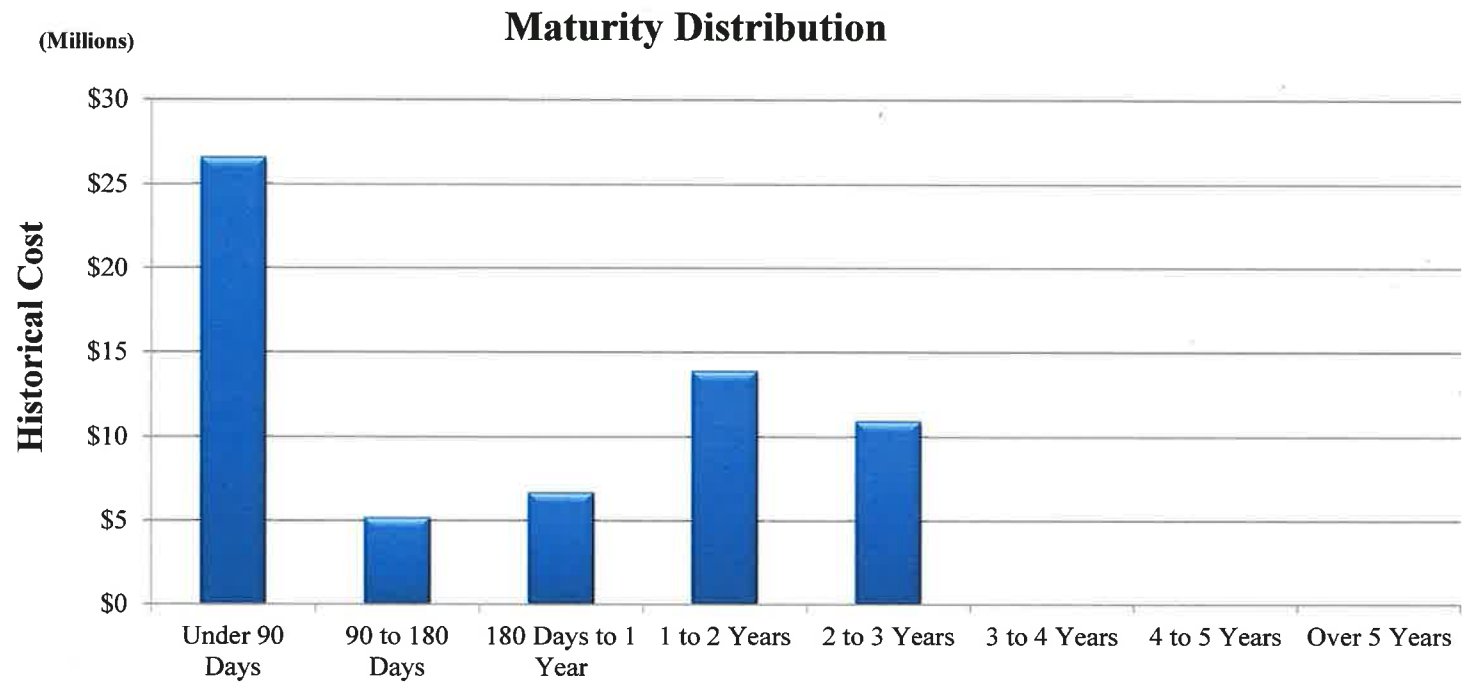
	Historical Cost	Amortized Cost	Fair Value	Unrealized Gain (Loss)	Weighted Average Effective	% Portfolio/ Segment	Weighted Average Market
Cash and Equivalents	\$24,156,922	\$24,156,922	\$24,156,922	\$0	1	38.16%	0.00
Corporate Bonds	\$11,201,683	\$11,165,115	\$11,098,057	(\$67,058)	517	17.70%	1.37
Government Agencies	\$15,134,059	\$15,117,926	\$14,891,599	(\$226,327)	496	23.91%	1.32
Government Bonds	\$12,805,674	\$12,818,181	\$12,761,034	(\$57,147)	384	20.23%	1.02
<b>TOTAL</b>	<b>\$63,298,339</b>	<b>\$63,258,144</b>	<b>\$62,907,612</b>	<b>(\$350,532)</b>	<b>465</b>	<b>100.00%</b>	<b>1.23</b>

**Portfolio Diversification**



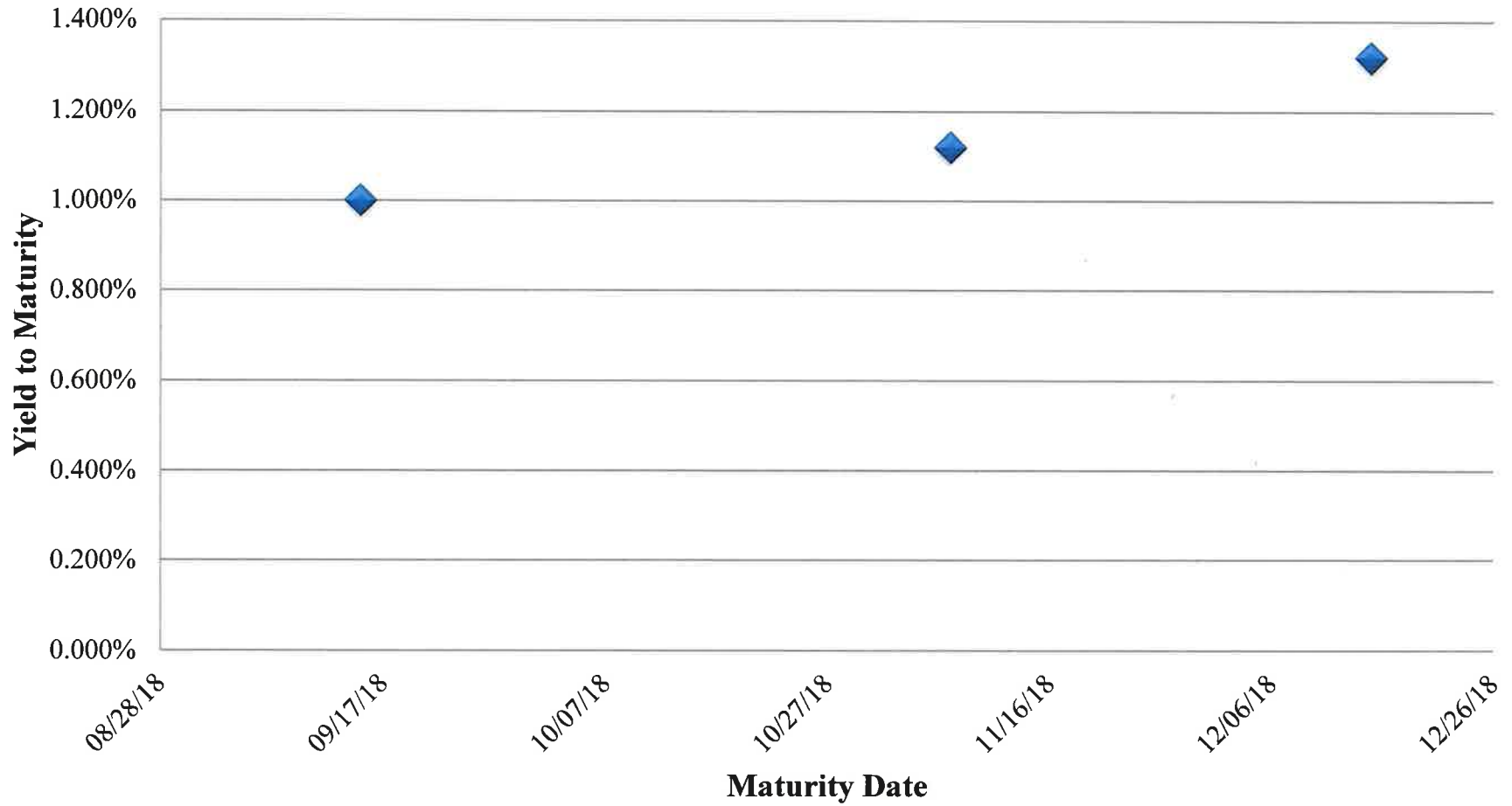
City of Lancaster  
Maturity Distribution  
August 31, 2018

Maturity	Historical Cost	Percent
Under 90 Days	\$26,601,405	42.03%
90 to 180 Days	\$5,196,490	8.21%
180 Days to 1 Year	\$6,683,824	10.56%
1 to 2 Years	\$13,876,826	21.92%
2 to 3 Years	\$10,939,794	17.28%
3 to 4 Years	\$0	0.00%
4 to 5 Years	\$0	0.00%
Over 5 Years	\$0	0.00%
	<b>\$63,298,339</b>	<b>100.00%</b>



City of Lancaster  
Securities Held  
August 31, 2018

### Securities Held



**STAFF REPORT**  
**City of Lancaster**

CC 4
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Britt Avrit, MMC, City Clerk

Subject: **Consideration of adoption of Ordinance No. 1047**

---

**Recommendation:**

Adopt **Ordinance No. 1047**, amending the City zoning plan for 73 acres bounded by Avenue K-4, Avenue K-8, 70<sup>th</sup> Street West and 75<sup>th</sup> Street West (Assessor’s Parcel Numbers 3204-001-184 and 3204-001-195) and 12.8 acres of a 234-acre site bounded by Avenue L, Avenue K-8, 62<sup>nd</sup> Street West, and 70<sup>th</sup> Street West (Assessor’s Parcel Numbers 3204-008-045 and 3204-008-047), known as Zone Change No. 16-01.

**Fiscal Impact:**

None.

**Background:**

The applicant, Royal Investors Group, LLC, submitted applications for a General Plan Amendment (GPA), Zone Change (ZC), Specific Plan (SP), Tentative Tract Map (TTM) and Development Agreement (DA) for a master planned development. At full build-out, the proposed project would consist of a total of 1,700 residential dwelling units (including 175 age-targeted units, 256 active adult units and 325 multi-family units), 213,600 square feet of commercial uses, 31.5-acres parks/open space, a 12.8-acre school site, 1.3-acre fire station site, and 38.4 acres of internal streets. These uses would be located on 307.7 acres divided into two subareas: 1) Avanti West: approximately 73 acres bounded by Avenue K-4, Avenue K-8, 70<sup>th</sup> Street West, and 75<sup>th</sup> Street West, and 2) Avanti South: approximately 234 acres bounded by Avenue L, Avenue K-8, 62<sup>nd</sup> Street West, and 70<sup>th</sup> Street West.

At the September 11, 2018 City Council meeting, the City Council approved the introduction of Ordinance No. 1047 by the following vote:

AYES: Council Members Malhi, Mann, Underwood-Jacobs, Vice Mayor Crist  
NOES: None  
ABSTAIN: None  
ABSENT: Mayor Parris

**Attachment:**

Ordinance No. 1047

ORDINANCE NO. 1047

AN ORDINANCE OF CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, AMENDING THE ZONING DESIGNATION FOR 73 ACRES BOUNDED BY AVENUE K-4, AVENUE K-8, 70<sup>TH</sup> STREET WEST AND 75<sup>TH</sup> STREET WEST AND 12.8 ACRES OF A 234 ACRE SITE BOUNDED BY AVENUE L, AVENUE K-8, 62<sup>ND</sup> STREET WEST, AND 70<sup>TH</sup> STREET WEST, KNOWN AS ZONE CHANGE NO. 16-01

WHEREAS, pursuant to Section 17.24.060 of the Lancaster Municipal Code (“LMC”), an application has been filed by the Royal Investors Group, LLC (“Applicant”) to change the zoning designation on 73 acres of land bounded by Avenue K-4, Avenue K-8, 70<sup>th</sup> Street West and 75<sup>th</sup> Street West (Assessor Parcel Numbers [APNs] 3204-001-184 and 3204-001-195) from RR-2.5 (Rural Residential, minimum lot size 2.5 acres) to SP (Specific Plan) and to change the zoning designation on 12.8 acres of a 234-acre site bounded by Avenue L, Avenue K-8, 62<sup>nd</sup> Street West, and 70<sup>th</sup> Street West (APNs 3204-008-045 and 3204-008-047) (Planning Area 21 of the Specific Plan and Lot 24 of the Tentative Tract Map) from SP to S (School); and

WHEREAS, a notice of intention to consider a zone change of the subject property was given, as required by Section 17.24.110 of the LMC and Sections 65854 and 65905 of the Government Code; and

WHEREAS, staff has performed the necessary investigations, prepared a written report, and recommended that the zone change request be approved; and

WHEREAS, public notice was provided as required by law, and a public hearing was held on June 18, 2018, at which the Planning Commission (a) certified that it had reviewed and considered the information in the Final EIR prepared for the proposed project in compliance with the California Environmental Quality Act (including its implementing regulations) prior to taking action; (b) found the Final EIR determined that the proposed project could have a significant effect on the environment; however, with incorporation of the identified mitigation measures all impacts with the exception of project-specific and cumulative impacts to freeway segments would be less than significant; and (c) recommended to the City Council certification of the Final EIR and adoption of the associated findings and Statement of Overriding Considerations.

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

Section 1. The foregoing Recitals are true, correct and a substantive part of this Ordinance.

Section 2. The City Council has received, reviewed and hereby adopts the Planning Commission Recommendation. Consistent therewith, the City Council makes the following findings:

(a) The proposed zone change from RR-2.5 to SP and SP to S, is consistent with the General Plan land use designations of UR (Urban Residential, 2.1 to 6.5 dwelling units/acre) with a Specific Plan (SP) Overlay and Mixed Use (MU) with a SP Overlay proposed for the subject property.

(b) Modified conditions warrant a revision in the zoning plan, as the proposed project is compatible with the existing, surrounding land uses. Existing uses in the vicinity of the subject property include single-family residences, a cemetery and Quartz Hill High School. The subject property is immediately adjacent to the recently approved Avanti North Specific Plan, which has the same zoning as SP and allows for residential development.

(c) A need for the proposed zoning classification on Avanti West exists in order to make it consistent with the proposed General Plan designation, and allow for the development single-family residential uses at a higher density than allowed under the RR-2.5 zone. A need for the proposed S zoning classification on Avanti South for Lot 24 exists in order for the site to be developed with a school, which would support the proposed master planned community.

(d) The particular site under consideration is a proper location for the proposed zoning classifications (SP and S), as they are compatible with the surrounding area. Existing uses in the vicinity of the subject property includes single-family residences, a cemetery, and Quartz Hill High School. Additionally, the Avanti North Specific Plan has been approved for the property immediately north of Avanti South and east of Avanti West with similar uses. The zone change allow for uses that are similar to uses that already exist in the area.

(e) The placement of the proposed zones at the specified locations will be in the interest of public health, safety, and general welfare, and in conformity with good zoning practice, because it will allow for the development of residential neighborhoods with access to open space and parks, and provide a school facility to serve the community.

(f) The Planning Commission held a public hearing on the action herein pursuant to Section 65854 of the Government Code, notice of which was published and provided as required by law, and, therefore, recommended adoption of this Ordinance.

(g) The City Council held a public hearing on this Ordinance pursuant to Section 65856 of the Government Code, notice of which was published and provided as required by law.

Section 3. That portions of the subject property are reclassified from RR-2.5 to SP and from SP to S.

Section 4. The Final EIR and all environmental findings and Statement of Overriding Considerations, as contained in Attachments "A" and "B" respectively, are hereby certified, approved, adopted, and incorporated in this Ordinance.



Section 5. Any ordinance previously adopted by the City Council shall be and hereby is repealed if and to the extent inconsistent with this Ordinance; provided, however, that each such ordinance shall otherwise remain in full force and effect.

Section 6. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 7. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provision of law in that regard, and this Ordinance shall take effect 30 days after adoption.

I, Britt Avrit, MMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the 11<sup>th</sup> day of September, 2018 and placed upon its second reading and adoption at a regular meeting of the City Council on the 25<sup>th</sup> day of September, 2018, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

---

BRITT AVRIT, MMC  
City Clerk  
City of Lancaster

---

R. REX PARRIS  
Mayor  
City of Lancaster

STATE OF CALIFORNIA            }  
COUNTY OF LOS ANGELES       }ss  
CITY OF LANCASTER             }

CERTIFICATION OF ORDINANCE  
CITY COUNCIL

I, \_\_\_\_\_, \_\_\_\_\_ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 1047, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

\_\_\_\_\_

**STAFF REPORT**  
**City of Lancaster**

CC 5
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Britt Avrit, MMC, City Clerk

Subject: **Consideration of adoption of Ordinance No. 1048**

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**Recommendation:**

Adopt **Ordinance No. 1048**, amending Title 8 of the Lancaster Municipal Code by adding Chapter 8.62, relating to shopping cart containment, retrieval and abatement.

**Fiscal Impact:**

The Ordinance will reduce costs associated with the City's shopping cart retrieval contractor.

**Background:**

The proposed ordinance incorporates the provisions of the California Business & Professions Code related to shopping carts, including the prohibitions on unauthorized removal or possession of a cart off of the retailer's premises, as well as the provisions that establish the procedures for impounding a cart that is discovered off premises, notifying the cart owner of such discovery, and recovering the City's costs of impounding and storing an off-premises cart.

Additionally, the proposed ordinance establishes standards outside of the scope of the state law, including requirements for cart identification and store premises signage. It further requires new shopping cart owners to submit to the City a cart containment and retrieval plan, subject to director's review and approval, which at a minimum must include: all pertinent contact information for notification regarding abandoned or stolen carts; a cart inventory; cart identification and store premises signage which complies with the City's standards; mandatory cart retrieval, with a retrieval service company; and cart containment methods the cart owner intends to implement. The containment methods may include, without limitation, electric or other disabling devices installed on the carts; bollards or other structures installed on the perimeter of the store premises; use of clerks to accompany customers to their vehicles and return carts to the store; and a security deposit for a customer's use of a cart.

Shopping cart owners currently engaging in business in the City on the effective date of the ordinance will be required to affix identification to each of their carts, post requisite signage, and submit evidence of a contract with a cart retrieval service within 30 days from the effective date of the ordinance, and to submit the cart containment and retrieval plan within 90 days from the effective date of the ordinance.

At the September 11, 2018 City Council meeting, the City Council approved the introduction of Ordinance No. 1048 by the following vote:

AYES: Council Members Malhi, Mann, Underwood-Jacobs, Vice Mayor Crist  
NOES: None  
ABSTAIN: None  
ABSENT: Mayor Parris

**Attachment:**  
Ordinance No. 1048

ORDINANCE NO. 1048

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER AMENDING TITLE 8 (HEALTH AND SAFETY) OF THE LANCASTER MUNICIPAL CODE BY ADDING CHAPTER 8.62, RELATING TO SHOPPING CART CONTAINMENT, RETRIEVAL AND ABATEMENT

WHEREAS, the City Council of the City of Lancaster finds and declares that the presence of abandoned, stolen, wrecked and/or dismantled shopping carts on public and private property creates a visual blight, is aesthetically detrimental to the community, is injurious to the general welfare of the citizens of the City of Lancaster, and constitutes a public nuisance; and

WHEREAS, the City Council further finds and declares that the City's retrieval of abandoned, stolen, wrecked and/or dismantled shopping carts is a drain on resources; and

WHEREAS, California Business & Professions Code Sections 22435 et seq. set forth procedures for the retrieval and abatement of shopping carts, and cost recovery for such abatement; and

WHEREAS, the City Council believes that an effective way to reduce the number of abandoned, stolen, wrecked and/or dismantled shopping carts on public and private property in the City of Lancaster is to adopt regulations and procedures for businesses that utilize shopping carts to establish effective cart containment and retrieval systems;

THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Lancaster hereby finds and determines that the above recitals are true and correct.

Section 2: Lancaster Municipal Code Title 8 is hereby amended by adding Chapter 8.62, as set forth in Attachment A attached hereto.

Section 3. That the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

I, Britt Avrit, MMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the 11<sup>th</sup> day of September, 2018, and placed upon its second reading and adoption at a regular meeting of the City Council on the 25<sup>th</sup> day of September, 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
BRITT AVRIT, MMC  
City Clerk  
City of Lancaster

\_\_\_\_\_  
R. REX PARRIS  
Mayor  
City of Lancaster

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss  
CITY OF LANCASTER            )

CERTIFICATION OF ORDINANCE  
CITY COUNCIL

I, \_\_\_\_\_, \_\_\_\_\_ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 1048, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

\_\_\_\_\_

**Attachment A**

**Chapter 8.62**

**Shopping Cart Containment, Retrieval and Abatement**

**8.62.010 Title.**

This chapter shall be known as the city of Lancaster's Shopping Cart Containment, Retrieval and Abatement ordinance.

**8.62.020 Findings and declaration.**

The city council finds and declares as follows:

A. The presence of abandoned, stolen, wrecked and/or dismantled shopping carts, or parts thereof, on public and private property is found to create a condition tending to promote blight and deterioration, to reduce property values, to constitute a public nuisance, to be aesthetically detrimental to the community and to be injurious to the general welfare.

B. Responsibility for eliminating or minimizing this impact rests with individuals who use shopping carts and the businesses which provide such carts for their patrons. Therefore, pursuant to Cal. Business & Professions Code section 22435.8, effective containment or control of shopping carts shall be mandated, and the presence of abandoned, stolen, wrecked and/or dismantled shopping carts, or parts thereof, on property located outside the premises or parking lot of the business that provided such cart, shall be cause to institute impoundment and abatement procedures in accordance with the provisions of this chapter and of Cal. Business & Professions Code, Division 8, Chapter 19 "Shopping and Laundry Carts."

**8.62.030 Definitions.**

As used in this chapter, the following words and phrases have the meanings set forth below:

"Abandoned shopping cart" means a shopping cart located outside the store premises of a business establishment which furnishes such cart for use by its patrons.

"Cart" means a shopping cart as defined in this section.

"City Manager" means the City Manager of the city of Lancaster, or his or her designee.

"Code" means the Lancaster Municipal Code.

"Director" means the Director of Development Services or his or her designee.

"Shopping cart" means a basket of any size which is mounted on wheels or a similar device, provided by a store operator for the purpose of transporting goods of any kind within a business establishment or designated parking or loading area of that business establishment.

“Shopping cart owner” or “owner” means the owner of a shopping cart, the agent of the owner of such cart, including individuals or business entities, or the business establishment which furnishes such cart for use by its patrons. The actions or inactions of an owner’s agent, on-site or off-site manager, or employee may be attributed to the owner.

“Store premises” means the lot area, maintained and managed by the business, that may include the building, parking lot and adjacent walkways, and where the business’s carts are permitted. The parking area of a business establishment located in a multi-store complex or shopping center shall include the entire parking area used by the complex or center.

#### **8.62.040 Administration.**

The City Manager is hereby authorized to enforce the provisions of this chapter, and may designate in writing the City employees or contractors who are authorized to assist in the enforcement of the provisions of this chapter (collectively, “enforcement officers”). The City Manager shall have the authority to promulgate and/or adopt regulations to implement the provisions of this chapter.

#### **8.62.050 Unauthorized Removal or Possession.**

A. It shall be unlawful for any person to perform any of the following acts with respect to a shopping cart, when such cart has a permanently affixed sign in conformity with this chapter:

1. To remove a shopping cart from the store premises with the intent to temporarily or permanently deprive the shopping cart owner of possession of the cart;
2. To be in possession of any shopping cart that has been removed from the store premises with the intent to temporarily or permanently deprive the shopping cart owner of possession of the cart;
3. To be in possession of any shopping cart with serial numbers or identification signage removed, obliterated, or altered, with the intent to temporarily or permanently deprive the shopping cart owner of possession of the cart;
4. To leave or abandon a shopping cart at a location other than the store premises with the intent to temporarily or permanently deprive the shopping cart owner of possession of the cart;
5. To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers or identification signage on a cart, with the intent to temporarily or permanently deprive the shopping cart owner of possession of the cart;



6. To be in possession of any shopping cart while that cart is not located on the store premises, with the intent to temporarily or permanently deprive the shopping cart owner of possession of the cart.

B. This section shall not apply to a shopping cart owner, an owner's employee, a person or business entity engaged in the business of cart retrieval on behalf of the owner, or a customer who has written consent, on store letterhead and signed by the shopping cart owner, to be in possession of a cart or to remove a cart from the store premises.

#### **8.62.060 Abandoned Shopping Carts Abatement, Removal and Storage**

A. The city may impound a shopping cart that has a permanently affixed sign, in conformity with this chapter, provided both of the following conditions have been met:

1. The cart is located outside the store premises, as defined in this chapter;
2. The cart is not retrieved within three business days from the date the cart owner receives notice from the city of such cart's discovery and location.

B. Notwithstanding other provisions of this section, the city may immediately retrieve a shopping cart from public or private property when the location of such cart will impede emergency services, as determined by the City Manager or a duly designated enforcement officer.

C. A shopping cart that has been impounded by the city pursuant to subsection (A) or (B) of this section shall be held at a location that is reasonably convenient to the shopping cart owner and open for business at least six hours of each business day.

D. When the city has impounded a shopping cart pursuant to subsection (A) or (B) of this section, the city may recover its actual costs for providing such service.

E. The City may fine a shopping cart owner \$50 for each occurrence in excess of three during a six-month period for failure to retrieve shopping carts in accordance with this section. For purposes of this subsection, an occurrence shall include all shopping carts impounded in accordance with this section during a calendar day.

F. Notwithstanding subsection (A), the city may impound a shopping cart that is located outside the store premises without complying with the three-day advance notice requirement of subsection (A), provided that:

1. The shopping cart owner has been provided actual notice within 24 hours following the impound, and is informed of the location where the cart may be claimed;
2. The impounded shopping cart is held at a location in compliance with subsection (C);

3. Any shopping cart reclaimed by the shopping cart owner within three business days following the date of actual notice of the impound shall be released and surrendered to the shopping cart owner at no charge;
4. Any shopping cart not reclaimed within three business days following the date of actual notice of the impound shall be subject to the fees and fines set forth in subsections (D) and (E) commencing on the fourth business day following the date of notice of the impound.

G. The city may sell or dispose of any shopping cart not reclaimed within 30 days following the date of notice of the impound.

H. Notwithstanding other provisions of this section, the city may immediately impound, sell and/or dispose of a shopping cart that does not contain a permanently affixed sign required pursuant to this chapter and whose ownership cannot otherwise be ascertained.

I. The actions described in this section may be performed by city personnel or contractor.

J. A shopping cart owner shall be deemed to have been provided any notice required pursuant to this section when the city notifies the owner's designated person, as set forth in section 8.62.070, by telephone call or email.

#### **8.62.070 Cart Containment and Retrieval Plan**

A. No shopping cart owner shall commence or conduct business operations without having implemented a city-approved cart containment and retrieval plan to prevent the unauthorized removal of carts from store premises, and if removed, to retrieve such carts within 24 hours of the removal or notice of removal.

B. A proposed cart containment and retrieval plan shall be submitted in writing, on a city-approved form, and shall include the following:

1. Owner/business information: the name of the business owner; the name of the business establishment; the physical address of the store premises; the name, address, telephone number and email address of each on-site or off-site manager; and designation of the person to whom the city should give notices related to shopping carts, as set forth in section 8.62.060, and such person's telephone number and email address.
2. Cart inventory: a complete inventory of all shopping carts maintained on or in the store premises.

3. Cart identification: a description of the identification sign to be affixed to each shopping cart on the store premises. The identification must, at a minimum, contain the information set forth in section 8.62.090 of this chapter.
4. Store premises signage: a description of the signage to be posted on the store premises, including sign and typeface size, sign text, and posting locations. Signage must, at a minimum, conform to the requirements set forth in section 8.62.100 of this chapter.
5. Mandatory cart retrieval: evidence of a contract with a cart retrieval service employed to retrieve shopping carts which have been removed from the store premises within 24 hours of the removal, or notice of removal.
6. Containment methods: a detailed description of all methods the shopping cart owner shall implement to prevent removal of carts from the store premises. These methods may include, but need not be limited to, those set forth in section 8.62.120.

C. Except as set forth in subsection D of this section, no proposed cart containment and retrieval plan shall be accepted unless accompanied by payment of a fee, established by resolution of City Council and as may be amended from time to time.

D. Shopping cart owners engaging in business in the city on the effective date of this chapter shall submit evidence of a contract with a cart retrieval service, and provide the name of the person to whom the city should give notices as set forth in section 8.62.060 within 30 days of the effective date of this chapter, and shall submit the complete cart containment and retrieval plan to the city within 90 days of the effective date of this chapter.

Shopping cart owners engaging in business in the city on the effective date of this chapter who are already contracting with a cart retrieval service and/or utilizing an on-site cart containment system(s) shall submit contracts, plans, specifications, photographs and/or other additional evidence (collectively, the “documentation”) as the Director may request. Such shopping cart owner shall not be required to tender the cart containment and retrieval plan fee. The documentation will undergo director’s review to verify compliance with the requirements set forth in this chapter and efficacy of containment system(s).

E. It shall be the responsibility of a shopping cart owner to implement and continuously maintain all provisions and measures of the city-approved cart containment and retrieval plan at all times the owner is engaging in business in the city.

### **8.62.080 Review and Approval or Denial of Cart Containment and Retrieval Plan**

A. Cart containment and retrieval plans shall be subject to director's review, in accordance with the procedures set forth in chapter 17.43 article VI of this code. The director may approve, conditionally approve, or deny a plan.

B. The director shall deny a plan based upon any of the following grounds:

1. Implementation of the plan would violate provisions of the building, zoning, health, safety, fire or other municipal codes, or any county, state or federal law which substantially affects public health, safety or welfare;
2. The plan fails to include all information provided by this chapter;
3. The plan is insufficient or inadequate to prevent removal of carts from the store premises, as determined by the director;
4. Implementation of the plan would violate a term or condition of a city license, permit or other approval;
5. The applicant has made a false, misleading or fraudulent material statement or omission of fact in the cart containment and retrieval plan.

C. The director may conditionally approve a plan if imposing such conditions will, in the director's determination, eliminate any grounds requiring denial of the plan.

D. The director shall make findings and render a written decision of the proposed plan. A copy of the decision shall be served on the applicant by first class mail. Service shall be deemed complete on the date the decision is placed in a U.S. Postal Service mail receptacle.

E. Notwithstanding any other provisions of this code, the director's denial or conditional approval of a proposed cart containment and retrieval plan shall be the final administrative decision. The superior court is the sole reviewing authority and an appeal of the director's decision is not appealable to the Planning Commission or City Council. The written decision shall contain the following statement: "Judicial review of the director's decision is subject to the time limits set forth in California Code of Civil Procedure, section 1094.6."

### **8.62.090 Cart Identification**

A. It shall be the responsibility of a shopping cart owner to maintain each cart with a sign permanently affixed to it. Cart identification shall be in conformity with that described in the owner's city-approved cart containment and retrieval plan and shall, at a minimum, contain all of the following information:

1. The identity of the shopping cart owner or the business establishment, or both;
2. Notification to the public that the unauthorized removal of the cart from the store premises, or the unauthorized possession of the cart, is a violation of state and municipal law;
3. The address or telephone number for returning a cart removed from the store premises to the shopping cart owner.

B. Shopping cart owners engaging in business in the city on the effective date of this chapter shall affix identification to each cart, in accordance with this section, within 30 days of the effective date of this chapter. If the owner subsequently makes a change to the cart identification in the city-approved cart containment and retrieval plan, the new cart identification shall be affixed within 30 days of city approval of the plan.

#### **8.62.100 Store Premises Signage**

A. It shall be the responsibility of a shopping cart owner to maintain signage concerning cart removal posted on the store premises. Signage shall be in conformity with that described in the owner's city-approved cart containment and retrieval plan and shall, at a minimum, meet the following requirements:

1. Each sign shall be not less than 18 inches in width and 24 inches in height with block lettering not less than one-half inch in width and two inches in height;
2. A sign shall be posted in a conspicuous place within two feet of each customer entrance and exit;
3. Each sign shall state, at a minimum, as follows: "REMOVAL OF SHOPPING CARTS FROM THE PREMISES IS PROHIBITED BY STATE AND MUNICIPAL LAW (B&P §22435.2; LMC §8.62.050)";
4. Each sign shall be in English and Spanish.

B. Shopping cart owners engaging in business in the city on the effective date of this chapter shall post signage on the store premises, in accordance with this section, within 30 days of the effective date of this chapter. If the owner subsequently makes a change to the store premises signage in the city-approved cart containment and retrieval plan, the new store premises signage shall be installed or erected within 30 days of city approval of the plan.

### **8.62.110 Cart Retrieval; Retrieval Service**

A. It shall be the responsibility of a shopping cart owner to secure and continuously maintain a service to retrieve shopping carts which have been removed from their store premises within 24 hours of the removal, or notice of removal. Service shall only be established with a person or business entity engaged in the business of shopping cart retrieval who possesses a valid Lancaster business license.

B. A person or business entity engaged in the business of cart retrieval shall maintain a current and valid Lancaster business license at all times the person or entity conducts business in the city.

C. A person or business entity engaged in the business of cart retrieval shall retain records showing written authorization from the shopping cart owner, or an agent thereof, to retrieve carts and to be in possession of carts retrieved. A copy of said records shall be maintained in each vehicle used for cart retrieval.

D. Each vehicle used for the retrieval of shopping carts shall display a sign that clearly identifies the person or business entity engaging in the business of cart retrieval.

### **8.62.120 Cart Containment**

A. It shall be the responsibility of a shopping cart owner to effectively contain or control all carts within the boundaries of the store premises. A shopping cart owner shall install and/or implement each method of containment described in the city-approved containment and retrieval plan. Methods of containment may include, but need not be limited to, the following:

1. Electronic or other disabling devices installed on the shopping carts that prevent their removal from the store premises;
2. Bollards or other structures, installed or erected on the perimeter of the store premises, which restrict shopping carts to the premises. Such structures shall not interfere with fire lanes, disabled access, or conflict with federal, state and local laws, including municipal building and zoning codes;
3. Use of courtesy clerks to accompany customers to their vehicles and return shopping carts to the store;
4. Security deposit for a customer's use of a shopping cart;
5. Other demonstrably effective method, as determined by the director, that is likely to prevent cart removal from the store premises.

B. Shopping cart owners engaging in business in the city on the effective date of this chapter shall implement methods of cart containment, in conformity with this section, within 90 days of the effective date of this chapter. If the owner subsequently makes a change to the cart containment methods in the city-approved cart containment and retrieval plan, the new cart containment methods shall be implemented within 30 days of city approval of the plan.

#### **8.62.130 Penalty**

Notwithstanding any other provision of the municipal code to the contrary, any person who violates any provision of this chapter, and any cart owner who violates or fails to comply with or continuously maintain any provision of the shopping cart owner's city-approved cart containment and retrieval plan, is guilty of a misdemeanor unless the offense is charged as an infraction by a prosecuting attorney.

#### **8.62.140 Enforcement**

Any person who violates any provision of this chapter, and any cart owner who violates or fails to comply with or continuously maintain any provision of the owner's city-approved cart containment and retrieval plan, shall be subject to enforcement procedures for each violation by any lawful means available to the city, including but not limited to, those set forth in Cal. Business and Professions Code (Division 8, Chapter 19), and chapters 1.12, 1.16, and 8.28 of this code.

#### **8.62.150 Severability**

If any section, subsection, paragraph, sentence, clause or phrase of this chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have adopted this chapter, and each section, subsection, paragraph, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, clauses or portions be declared invalid or unconstitutional.

**STAFF REPORT**  
**City of Lancaster**

CC 6
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Britt Avrit, MMC, City Clerk

Subject: **Consideration of adoption of Ordinance No. 1049**

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**Recommendation:**

Adopt **Ordinance No. 1049**, repealing chapter 9.44 of the Lancaster Municipal Code (“Chapter 9.44”) relating to regulation of registered sex offenders.

**Fiscal Impact:**

None.

**Background:**

Chapter 9.44 was originally adopted in 2012 and contained four distinct restrictions applicable to registered sex offenders. On December 18, 2012, litigation known as *John Doe, et al. v. City of Lancaster*, Case No. CV-12-10808 SJO (RZx) was filed against the City of Lancaster (“City”) in the United States District Court for the Central District of California challenging the constitutionality of Chapter 9.44. The City settled that action in March of 2013. As part of the settlement, the City agreed to amend Chapter 9.44. On March 26, 2013, the City adopted Ordinance No. 988, which ordinance amended Chapter 9.44.

Subsequent to the litigation known as *John Doe, et al. v. City of Lancaster* and the City’s adoption of Ordinance No. 988 amending Chapter 9.44, the California Courts of Appeal announced decisions in certain cases (*People v. Nguyen* (2014) 222 Cal.App.4th 1168 and *People v. Godinez* (2014) Cal. App. Unpub. LEXIS 99188), that found local laws applicable to registered sex offenders are preempted by state law. Based on the decisions of the California Courts of Appeal, Chapter 9.44 is likely preempted by state law and, therefore unconstitutional. On August 22, 2018, the City Attorney’s office received a letter from the Law Office of Janice M. Bellucci asserting that Chapter 9.44 is unconstitutional for the reasons stated above.

At the September 11, 2018 City Council meeting, the City Council approved the introduction of Ordinance No. 1049 by the following vote:

AYES: Council Members Malhi, Mann, Underwood-Jacobs, Vice Mayor Crist  
NOES: None  
ABSTAIN: None  
ABSENT: Mayor Parris

**Attachment:**

Ordinance No. 1049



ORDINANCE NO. 1049

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, REPEALING CHAPTER 9.44 OF THE LANCASTER MUNICIPAL CODE RELATING TO REGULATION OF REGISTERED SEX OFFENDERS

WHEREAS, Chapter 9.44 of the Lancaster Municipal Code (the “LMC”) contains certain restrictions on registered sex offenders;

WHEREAS, certain decisions of the California Courts of Appeal have held that laws adopted by municipalities, such as the City of Lancaster, that regulate registered sex offenders are preempted by state law and, therefore are unconstitutional; and

WHEREAS, the City Council desires to repeal Chapter 9.44 of the LMC to conform with state law.

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

Section 1. Chapter 9.44 of the Lancaster Municipal Code is hereby repealed in its entirety.

Section 2. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after adoption

I, Britt Avrit, MMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the 11<sup>th</sup> day of September, 2018, and placed upon its second reading and adoption at a regular meeting of the City Council on the 25<sup>th</sup> day of September, 2018 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
BRITT AVRIT, MMC  
City Clerk  
City of Lancaster

\_\_\_\_\_  
R. REX PARRIS  
Mayor  
City of Lancaster

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss  
CITY OF LANCASTER            )

CERTIFICATION OF ORDINANCE  
CITY COUNCIL

I, \_\_\_\_\_, \_\_\_\_\_ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 1049, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

\_\_\_\_\_

**STAFF REPORT**  
**City of Lancaster**

CC 7
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Britt Avrit, MMC, City Clerk

Subject: **Electronic Signatures Policy**

---

**Recommendation:**

Adopt **Resolution No. 18-48**, establishing an Electronic Signatures Policy.

**Fiscal Impact:**

None for this action.

**Background:**

The City's current document signature process entails routing physical documents to signors, and can be streamlined through the implementation of an electronic signature process. The use of electronic signatures on legally-binding documents has become increasingly prevalent in the private and public sectors. The benefits of using electronic signatures in lieu of handwritten signatures include: reduction of paper generation; significant decrease in time and cost associated with transmitting, approving, and retaining physical documents; and the creation of an audit trail of the modification, editing, and approval/signing of documents.

This Policy authorizes the City to accept and approve electronic signatures, in lieu of written signatures, on documents requiring signatures, in compliance with the legal requirements of California Government Code section 16.5 (the California Uniform Electronic Transaction Act, "UETA"), 15 United States Code Service section 7001 (the United States Electronic Signatures in Global and National Commerce Act, "ESIGN Act"), and all other applicable laws and regulations.

The City Manager and City Clerk, in consultation with the City Attorney, shall have the authority to develop administrative policies and procedures to the extent necessary to implement the terms of this Policy.

**Attachment:**

Resolution No. 18-48

RESOLUTION NO. 18-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LANCASTER, CALIFORNIA, ESTABLISHING AN  
ELECTRONIC SIGNATURES POLICY.

WHEREAS, The use of electronic signatures on legally-binding documents has become increasingly prevalent; and

WHEREAS, The City's current document signature process entails routing physical documents to signors, and can be streamlined through the implementation of an electronic signature process; and

WHEREAS, The benefits of using electronic signatures in lieu of handwritten signatures include: reduction of paper generation; significant decrease in time and cost associated with transmitting, approving, and retaining physical documents; and the creation of an audit trail of the modification, editing, and approval/signing of documents; and

WHEREAS, The adoption of an Electronic Signature Policy would authorize the City to accept an approved "digital signature," a type of electronic signature that has the same force and effect as a manual signature, in lieu of a written signature, on a document in which a signature is required or used; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER, DOES  
HEREBY RESOLVE, DETERMINE AND ORDER, AS FOLLOWS:

Section 1. In order to provide greater efficiencies in business practices, the City Council of the City of Lancaster authorizes the use of digital signatures on city documents pursuant to the attached proposed Administrative Policy 150-05.

PASSED, APPROVED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
BRITT S. AVRIT, MMC  
City Clerk  
City of Lancaster

\_\_\_\_\_  
R. REX PARRIS  
Mayor  
City of Lancaster

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss  
CITY OF LANCASTER            )

CERTIFICATION OF RESOLUTION  
CITY COUNCIL

I, \_\_\_\_\_, \_\_\_\_\_ City of Lancaster, CA, do hereby certify that this is a true and correct copy of the original Resolution No. 18-48, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

\_\_\_\_\_

**City of Lancaster**  
**Administrative Policies and Procedures Manual**

Subject <b>Electronic Signatures</b>		Effective Date	
Index: City Clerk	Supersedes	Staff Contact	Pages
Number: 150-05	N/A	B. Avrit	4

1.0 Purpose

The use of electronic signatures on legally-binding documents has become increasingly prevalent in the private and public sectors. The benefits of using electronic signatures in lieu of handwritten signatures include: reduction of paper generation; significant decrease in time and cost associated with transmitting, approving, and retaining physical documents; and the creation of an audit trail of the modification, editing, and approval/signing of documents.

2.0 Policy

It is the policy of the City of Lancaster (“City”) to encourage the use of electronic signatures in internal and external activities, documents, and transactions when it is operationally feasible, where technology permits, and when it is otherwise appropriate in the discretion of the City Manager, in accordance with the provisions that follow (the “Policy”).

This Policy authorizes the City to accept and approve electronic signatures, in lieu of written signatures, on documents requiring signatures, in compliance with the legal requirements of California Government Code section 16.5 (the California Uniform Electronic Transaction Act, “UETA”), 15 United States Code Service section 7001 (the United States Electronic Signatures in Global and National Commerce Act, “ESIGN Act”), and all other applicable laws and regulations. The parties to a transaction must agree to conduct the transaction by electronic means using a City-approved signature method that complies with applicable laws and regulations, including the capability of all parties to retain and accurately reproduce the electronically signed document or record.

This Policy does not supersede any laws that specifically require a written signature on a particular document for the same to be considered legally valid. This Policy does not limit the right of any party to a contract to conduct a transaction on paper or in non-electronic form, and/or the right of any party to a contract to have documents provided in paper or non-electronic form.

### 3.0 Legal Requirements

Under the UETA and the ESIGN Act, an electronic signature will be legally valid and recognized if it satisfies the following requirements:

1. Intent to sign - Electronic signatures, like traditional, handwritten signatures, are valid only if each party intended to sign.
2. Consent to do business electronically - The parties to the transaction must consent to do business electronically. Electronic records may be used in transaction with consumers only when the consumer has:
  - Received UETA Consumer Consent Disclosures
  - Affirmatively agreed to use electronic records for the transaction
  - Has not withdrawn such consent
3. Association of signature with the record - In order to qualify as an electronic signature under the ESIGN Act and UETA, the system used to capture the transaction must keep an associated record that reflects the process by which the signature was created, or generate a textual or graphic statement (which is added to the signed record) proving that it was executed with an electronic signature.
4. Record retention - U.S. laws on electronic signatures and transactions require that electronic signature records be capable of retention and accurate reproduction for reference by all parties or persons entitled to retain the contact or record.

Under the UETA, electronic document signers may elect to use an 'electronic signature' or a 'digital signature.' An 'electronic signature' is "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record." (Cal. Civ. Code § 1633.2.) A 'digital signature' is "an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature." (Cal. Gov. Code § 16.5.) A 'digital signature' is a type of electronic signature. (*Id.*) Digital signatures appear to be more widely accepted as alternatives to written signatures.

Should a signer elect to use a 'digital signature' rather than an electronic signature, the signature must embody all of the following attributes in order to have the same force and effect as a manual signature:

- (1) It is unique to the person using it;
- (2) It is capable of verification;
- (3) It is under the sole control of the person using it;
- (4) It is linked to data in such a manner that if the data are changed, the digital signature is invalidated; and
- (5) It conforms to regulations adopted by the Secretary of State.

#### 4.0 Organizations Affected

All City departments/divisions

#### 5.0 References

Cal. Gov. Code § 16.5 (UETA); 15 U.S.C.S. § 7001 (ESIGN Act).

#### 6.0 Procedure

- 6.1 In any document accepted by the City in which a signature is required or used, the City may authorize the use of an electronic signature, so long as it complies with the requirements of this section.
- 6.2 To the fullest extent permitted by law, the City accepts electronic signatures as legally binding and equivalent to handwritten signatures to signify an agreement.
- 6.3 The City's right or option to conduct a transaction on paper or in non-electronic form shall not affect the City's right, option or obligation to have documents provided or made available in paper format.
- 6.4 Where a legal requirement, beyond City policy, requires a written document, that requirement is met when an electronic record has associated with it an electronic signature using an approved electronic signature method, which complies with applicable state law.
- 6.5 This Policy applies only to transactions between parties, which have agreed to conduct transactions by electronic means with the use of the City's approved electronic signature method.
- 6.6 This Policy shall not apply to any transaction that requires a person's signature to be signed in the presence of a notary public.



6.7 Prohibited Uses of Electronic Signatures:

Use of electronic signatures is prohibited in the following situations:

- Transactions for which electronic signatures are not enforceable by law and/or transaction requiring a handwritten signature, such as transfers of real property.
- Transactions that require a person to sign in the presence of a notary public.

7.0 Responsibilities

- 7.1 The City Manager and City Clerk, in consultation with the City Attorney, shall have the authority to develop administrative policies and procedures to the extent necessary to implement the terms of this Policy.
- 7.2 The City Manager, or his/her designee in consultation with the City Attorney, shall determine acceptable technologies and vendors consistent with industry best practices to ensure the security and integrity of the data and the signature. The final approval of any electronic signature method will be made by the City Manager and City Attorney.
- 7.3 The City Manager, or his/her designee in consultation with the City Attorney, shall further determine the documents for which the City will accept electronic signatures. Periodic reviews will be implemented for appropriateness and continued applicability of electronic signatures.
- 7.4 If it is determined that an approved electronic signature method is no longer trustworthy, the City Manager, or his/her designee must revoke the approval of that electronic signature method. If there is continued significance for the electronic signatures, which used the revoked method, the City Manager, or his/her designee will take steps to see that any valid records signed with the revoked electronic signature method are signed again either with a written signature or with an approved electronic signature method.

Approved

\_\_\_\_\_  
Mark V. Bozigian, City Manager

\_\_\_\_\_  
Date

**STAFF REPORT**  
**City of Lancaster**

CC 8
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Jeff Hogan, Development Services Director

Subject: **Award of Bid – Public Works Construction Project No. 17-003  
2017 Pavement Management Program (Revive 25)**

---

**Recommendation:**

Award Public Works Construction Project No. 17-003, 2017 Pavement Management Program (Review 25), to Hardy & Harper, Inc., of Santa Ana, California, in the amount of \$1,839,000.00 Base Bid, plus Additive Alternate A1 in the amount of \$888,000.00 for a total bid of \$2,727,000.00, plus a 10% contingency, to repair and resurface approximately 22 lane-miles of streets as part of the City’s REVIVE 25 program. Authorize the City Manager, or his designee, to sign all documents. This contract is awarded to the lowest responsible bidder per California Public Code Section 22038(b).

**Fiscal Impact:**

\$2,999,700.00 (including 10% contingency) to be awarded; sufficient funds are available in Capital Improvements Budget Account No.’s 206-12ST036-924, 209-12ST036-924, 210-12ST036-924, and 252-12ST036-924. Estimated additional annual maintenance costs are negligible.

**Background:**

In 2015, the City of Lancaster set an ambitious goal of renewing, repairing or replacing every lane mile of public roadway within the City by 2025. To date, the City has completed more than 30 road projects, which have revived approximately 367 lane-miles of roads. There are also more than 209 lane-miles of new road projects that are in the design process and slated for construction over the next year. With the completion of these projects, the City will have reached 33% of the City’s ultimate 1,700-lane mile goal.

As part of the REVIVE 25 program, this project will repair and resurface approximately 22 lane-miles of City streets. The project areas include (1) Neighborhood bounded by West Avenue K-4 to Avenue K-8, 25<sup>th</sup> Street West to 30<sup>th</sup> Street West (2) Neighborhood bounded by Norberry Street to West Avenue J, 12<sup>th</sup> Street West to 15<sup>th</sup> Street West; (3) 5<sup>th</sup> Street East from Avenue H-8 to Avenue J. Road construction is anticipated to be completed within forty-five calendar days after the issuance of the notice to proceed. The project is also expected to be completed prior to the City's Holiday Construction Moratorium period.

Per Section 2.2, this project is subject to the Community Workforce Agreement by and between the City of Lancaster and Los Angeles/Orange Counties Building and Construction Trades Council and the Signatory Craft Councils and Unions ("CWA"). The PWCP 17-003 contract documents were prepared, and the project was advertised accordingly. Per Section 2.6(b) of the CWA, Letters of Assent shall be submitted by the Contractor and each of its subcontractors, of whatever tier, 48 hours prior to commencement of work, or within forty-eight (48) hours after the award of Project Work to that Contractor (or subcontractor), whichever occurs later.

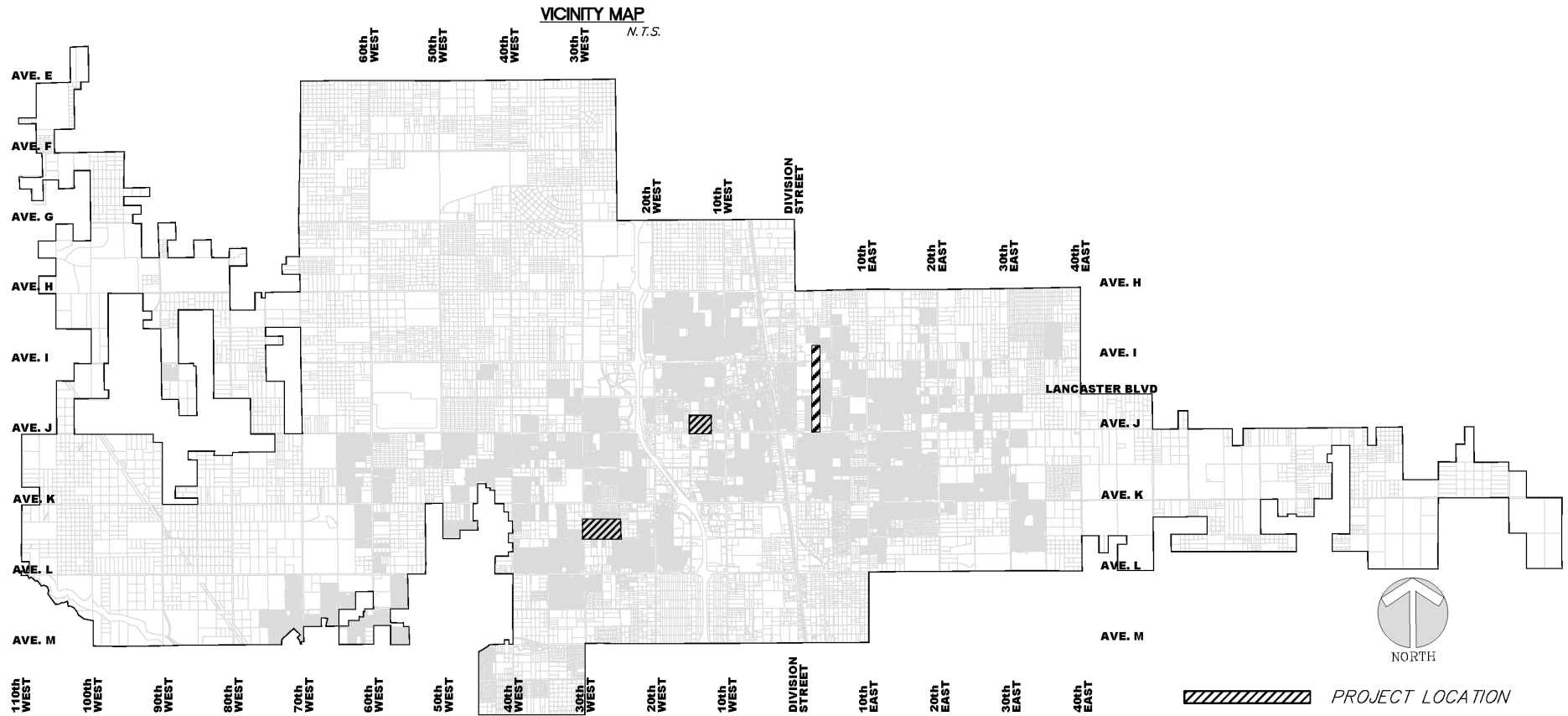
On August 21, 2018, at 11:00 a.m., the City conducted a bid opening for Public Works Construction Project No. 17-003. Two (2) sealed bid envelopes were received, opened, and read aloud. The bids were as follows:

	<u>Contractor</u>	<u>City</u>	<u>Bid Amount</u>
1.	Hardy & Harper	Santa Ana, CA	\$ 2,727,000.00
2.	R.C. Becker & Son	Santa Clarita, CA	\$ 3,365,275.05
	Engineer's Estimate		\$ 2,002,818.00

ML: mm

**Attachment:**  
Vicinity Map

PWCP 17-003  
2017 Pavement Management Program (REVIVE 25)  
Vicinity Map



**STAFF REPORT**  
**City of Lancaster**

CC 9
09/25/18
MVB

Date: September 25, 2018  
To: Mayor Parris and City Council Members  
From: Jeff Hogan, Development Services Director  
Subject: **Acceptance of Improvements (Sewer)**

---

**Recommendation:**

Approve the following developer installed sanitary sewer and accept this sewer for maintenance by the City and for public use:

<u>Project No.</u>	<u>Private Contract No.</u>	<u>Location/Owner:</u>
Site Plan Review 16-06	17-01	In Public Easement at the Northwest Corner of 10 <sup>th</sup> Street West and Avenue K and Avenue J-15 Owner: Clutter Family Trust

**Fiscal Impact:**

\$31,294.00. A total of 260.63 linear feet of sewer line and two (2) manholes are being accepted at this time. These costs will be assessed against benefiting properties.

**Background:**

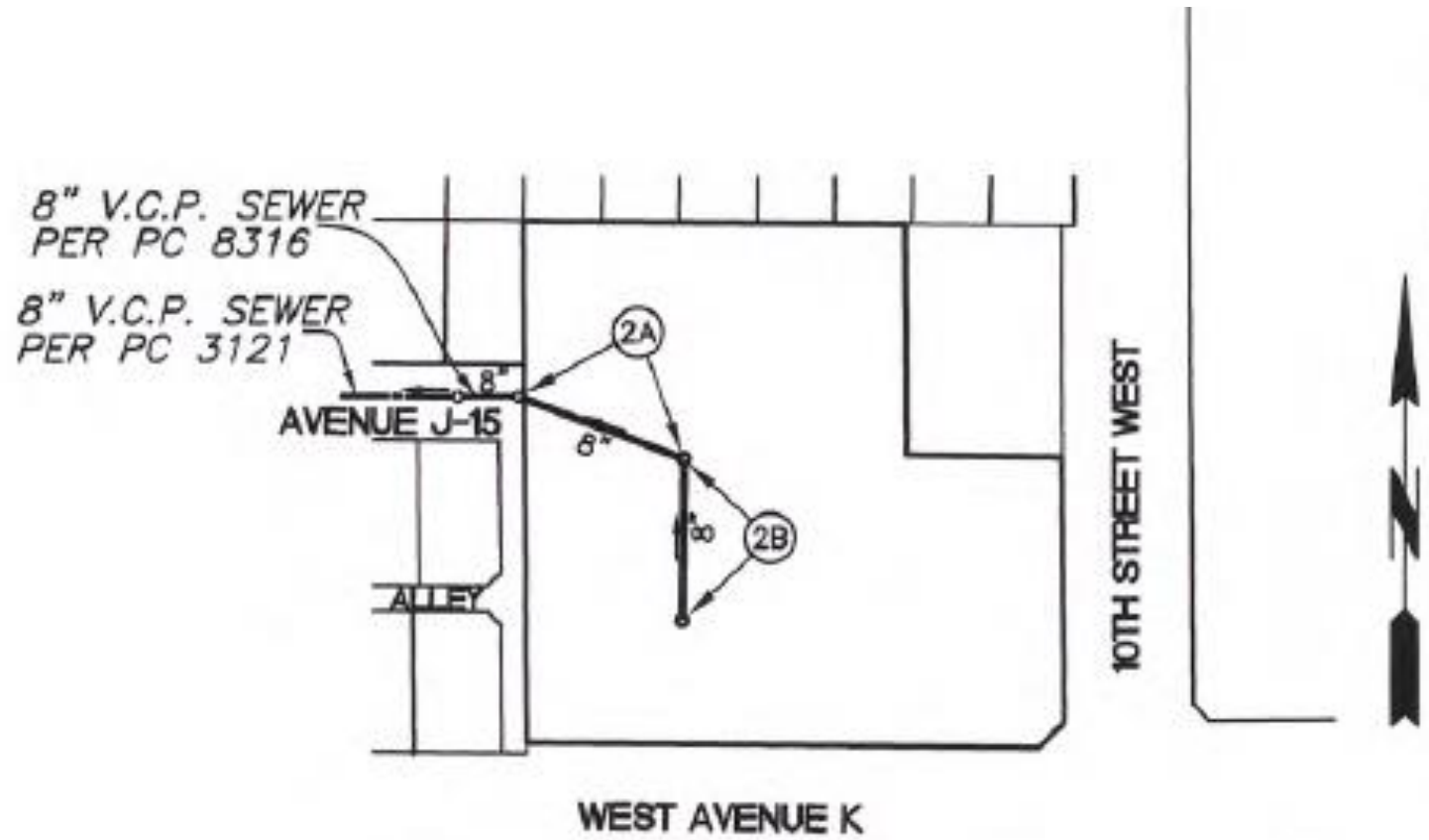
The listed sanitary sewer has been constructed and completed by the developer according to the approved plans and specifications. The work has been inspected and found to be satisfactory to the Development Services Director.

TL:mm

**Attachment:**

Map

SPR 16-06  
Exhibit "A"



INDEX MAP

**STAFF REPORT**  
**City of Lancaster**

CC 10
09/25/18
MVB

Date: September 25, 2018  
To: Mayor Parris and City Council Members  
From: Jeff Hogan, Development Services Director  
Subject: **Acceptance of Improvements (Streets)**

---

**Recommendation:**

Approve the developer constructed streets on the following project. In addition, accept the streets for maintenance by the City and for public use.

<u>Project</u>	<u>Location/Owner</u>
Site Plan Review 16-06	Northwest Corner of 10 <sup>th</sup> Street West and Avenue K Owner: Clutter Family Trust

**Fiscal Impact:**

\$305,927.68. The projected annual maintenance cost for the street improvements are anticipated to be:

Pavement: Negligible  
Surface Mounted Median Curb: \$300.00  
Sidewalk: Negligible

**Background:**

The existing streets have been improved and repaired by the developer according to the approved plans and specifications. The work has been inspected and found to be satisfactory to the Development Services Director.

TL:mm

**Attachment:**

Map

# SPR 16-06

## Exhibit "A"

### VICINITY MAP

N.T.S





**STAFF REPORT**  
**City of Lancaster**

CC 11
09/25/18
MVB

Date: September 25, 2018  
To: Mayor Parris and City Council Members  
From: Jeff Hogan, Development Services Director  
Subject: **Acceptance of Improvements (Water)**

---

**Recommendation:**

Approve the completed water system installed by the developer for the following project:

<u>Project</u>	<u>Location/Owner</u>
Site Plan Review 16-06	Northwest Corner of 10 <sup>th</sup> Street West and Avenue K Owner: Clutter Family Trust

**Fiscal Impact:**

None.

**Background:**

The water system for this project has been constructed and completed to the satisfaction of the local water purveyor, Los Angeles County Waterworks District No. 40, Antelope Valley, and was constructed according to the approved plans and specifications. Additionally, the work has been inspected and found to be satisfactory to the Development Services Director.

TL:mm

**Attachment:**

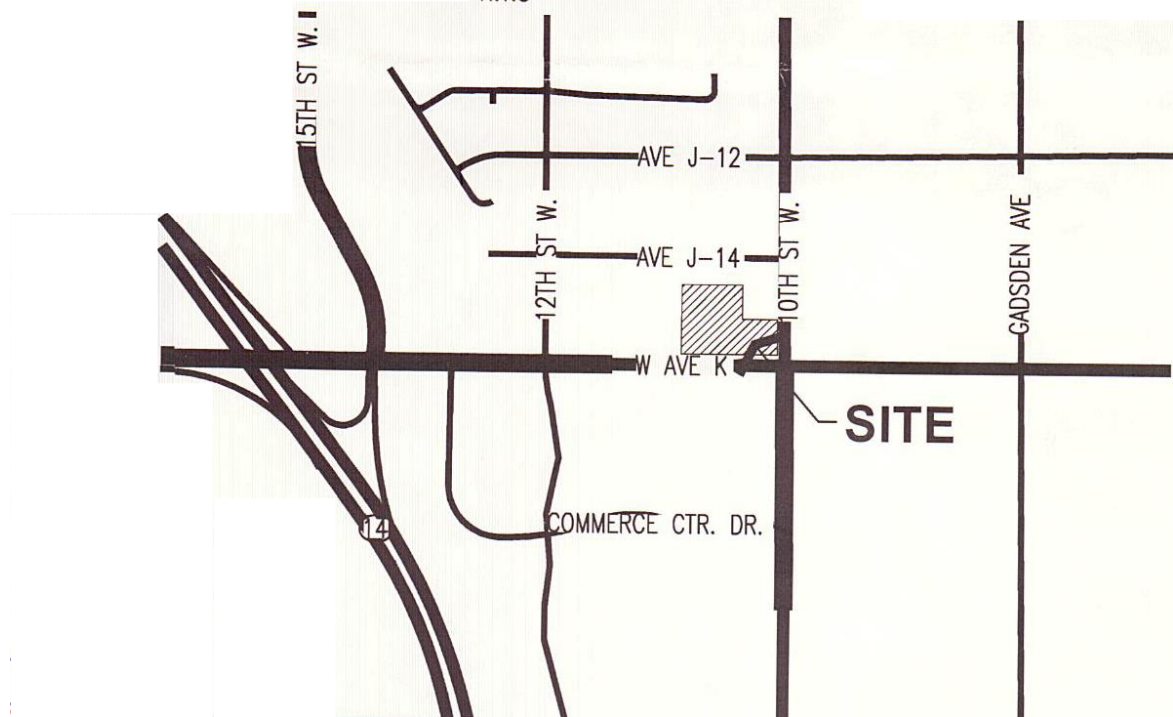
Map

# SPR 16-06

## Exhibit "A"

### VICINITY MAP

N.T.S



**STAFF REPORT**  
**City of Lancaster**

CC 12
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Jeff Hogan, Development Services Director

Subject: **Final Map Approval – Tract Map No. 61535-01 (Located on the Southwest Corner of 42<sup>nd</sup> Street West and Avenue J)**

---

**Recommendation:**

Approve the map and accept the dedications as offered on the map for Tract Map No. 61535-01; make findings that this project will not violate any of the provisions of Sections 66473.5, 66474.1, and 66474.6 of the Subdivision Map Act; and instruct the City Clerk to endorse on the face of the map the certificate which embodies the approval of said map and the dedications shown thereon.

**Fiscal Impact:**

None.

**Background:**

On October 17, 2005, the Planning Commission approved Tentative Tract Map No. 61535 (revised on February 22, 2016). The Final Map is in substantial conformance with the approved tentative map. Tract Map No. 61535-01 has been examined by the City Engineer, and is ready for Council approval. The securities for this map will be in the form of a Subdivision Improvement and Lien Agreement (Agreement), which will guarantee and secure the performance of all the grading, public improvements, impact fees, and public agency fees. The lien will be in first position, and the developer agrees to present substitute bond and deposit securities with the City prior to the commencement of the work of any improvements. The Agreement satisfies the security requirements of the Undertaking Agreement as an authorized form of security in accordance with the Subdivision Map Act and the City’s Municipal Code.

JF:mm

**Attachments:**

Subdivision Improvement and Lien Agreement  
Map

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Recorder's Office, Los Angeles County,  
California

07/18/18 AT 08:50AM

FEES:	0.00
TAXES:	0.00
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THIS FORM IS NOT TO BE DUPLICATED



RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Lancaster  
Attn: City Engineering Division  
44933 Fern Avenue  
Lancaster, California 93534

This document is exempt from the payment of a recording  
fee pursuant to Government Code Section 6103.

**SUBDIVISION IMPROVEMENT AND LIEN AGREEMENT**  
(Cal. Gov't Code § 66499(a)(4))

**THIS SUBDIVISION IMPROVEMENT AND LIEN AGREEMENT** (this  
"Agreement") is made this 14<sup>th</sup> day of July, 20 18 (the "Date of Agreement"),  
by and between the **CITY OF LANCASTER**, a California municipal corporation and charter city  
(the "City"), and **LANCASTER 54 AC, LLC**, a Delaware limited liability company (the  
"Developer").

**RECITALS**

A. Developer is the owner of Tentative Tract Map 061535-01, including all real  
property associated therewith, in the City of Lancaster, California. Said map was administratively  
approved for phasing on July 24, 2017, which is shown in Exhibit "A" attached hereto and  
incorporated herein. The Developer now wishes to develop Phase 1, consisting of one lot as Tract  
061535-01 (the "Property").

B. The City approved Tentative Tract Map No. 061535 on October 17, 2005 (the  
"Tentative Map"), subject to certain conditions of approval as set forth in Planning Commission  
Resolution No. 05-67 and revised on February 22, 2016 (the "Conditions of Approval"); and  
phased at staff level as Tentative Tract Map No. 061535-01 on July 24, 2017.

C. Developer now wishes to develop the Property (*i.e.*, the remainder of Tract Map  
No. 061535-01) and certain related public improvements (the "Improvements"), in accordance  
with, and as required by, the plans and specifications for said Improvements, which plans and  
specifications are now in the office of the City Engineer and which are hereby referred to and  
incorporated herein as though set forth in full.

D. Developer has requested to enter into a new undertaking agreement with City  
regarding construction and completion of the Improvements. Developer has also requested that  
City accept a lien on the Property to secure completion of the Improvements.

E. City has agreed to accept a lien on the Property to secure performance of the  
Developer's obligation under this Agreement provided such lien is in first position. Developer  
agrees to present substitute security to the City prior to the commencement of the work of

Improvements, and Developer agrees the City may revert the property to acreage if the work of Improvements has not commenced within two years of the Date of Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and of the approval of the Map and of the acceptance of the dedications therein offered, the parties agree as follows:

**1. Subdivision Development Lien.** This Agreement shall constitute a lien (the "Subdivision Development Lien") on the Property in the amount of One Million, Eighty Thousand, Four Hundred Dollars and No Cents (\$1,080,400.00). This Subdivision Development Lien is established pursuant to Government Code Section 66499(a)(4), to secure the performance of the Developer's obligations contained in this Agreement. The Subdivision Development Lien shall be in first position, and shall not be subordinate to any other lien or deed of trust on the Property. To the extent that it is necessary for some other lienholder(s) to subordinate its/their lien(s) on the Property in order to ensure that the Subdivision Development Lien is in first position, Developer shall obtain from said lienholder(s) a subordination of lien agreement in a form approved by the City in its sole discretion.

**2. Construction and Installation of Improvements.** Developer shall construct and install all improvements as hereinafter provided:

2.1. Performance of Work. Developer, at its sole cost and expense, will improve the Property, or cause the Property to be improved, by the grading and paving of streets, construction of curbs and gutters, cross gutters and sidewalks, installation of drainage and sanitary sewerage facilities, provision of an underground utility and street lighting system, installation of street signs, parkway trees, a water system and all related facilities, and such other improvements required by the ordinances of the City and/or the City Council in the approval of the Map, together with appurtenances, contingencies and engineering costs and as more particularly shown in the improvement plans for said Map. Developer will do all work and furnish all materials necessary, in the opinion of the City Engineer, to complete said work in accordance with the plans and specifications on file in the office of the City Engineer or with any changes or modifications required or ordered by the City Engineer which, in his opinion, are necessary or required to complete the subdivision work. Developer shall maintain the subdivision Improvements and adjacent public facilities clear of all debris, weeds, and other materials which inhibit the performance of the Improvements or become a public nuisance. Should the Developer fail to act promptly in accordance with this requirement the City may, at its option, perform the necessary work and the Developer shall pay to the City the actual cost of such maintenance plus fifteen percent (15%).

2.2. Work, Places and Grades to be Fixed by Engineer. All of the work of Improvements is to be done at the places, of the materials, in the manner and at the grades, all as shown upon the plans and specifications therefor, heretofore approved by City Engineer and which are now on file in his office, and to the satisfaction of said City Engineer.

2.3. Repairs and Replacements. Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all survey monuments, shown on the Map which have been damaged, disturbed, or obliterated by reason of any work done hereunder. In addition, Developer shall replace or have replaced, repair, or have repaired, as the case may be; or pay to the owner, the entire cost of replacement or repairs, or any and all property damaged or destroyed

by reason of any work done hereunder. Any such repair or replacement pursuant to this Section 2.3 shall be to the satisfaction and subject to the approval of the Development Services Director.

2.4. Supervision by Developer. Developer shall personally supervise the work of Improvements, or have a competent foreman or superintendent on the work at all times during progress, with authority to act for Developer.

2.5. Inspection by City. Developer shall at all times maintain proper facilities and provide safe access for inspection by City, to all parts of the work, and to the shops wherein the work is in preparation.

2.6. Commencement of Work of Improvements. Developer shall commence the work of improvements on or before the second anniversary of the Date of Agreement, as hereinafter defined, (the "Commencement Date"), or within such further time as may be granted by the City Council in its sole discretion.

2.7. Completion of Work of Improvements. Developer shall complete all work of Improvements within two (2) years from the Commencement Date, or within such further time as may be granted by the City Council in its sole discretion. Work of Improvements will be deemed complete on the date that the City Council authorizes final acceptance of the Improvements.

### **3. Permits and Fees.**

3.1. Permits: Compliance with Law. Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction of such improvements, give all necessary notices and pay all fees and taxes required by law.

3.2. Cash Charges. Developer shall pay to the City in cash such subdivision fees ("Cash Charges") that have been established by ordinance or by the City Council in conferring approval or extension of time to said Subdivision.

**4. Substitution of Security and Termination of the Subdivision Development Lien.** Prior and as a condition precedent to the City issuing any building permit relative to the Property and after the Date of Agreement, the Developer shall provide the City with substitute improvement security ("Substitute Security") consisting of security for the faithful performance of this Agreement, security for the payment of all persons performing labor and materials, and security for the setting of monuments. The City agrees to terminate the Subdivision Development Lien following receipt of acceptable Substitute Security. Substitute Security and termination of the Subdivision Development Lien shall be subject to the requirements set forth in this Section 4.

4.1. Security for Faithful Performance and for Payment of Labor and Materials. This portion of the Substitute Security shall be executed by a surety acceptable to the City in its sole and absolute discretion and shall include the following: (1) security in an amount equal to at least one hundred percent (100%) of the estimated cost of improvements as security for the faithful performance of this Agreement and; (2) separate security in an amount equal to at least fifty percent (50%) of the estimated cost of improvements as security for the payment of all persons performing labor and furnishing materials in connection with this Agreement. If at any time after

deposit of this portion of the Substitute Security, the surety on said securities is no longer acceptable to the City, Developer agrees to renew said securities with an acceptable surety within ten (10) days after receiving notice that said surety is unacceptable.

4.2. Monument Security. Prior to commencement of any work on Property the Developer shall submit a new Monument Security which shall consist of a cash deposit or cashier's check in the amount of Three Thousand, Five Hundred Dollars and No Cents (\$3,500.00) ("Monument Security") as security for the faithful performance of all work of setting monuments for the entire Map and as security for the payment of the engineer(s) or surveyor(s) who set said monuments. If after depositing the Monument Security, Developer refuses or fails to complete the work of setting monuments, or if Developer refuses or fails to pay the engineer(s) or surveyor(s) for setting the monuments, the City shall have the right to expend all, or any portion of the Monument Security without notice to Developer, for purposes of completing the setting of monuments and/or paying said engineer(s) or surveyor(s).

4.3. Termination of Subdivision Development Lien. No later than thirty (30) days following City's acceptance of the Substitute Security, the City shall cause to be duly executed and acknowledged by City and recorded with the office of the County Recorder of Los Angeles County, an instrument which shall terminate the Subdivision Development Lien created by this Agreement. Upon recording of said instrument, the Subdivision Development Lien shall be of no further force and effect. Notwithstanding the foregoing, the rest of this Agreement shall remain in full force and effect.

## **5. Warranty Period and Retention of Substitute Security.**

5.1. Repair or Reconstruction of Defective Work. If within a period of one (1) year after final acceptance of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, Developer shall, without delay and without cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work and Developer shall pay to the City the actual cost of such repairs plus fifteen percent (15%).

5.2. Retention of Security for Faithful Performance and Payment of Labor and Materials. The City shall retain at least ten percent (10%) of the security for faithful performance for a period of one (1) year after final acceptance of the work performed under this Agreement, to guarantee corrective work throughout the warranty period described in Section 5.1 herein. The security for payment of labor and materials shall be retained by City for a period of ninety (90) days after final acceptance of the work performed under this Agreement. Ninety (90) days after said final acceptance, the security for payment of labor and materials may be reduced to an amount equal to the amount of all claims, for which claims of lien have been recorded and notice given in writing to the City Council. The balance of the security for payment of labor and materials shall be retained until the settlement of all such claims and obligations for which security was given.



5.3. Retention of Monument Security. The Monument Security shall be retained by City until all of the following conditions have been met: (1) all work of setting monuments has been completed; (2) all work of setting monuments has been approved and accepted by City Council; and (3) City has received written verification from surveyor(s) or engineer(s) that he/she/they have been paid in full for such work.

**6. Default by Developer.** The following events shall constitute an “Event of Default”:

- a. Failure or delay by the Developer or any of Developer’s contractors, subcontractors, agents or employees to perform any term or provision of this Agreement; or
- b. The Developer’s refusal or failure to commence construction of the required Improvements within the time specified herein, or any extensions thereof; or
- c. The Developer’s refusal or failure to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure completion of the required Improvements within the time specified herein, or any extensions thereof; or
- d. The Developer’s refusal or failure to complete the required Improvements within the time specified herein, or any extensions thereof; or
- e. The Developer’s refusal or failure to provide the City with acceptable Substitute Security in accordance with the provisions of this Agreement; or
- f. The Developer is adjudged a bankrupt, the Developer makes a general assignment for the benefit of Developer’s creditors, or a receiver is appointed in the event of Developer’s insolvency.

**7. Remedies.**

7.1. Remedies Prior to Substitution of Security. Prior to the substitution of security and upon the occurrence of any Event of Default, the City may pursue any and all rights and remedies available at law or in equity, including without limitation:

- a. Any action at law or in equity as may be permitted by this Agreement in order to recover all damages necessary to compensate the City for the Developer's failure to perform its agreements, obligations or undertakings hereunder; or otherwise arising out of the events of default; or
- b. Reversion of the Property to acreage pursuant to Government Code Section 66499.11 *et seq.* and all other applicable law.

7.2. Remedies Following Substitution of Security. Following substitution of the security and upon the occurrence of any Event of Default, the City may pursue, in addition to those remedies set forth in Section 7.1 above, any and all rights and remedies available at

law, in equity, or under the terms of this Agreement that the City has against the Developer and/or surety(ies) which issued the security for faithful performance and security for payment of labor and materials.

## **8. Performance by Surety.**

8.1. Notice of Breach and Default. If any Event of Default occurs after substitution of security, the City may serve written notice upon Developer and Developer's surety of the occurrence of an Event of Default, and Developer's breach of this Agreement.

8.2. Occurrence of Event of Default; Performance by Surety or City. In the event of any such notice of breach, Developer's surety shall have the duty to take over and complete the work and the Improvements herein specified, provided however, that if the surety, within five (5) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of said work and Improvements, or if surety does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer and Developer's surety shall be liable to City for any excess cost or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary therefor.

## **9. General Provisions**

9.1. Hold-Harmless Agreement. Developer hereby binds itself, its executors, administrators and assigns and agrees to indemnify, defend and hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for or claims for damage for personal injury, including death, as well as from claims for damage to property, both real and personal, which may arise from or be caused by Developer's or Developer's contractor's, subcontractor's, agent's or employee's operations under this Agreement. Developer agrees to, and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason for any of the aforesaid operations. It is understood that City does not, and shall not waive any right against Developer which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by Developer, of the Substitute Security or Cash Charges. It is further understood that this Section shall apply to all damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this Section, regardless of whether the City has prepared, supplied or approved of, plans and/or specifications for the Subdivision.

9.2. Relationship between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture. Neither Developer nor any of the Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement. Developer agrees to indemnify, hold harmless and defend City from any claim made against City

arising from a claimed relationship of partnership or joint venture between City and Developer with respect to the performance of Developer's obligations under this Agreement.

9.3. Time of Essence - Extension. Time is of the essence with respect to the performance by Developer of each and every obligation and condition of this Agreement; provided, that in the event good cause is shown therefor, the City Council may extend the time for commencement of work of improvements, and/or the time for completion of the improvements hereunder. Any such extension may be granted without notice to any surety who issues security for faithful performance and/ or security for payment of labor and materials pursuant to this Agreement, and extensions so granted shall not relieve the surety of its liability under the security to secure the faithful performance of this Agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle Developer to an extension.

9.4. Emergencies. If, in the judgment of the City Engineer, conditions exist that cause, or may cause, a hazard to life or property, the City Engineer may cause such conditions to be modified on an emergency basis without notice to the Developer. Neither the City Engineer, the City or its agents shall be held liable to the Developer for damages arising out of such emergency actions and to the extent that the actions taken are for the maintenance of safety to life and property that would not have existed had the Developer's operations not been in progress, the cost of such emergency measures so taken by the City shall be reimbursed to the City by the Developer.

9.5. Attorneys' Fees. In addition to any other amounts to be paid by Developer hereunder, Developer shall pay all costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing the Subdivision Development Lien and/or Substitute Security furnished by Developer hereunder.

9.6. Notices. All notices and other communications hereunder shall be in writing and mailed or personally delivered to the appropriate party at the address set forth below or, as to any party, at any other address in the State of California as shall be designated by it in a written notice sent to the other party.

To City:

City of Lancaster  
44933 Fern Avenue  
Lancaster, CA 93534-2461  
Attn: City Engineer

To Developer:

Lancaster 54 AC, LLC  
100 Bayview Circle, Suite 2000  
Newport Beach, CA 92660  
ATTN: Mark Burkes  
Telephone: (949) 851-2121

9.7. Alteration of Agreement; No Effect on Substitute Security. Any addition, alterations, or modifications of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. Developer hereby stipulates and agrees that no addition, alterations or modifications of or to this Agreement or to the plans and specifications referred to herein, including any extension of time within which the work hereunder may be

completed, shall in any way affect its obligations on the Substitute Security to be furnished hereunder. Developer does hereby waive notice of any such addition, alterations or modifications.

9.8. Demands for Payment under Substitute Security. Developer hereby stipulates and agrees that it shall have no right to dispute the propriety of any demand made by the City for payment under Substitute Security to be furnished hereunder.

9.9. Surety to Include Issuer of Letter of Credit. The term surety as used herein shall include the issuer of any letter of credit which is acceptable to the City as Substitute Security under this Agreement.

9.10. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect.

9.11. Successors and Assigns. All of the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties, their respective heirs, successors, representatives, assigns, officers, directors, agents, partners, servants, employees, and affiliated corporations or companies.

9.12. Headings. The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the scope of interpretation of this Agreement.

9.13. No Waiver. A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

9.14. Corporate Authority. Each individual executing this Agreement on behalf of a public or private corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, partnership, entity, or organization and that this Agreement is binding upon same in accordance with its terms. Developer shall, at City's request deliver a certified copy of its board of director's resolution or certificate authorizing or evidencing Controlling Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**[Signatures appear on following page.]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

**CITY:**

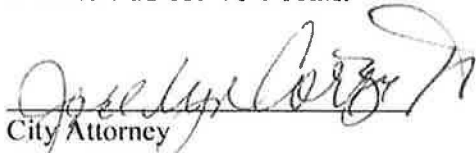
**CITY OF LANCASTER**, a California municipal corporation and charter city

By: 

Name: MARISSA DIAZ

Its: CAPITAL PROGRAM MANAGER

**APPROVED AS TO FORM:**

  
City Attorney

**DEVELOPER:**

**LANCASTER 54 AC, LLC**, a Delaware limited liability company

By: 

Name: Donald S. Grant

Its: Executive Vice President

By: 

Name: Barry S. Villines

Its: Chief Financial Officer

**DEVELOPER SIGNATURES MUST BE  
ACKNOWLEDGED BY NOTARY**

## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Orange )

On June 5, 2018 before me, Sharon L. Pozos, Notary Public  
(insert name and title of the officer)

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

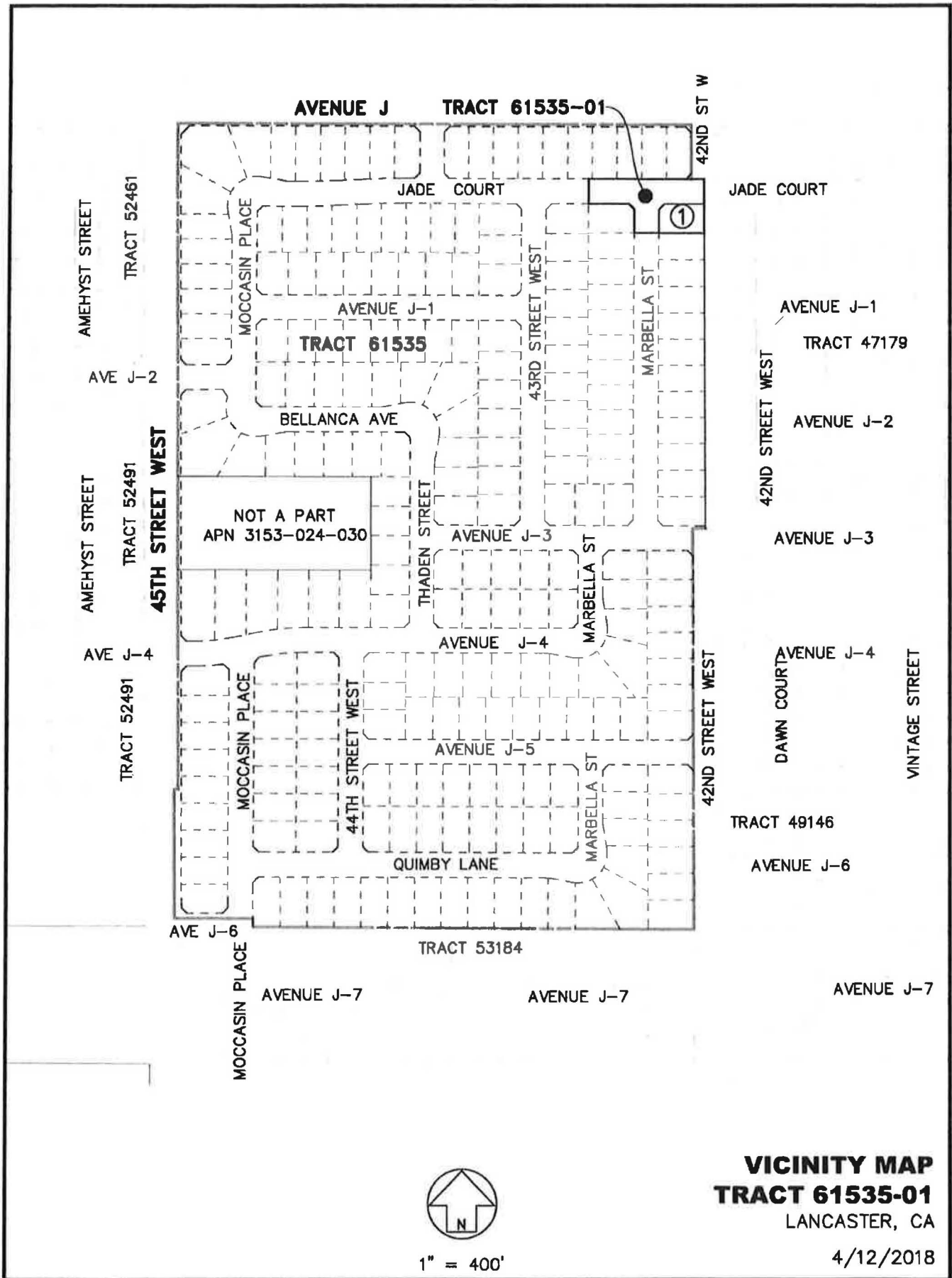
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sharon L. Pozos (Seal)



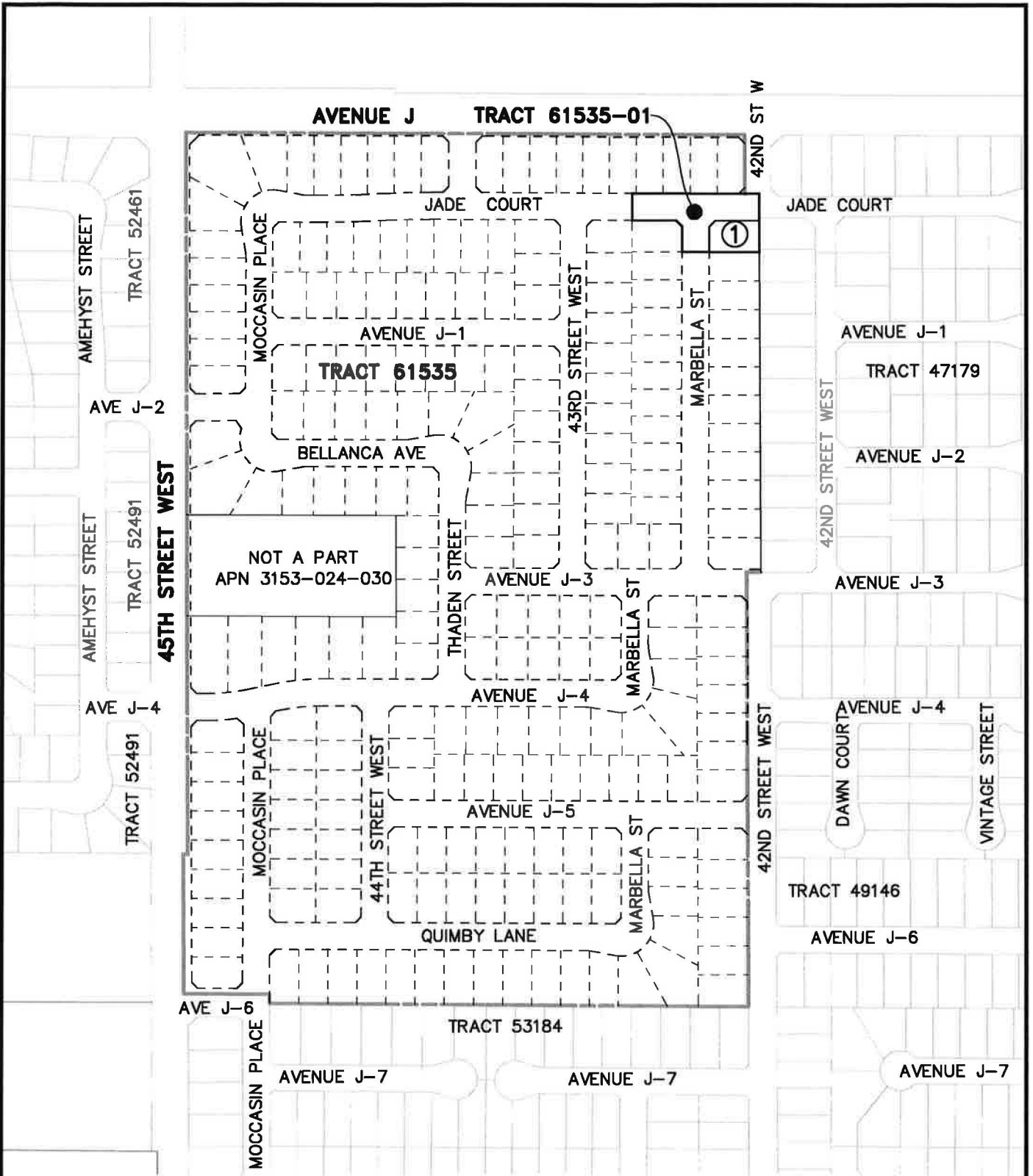
# Exhibit "A"



**VICINITY MAP**  
**TRACT 61535-01**  
LANCASTER, CA

4/12/2018

DRAWING: c:\projects\16921\exhibits\exb\_vicinity\_map.dwg



111 East Victoria Street, Santa Barbara, CA 93101  
 Phone: (805) 963-9532



1" = 400'

**VICINITY MAP**  
**TRACT 61535-01**

LANCASTER, CA

4/12/2018



**STAFF REPORT**  
**City of Lancaster**

CC 13
09/25/18
MVB

Date: September 25, 2018  
To: Mayor Parris and City Council Members  
From: Ronda Perez, Director, Parks, Recreation and Arts  
Subject: **Operating Agreement for Zelda's 750 West and East End Concessions**

---

**Recommendation:**

Approve the Operating Agreement with Team 211 Entertainment, LLC for the management and operation of Zelda's 750 West and the concessions at the east end of the Lancaster Performing Arts Center (LPAC).

**Fiscal Impact:**

Revenue of \$2,500 per month, after initial 90 days, to Account No. 402-3405-308; to be re-evaluated following completion of the 18/19 LPAC Performance Season per the Operating Agreement.

**Background:**

The City is responsible for the operation of the Lancaster Performing Arts Center, located at 750 West Lancaster Boulevard, Lancaster, California 93534, the interior of which is improved with, among other things, a 1920's themed lounge commonly known and referred to as Zelda's 750 West. Zelda's was conceptualized as a venue designed to enhance the LPAC experience while creating an additional BLVD destination location and minimizing the general fund subsidy of LPAC.

The City has received a proposal from Team 211 Entertainment, LLC for the operation and management of Zelda's 750 West and the concessions at the east end of LPAC. In the best interests of the venue and to provide for its ongoing management, staff recommends that the City utilize the services and experience of Team 211 Entertainment, LLC by approving the attached Operating Agreement. The Licensee will pay a flat lease fee of \$2,500 per month after the first 90 days of operation.

Zelda's will remain City property under private management and the venue will be managed within the discretion of City policy and standards under the terms and conditions set forth in the Agreement.

JC;jzs

**Attachment:**

Operating Agreement for Zelda's 750 West and East End Concessions

**OPERATING AGREEMENT**

by and between

**CITY OF LANCASTER,**  
a California municipal corporation and charter city

and

**TEAM 211 ENTERTAINMENT, LLC dba POUR D' VINO**  
a limited liability company

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EXHIBIT A ZELDA'S 750 WEST LICENSE AREA DETAIL

EXHIBIT B EAST END LICENSE AREA DETAIL

## OPERATING AGREEMENT

**THIS OPERATING AGREEMENT** (this “Agreement”) is made and entered as of \_\_\_\_\_, 2018 (the “Effective Date”), by and between the **CITY OF LANCASTER**, a California municipal corporation and charter city (the “City”) and **TEAMS 211 ENTERTAINMENT, LLC dba POUR D’ VINO**, a limited liability company (referred to herein as the “Licensee”) (the City and Licensee are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

### RECITALS

A. The City is responsible for the operation of the Lancaster Performing Arts Center, located at 750 West Lancaster Boulevard, Lancaster, California 93534, the interior of which is improved with, among other things, a bar and restaurant commonly known and referred to as Zelda’s 750 West, and a concession area at the east end of the LPAC commonly known and referred to as the East End.

B. The City desires to utilize the services and experience of the Licensee in connection with the management and operation of Zelda’s 750 West and the East End, and the Licensee desires to render such services, upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **100. OPERATION OF ZELDA’S 750 WEST.**

101. Grant of License. Subject to the terms and conditions of this Agreement, the City hereby grants to the Licensee, the Licensee’s agents, employees, representatives and permittees, a license (the “License”) to enter all or any part of that certain portion of the Lancaster Performing Arts Center, located at 750 West Lancaster Boulevard, Lancaster, California 93534 (the “LPAC”), that is operated as a bar and restaurant commonly known and referred to as “Zelda’s 750 West” (the “Zelda’s License Area”), and that portion of the LPAC that is operated as a concessions area commonly known and referred to as the East End (the “East End License Area”), for the purpose of operating such facilities (collectively, the “License Areas”). The Zelda’s License Area is further described on the Zelda’s 750 West License Area Detail, which is attached as Exhibit “A” and incorporated herein by reference. The East End License Area is further described on the East End License Area Detail, which is attached as Exhibit “B” and incorporated herein. Notwithstanding any provision of this Agreement, the City shall retain the right to use the License Area during periods of nonutilization. For purposes of this Agreement, “periods of nonutilization” means any period of time other than the Licensee’s regular hours of operation as established by this Agreement. The City shall have use of the Zelda’s License Area at no cost on 12 dates per year to be determined by the City with at least 48 hours notice to the Licensee. For all dates that the City uses Zelda’s 750 West, the City shall purchase all food and drinks from the Licensee provided Licensee can meet the quality, presentation and menu expected for each date as required by the City. Further, at its sole discretion, the City reserves the right to share, on a 50/50

basis, in naming rights revenue of areas, fixtures and appurtenances located within the License Areas based on mutually agreed upon sponsorship amounts and purchaser type.

102. Standards of Performance; Relationship Between City and Licensee. The Licensee accepts the relationship of trust and confidence established between the Licensee and the City by the terms of this Agreement. The Licensee covenants with the City to furnish its best skill and judgment in performing its obligations hereunder, and shall at all times exercise its rights and perform its duties under this Agreement in a manner which maintains the good name and business reputation of the City and the LPAC. The Licensee shall perform its duties and obligations under this Agreement in an efficient, expeditious, prudent and economical manner, consistent with the best interests of the City, in accordance with industry standards.

The Licensee is entering into this Agreement as an independent contractor to provide the services set forth in this Agreement. The Licensee acknowledges that it is acquiring no rights whatsoever in the LPAC, or any portion thereof (including Zelda's 750 West) or any appurtenant equipment, fixtures and/or supplies, except a nonexclusive and revocable license, during the Term, to enter upon Zelda's 750 West and use appurtenant equipment, fixtures and/or supplies if, and to the extent reasonably necessary, to carry out its obligations pursuant to this Agreement. In acknowledging that the Licensee is acquiring no rights whatsoever in the LPAC, Zelda's 750 West or appurtenant equipment, fixtures and/or supplies, the Licensee further agrees that it will not assert, in any legal action or otherwise, any right or interest in the LPAC, or any portion thereof. In no event shall the Licensee alter or improve any portion of the LPAC or Zelda's 750 West except as directed by the City or as expressly permitted in advance in writing by the City under this Agreement.

103. Term. The term of the License (the "Original Term") shall commence at 12:01 a.m. on October 1, 2018, and shall automatically renew at midnight on June 30, 2019 provided that the parties have reached mutually agreeable terms and potentially a renegotiated rental rate at the end of the 2018/2019 LPAC Season, unless terminated sooner as provided herein. The Parties may mutually agree, in writing, to extend the License for up to three (3) additional 2-year terms. All of the terms and conditions of this Agreement for the Original Term shall apply and remain the same during any extension of the Term. As used herein, "Term" means the Original Term and, as applicable, any extension. Notwithstanding the foregoing, either Party may terminate the License and this Agreement upon ninety (90) days written notice to the other Party.

104. License Fee. Licensee shall not pay a License Fee for the first 90 days of the term to allow Licensee to become fully operational. Thereafter, during the Term, the Licensee shall pay to the City at the address set forth in Section 903 a license fee (the "License Fee") of \$2,500.00 per month for the License Areas, in advance, on the first day of each month. Upon commencement of the Term of this Agreement, following the initial 90-day period, and as a condition precedent to the effectiveness of this Agreement, Licensee shall pay to the City the first month's License Fee on January 1, 2019. If the Term of this Agreement commences on other than the first day of a month, the Licensee must pay the first month's License Fee prorated on a per diem basis with respect to the portion of the month within the Term. The License Fee shall be re-evaluated following completion of the 18/19 LPAC Performance Season.

105. Books and Records. The Licensee shall keep full and accurate books of account and such other records as are necessary to reflect the results of operating Zelda's 750 West and other activities under this Agreement. All accounting records shall be maintained in accordance with generally accepted accounting principles. All such books, records, and reports shall be maintained separately from other facilities operated by the Licensee. The Licensee agrees to maintain reasonable and necessary accounting, operating, and administrative controls relating to the financial aspects of Zelda's 750 West and other activities under this Agreement.

106. Financial Statements. At the time that the Parties discuss the initial extension of the License pursuant to Section 103, and annually thereafter during the Term, the Licensee shall deliver to the City a profit and loss statement and balance sheet reflecting the results of operation of Zelda's 750 West, which statements shall be prepared in accordance with generally accepted accounting principles, consistently applied, by the Licensee's independent certified public accountant.

107. Delinquencies. In the event the Licensee is delinquent for a period of thirty (30) days or more in paying to the City any sums payable pursuant to this Agreement, including, without limitation, the Licensee Fee described in Section 104, the City shall be entitled to collect from the Licensee interest thereon, from the date such sum was due and payable until paid, at the rate of eighteen percent (18%) per annum or at the then maximum lawful rate of interest per annum, whichever is less, plus the reasonable attorney's fees incurred by the City in the collection of such delinquency. Receipt of such interest or attorney's fees by the City shall not bar the exercise of any other remedy available to the City on account of such delinquency.

108. Ownership and Use of Furniture, Fixtures and Equipment. The City is the owner of the "Zelda's 750 West" trade name (the "Zelda's Trade Name") and the furniture, fixtures and equipment (the "City FF&E") located at the LPAC and at, within and/or upon the License Area which may be used by the Licensee in whole or in part for operating Zelda's 750 West and engaging in other activities under this Agreement. At the commencement of this Agreement, the Licensee and the City shall take an inventory of all City FF&E. City FF&E will be returned to the City upon termination or expiration of this Agreement, in the same condition as received, ordinary wear and tear excepted. If and to the extent the Licensee acquires additional furniture, fixtures and equipment for use in operating Zelda's 750 West and/or engaging in other activities under this Agreement, including, without limitation, dishes, utensils, pans and cooking and serving equipment, they are permitted to do so with written City approval. All permanent additions to the facility will remain the property of the City, while all temporary additions will remain the property of the Licensee. Upon termination or expiration of this Agreement, the Licensee shall have no further right to use the Zelda's Trade Name.

## **200. LICENSEE'S DUTIES AND OBLIGATIONS.**

201. Serviceware, Utensils and Cleaning Materials. The Licensee is to provide at its sole expense all kitchen aids, serving aids and all other related items necessary for the proper maintenance of the License Area and proper service for the purposes of this Agreement, and will furnish at its sole expense, all basic and miscellaneous cleaning equipment, chemicals and utensils for maintenance of the License Area and will furnish at its sole expense all pots, pans, utensils,

and miscellaneous serving utensils such as trays, tray stands, pitchers, coffee servers and, as necessary, dinnerware.

202. Standards of Operation. The Licensee shall operate in a first-class manner all of the businesses operated by the Licensee pursuant to this Agreement, and shall keep the License Area and all other locations in which the Licensee operates pursuant to this Agreement in a safe, neat, clean, orderly, and inviting condition at all times, reasonably satisfactory to the City. The Licensee shall offer a wide variety of food and beverages (both alcoholic and non-alcoholic) sufficient to meet the demand of the public. The Licensee shall at all times maintain a minimum of two taps featuring beers from local breweries. The Licensee shall at all times maintain a standard of quality with respect to the food and beverages sold by the Licensee pursuant to this Agreement at least as high as the standard for like food and beverages sold or offered for sale at restaurants serving comparable food and beverages within a twenty-mile radius of the LPAC. The Licensee shall maintain a sanitation rating of "Grade A II" for each of its food-serving facilities based on the sanitation ratings which are now given, from time to time, to restaurants under the laws of the State of California. The Licensee's service shall be prompt and efficient, and the Licensee shall at all times have a sufficient number of its food and beverage service employees on hand, and adequate facilities, to provide such service. The Licensee's employees shall be clean and courteous and neat in appearance. The Licensee shall not permit any of its employees at, within or upon the License Area or LPAC to use foul or profane language, or act in a loud or boisterous or otherwise improper manner. The Licensee shall accept at least the following credit cards in payment for its sales and service hereunder: VISA and MasterCard. All food and beverages kept for sale by the Licensee pursuant to this Agreement shall be subject to inspection by the City. The Licensee shall satisfy and comply with all laws and regulations applicable to operating Zelda's 750 West and/or engaging in activities under this Agreement, including, without limitation, laws and regulations concerning the sale of alcoholic beverages, preparation of food and service of food.

203. Hospitality. The Licensee shall provide all food and beverages the LPAC is obligated to provide as and to the extent required by any performance or other agreement. Such food and beverages shall be provided at the Licensee's cost and expense up to \$200 per show. Alcoholic beverages are excluded. Upon request, LPAC shall provide to Licensee up to 10 complimentary tickets for non-sellout season performances for Licensee's loyal customers.

204. Hours of Operation. Zelda's 750 West and the East End shall be open for business from at least one (1) hour before each LPAC regular season performance and each private event for which LPAC has been rented, and shall remain until at least one (1) hour after each LPAC regular season performance and from at least one (1) hour before until at least one (1) hour after such performances and events. The LPAC staff shall provide the Licensee a schedule of the LPAC's regular season performances and shall notify the Licensee of private events for which the LPAC has been rented. Other than as specifically provided herein, the Licensee may establish its own hours of operation subject to prior City approval.

205. Prices. The prices charged by the Licensee for food and beverages sold pursuant to this Agreement shall be reasonably competitive with prices charged for like food and beverages by similar establishments. If the City believes that the prices charged by the Licensee exceed such reasonably competitive prices, the Licensee and the City shall confer and make such



reasonable adjustments to prices as necessary to keep prices reasonably competitive. Prices for all food and beverages sold pursuant to this Agreement shall be conspicuously displayed by the Licensee on a menu.

206. Solicitation. Solicitation of business at the LPAC by the Licensee shall be confined to signs, placards, and advertising displays, all of which shall be subject to the approval of the City prior to installation or placement and at all times thereafter. This requirement shall not apply to small signs, placards, and other similar items which would normally be placed within the License Area or affixed to tables, counters, bars, and the like, if they refer to items offered for sale by the Licensee.

207. Expenses.

207.1 Utilities. The City shall be responsible for the payment of all gas, trash, electricity, communications (including wireless Internet) and other utilities and services used or consumed by the Licensee with respect to the Licensee's use of the License Area pursuant to this Agreement.

207.2 Possessory Interest. Pursuant to California Revenue and Taxation Code Section 107.6, the City hereby informs the Licensee that this Agreement may create a possessory interest subject to property taxation, and in such event the Licensee may be subject to the payment of property taxes levied on such interest. The Parties agree that in the event possessory interest property taxes are levied against the Licensee in connection with this Agreement, such taxes shall be the Licensee's responsibility.

208. Personnel Policies. All food and beverage service employees will be on the Licensee's payroll. All persons employed by the Licensee at the License Area shall be in uniform, acceptable to the City, at all times. The Licensee's employees shall comply with the rules and regulations at any time promulgated by City for the safe, orderly and efficient conduct of all activities being carried out pursuant to this Agreement. The Licensee shall not retain any employee that is not acceptable to the City for any reason.

209. Maintenance and Repair of License Area. Except for maintenance and repairs necessitated by the willful acts or negligence of the Licensee, or of its agents, employees, invitees, licensees or customers, the City shall be responsible at its cost for maintaining the heating and air conditioning systems, roof, foundation and structural components of the License Area. The Licensee shall be responsible for maintaining the interior and non-structural portions of the License Area, throughout the Term of this Agreement, and delivering the same to the City at the expiration or termination of this Agreement, in good condition and repair, reasonable wear and tear excepted. Without limiting the generality of this obligation, the Licensee shall, at its own expense, be responsible as follows:

(a) The Licensee shall repair and maintain all equipment, furniture, furnishings and installations which are used within the License Area. The Licensee shall be responsible, at its own expense, for the maintenance and repair of all lighting fixtures within the License Area, including the replacement of incandescent and fluorescent lamps, starters, ballasts and other similar appurtenances.

(b) Cleaning and maintenance of the License Area shall be conducted at a level consistent and in accordance with all applicable health and sanitation laws and regulations high enough to receive an A rating upon inspection by the Department of Public Health (DPH), and any other standards as may be directed by the City.

(c) Equipment storage and maintenance areas shall at all times be kept and maintained in a clean, orderly and sanitary condition, free of debris and oil spills. Flammable materials must be stored in containers and in locations which are approved by the City and/or applicable local and state regulators. Spare equipment not used in regular daily operations shall be stored in areas designated by the City if available.

(d) The Licensee shall provide complete and proper arrangements for handling and disposal off the License Area of all garbage, trash, unused equipment, and other refuse resulting from Licensee's operations pursuant to this Agreement; and the Licensee shall provide and use suitable receptacles, in sufficient number, within and upon the License Area, for the disposal of the same. Upon payment by the Licensee of such charges as the City may assess therefore, the Licensee shall have the right to use the City's trash bins for disposal of its refuse. Piling of boxes, cartons, barrels or other similar items in an unsafe or unsightly manner is prohibited.

(e) The Licensee shall be responsible for the repair and maintenance of all plumbing which serves the License Area, including water lines from the point of connection with the main water line, and drains and waste lines to the point of connection with the main sewer line, whether such lines and such connections are within or outside the License Area. All drains shall be properly installed and sealed to prevent leakage, and Licensee shall install catch pans underneath all drains and waste lines where necessary to prevent leakage. The Licensee is responsible for all material that is deposited in the plumbing system from the License Area and for cleaning the grease traps within the License Area. The Licensee shall not deposit any drain cleaner or other chemical substances into the plumbing system which have not been approved in advance by City and/or applicable local and state regulators. The Licensee shall reimburse the City upon demand all costs of repairing any damage to the City's plumbing or other property of the City resulting from a failure by the Licensee to maintain the plumbing system serving the License Area, or from any failure by the Licensee to keep such plumbing system or the floors within the License Area in a watertight condition, or from any liquid, grease or other debris which has been deposited in such plumbing system that results in stoppage or other damage.

(f) The Licensee will at all times keep the License Area free of insects, rodents, and other pests.

If the Licensee fails to perform its obligations under this Section 209, the City may do all things necessary to restore the License Area to the condition required by this Agreement, charging the cost and expense to the Licensee, and the Licensee shall pay to the City all such costs and expenses in addition to the fees and charges herein provided.

210. Alterations. The Licensee shall make no alterations or changes to the License Area without having first received the prior written approval of the City.

211. Avoidance of Liens. The Licensee shall keep the License Area, LPAC and all other property of the City free and clear of any mechanic's or material men's liens of the Licensee's contractor or material suppliers, and the Licensee shall indemnify the City and hold it harmless against any such liens or any claims of lien of the Licensee's contractors or material suppliers.

212. Cooperation with Licensee's Successor. Upon the expiration or earlier termination of this Agreement, the Licensee shall cooperate reasonably with the party or parties selected by the City to operate Zelda's 750 West or other establishment upon and within the License Area so as to cause the least disruption of service to the public resulting from the transition.

213. Sale of Alcoholic Beverages. The Licensee's sale of alcoholic beverages upon and within the License Area shall be pursuant and subject to all of the terms, conditions and restrictions of the City's liquor license. The Licensee shall not commit any act or engage in any conduct that violates the terms, conditions and/or restrictions of the City's liquor license. Additionally, the Licensee shall not apply for its own liquor license with respect to the License Area or the LPAC. The City's liquor license is the City's property and any right the Licensee has to serve alcoholic beverages upon and within the License Area pursuant to the City's liquor license shall cease upon termination or expiration of this Agreement. All on-site employees will have documentation that they have taken Responsible Beverage training and new employees shall complete training within 30 days after employment has started. Certificates of completion shall be available for City inspection.

### **300. INSURANCE REQUIREMENTS.**

301. General Insurance Provisions. All insurance provided for under this Section 300 shall be effected by policies issued by insurance companies that have sound financial strength and maintain a rating of A:VII in Am Best's Key rating guide, or equivalent. Certificates of insurance shall be delivered to the City before and as an express condition precedent to the commencement of the Term of this Agreement and all insurance policies shall be renewed (or replaced, as applicable) prior to their respective expiration dates. All applicable insurance policies described in this Section 300 shall be written in the name of the Licensee, with the City named as an additional insured thereon, except for worker's compensation insurance and any other insurance with respect to which it is impractical or inappropriate to name the City, or any other parties as a named insured or an additional insured. All property insurance policies shall be endorsed specifically to the effect that the proceeds of any building, contents or business interruption losses shall be made payable to the City (except for the proceeds of any business interruption insurance which shall be payable to the Licensee as provided herein). All such policies of insurance shall also be endorsed specifically to the effect that such policies shall not be canceled or materially changed without at least thirty (30) calendar days prior written notice to the City. Certificates of insurance shall be sent to the City at the addresses shown in Section 903 below. The City and the Licensee shall review all coverage limits and deductible amounts set forth in this Section 300 from time to time for the purpose of determining the coverage limits and deductible amounts then appropriate for properties similar in type and construction to the License Area and for the nature of the business being conducted.

302. Insurance to be Maintained by Licensee. At all times during the Term, the Licensee shall procure and maintain the following insurance coverages:

(a) Comprehensive or commercial general liability insurance written on an "occurrence" basis against claims for personal property (including bodily injury and death) and property damage, with a combined single limit for bodily injury and property damage of at least Two Million Dollars (\$2,000,000) per occurrence;

(b) Owned, hired and non-owned automobile liability insurance covering all use of all automobiles, trucks and other motor vehicles utilized by the Licensee and the Licensee's employees in connection with this Agreement with a combined single limit for bodily injury and property damage of at least One Million Dollars (\$1,000,000) per occurrence;

(c) Employment practices liability coverage with a combined single limit of at least Two Million Dollars (\$2,000,000.00) to cover any of the Licensee's employees who work within the License Area;

(d) Workers' compensation and employer's liability insurance as may be required under applicable laws covering all of Licensee's employees employed at the License Area;

(e) Liquor liability coverage with a combined single limit of at least Two Million Dollars (\$2,000,000.00);

(f) Umbrella or excess liability coverage with a limit of not less than Ten Million Dollars (\$10,000,000.00); and

(g) Such other insurance in amounts as the City, in its reasonable judgment, deems advisable for protection against claims, liabilities and losses arising out of or in connection with the operation of Zelda's 750 West and/or other activities under this Agreement.

(h) The certificate of insurance must contain the following additional insured language, Additional Insureds: The City and its elected officials, officers, employees and volunteers are included as additional covered parties, but only insofar as the operations under this contract are concerned.

**400. DAMAGE OR DESTRUCTION; EMINENT DOMAIN; FORCE MAJEURE EVENTS.**

401. Damage or Destruction. Should the License Area be destroyed or substantially damaged by fire, flood, acts of God, or other casualty, the City, by written notice to the Licensee given within sixty (60) days following the occurrence of such event, shall have the right to terminate this Agreement on the basis that the City does not choose to rebuild or restore the License Area, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. For the purpose of this Section 401, the License Area shall be deemed to have been substantially damaged if the estimated length of time required to restore the License Area substantially to its condition and character just prior to the

occurrence of such casualty shall be in excess of six (6) months, as indicated by an architect's certificate or other evidence reasonably satisfactory to the Licensee. If this Agreement is not terminated in the event of damage to the License Area either because (i) the damage does not amount to substantial damage as described above, or (ii) notwithstanding destruction of or substantial damage to the License Area, the City elects to restore the License Area, then the City shall proceed, at the City's own expense, with all due diligence to commence and complete restoration of the License Area to its condition and character just prior to the occurrence of such casualty.

402. Eminent Domain. If all of the License Area (or such a substantial portion of the License Area so to make it unfeasible, in the reasonable opinion of the City, to restore and continue to operate the remaining portion of the License Area for the purposes contemplated in this Agreement) shall be taken through the exercise (or by agreement in lieu of the exercise) of the power of eminent domain, then upon the date that the City shall be required to surrender possession of the License Area or of that substantial portion of the License Area, this Agreement shall terminate and neither party shall have any further obligation to the other party under this Agreement except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. If such taking of a portion of the License Area shall not make it unfeasible, in the reasonable opinion of the City, to restore and continue to operate the remaining portion of the License Area for the purposes contemplated in this Agreement, then this Agreement shall not terminate, and the City shall proceed, at the City's own expense, with all due diligence to alter or modify the License Area so as to render it a complete architectural unit which can be operated as before.

403. Force Majeure Events. As used in this Agreement, the term "Force Majeure Event" means declared or undeclared war, acts of terrorism, sabotage, riot or acts of civil disobedience, acts or omissions of governmental agencies, accidents, fires, explosions, floods, earthquakes, or other acts of God, strikes, labor disputes, shortages of materials, or any other event not within the control of the Licensee and not caused by the gross negligence or intentional wrongful conduct of the Licensee.

## **500. INDEMNIFICATION.**

501. Licensee's Indemnity. The Licensee agrees to and shall indemnify and hold harmless the City and its elected officials, officers, employees and volunteers from and against any and all claims, demands, actions, lawsuits, proceedings, damages liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses:

(a) which result from any act or omission arising from or relating to Licensee's use of the License Area, operation of Zelda's 750 West and/or any other activities under this Agreement; or

(b) which result from any action taken by Licensee that is expressly prohibited by this Agreement; or

(c) which result from Licensee's breach of any covenant or obligation contained in this Agreement.

502. City's Indemnity. The City agrees to and shall indemnify and hold harmless the Licensee and its owners, officers, directors, employees, members and managers from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, attorneys' fees, costs, and expenses which result from the City's breach of this Agreement.

503. Nature of Indemnity. The indemnity obligations of the Licensee set forth in this Section 500 shall be offset to the extent of any applicable insurance proceeds paid to the City.

#### **600. DEFAULT.**

601. Events of Default. The occurrence of any one or more of the following events which is not cured in the time permitted shall constitute a default under this Agreement ("Event of Default"):

(a) The Licensee's failure to pay when due any sums payable under this Agreement.

(b) Either Party's failure to comply with any of the material covenants, agreements, terms, or conditions of this Agreement or such failure shall continue for a period of thirty (30) days after written notice to the defaulting party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any failure cannot with due diligence be cured within such thirty (30) day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be reasonably necessary for the defaulting party to cure the failure.

#### **700. REPRESENTATIONS AND WARRANTIES.**

701. Licensee's Representations. As a material inducement to the City to enter into this Agreement, Licensee represents and warrants the following:

(a) The Licensee is a limited liability company duly organized, validly existing and in good standing under the laws of the state of California; that it is duly qualified to do business and is in good standing in the State of California; that it has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by the Licensee of the Licensee's obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, law or court order to which the Licensee is a party or by which Licensee is bound.

(b) All actions required to be taken by or on behalf of the Licensee to authorize it to execute, deliver and perform its obligations under this Agreement have

been taken, and that this Agreement is a valid and binding obligation of Licensee enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(c) The person(s) executing this Agreement on behalf of Licensee have full power and authority to bind the Licensee to the terms hereof.

702. City's Representations. As a material inducement to the Licensee to enter into this Agreement, the City represents and warrants the following:

(a) The City is a California municipal corporation and charter city, validly existing and in good standing under the laws of the State of California; that it is duly qualified to do business and is in good standing in the State of California; that it has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated herein; and that the execution and delivery hereof and the performance by the City of City's obligations hereunder will not violate or constitute a default under the terms and provisions of any agreement, law or court order to which the City is a party or by which the City is bound.

(b) All actions required to be taken by or on behalf of the City to authorize it to execute, deliver and perform its obligations under this Agreement have been taken, and that this Agreement is a valid and binding obligation of the City enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws, or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(c) The persons executing this Agreement on behalf of the City have full power and authority to bind the City to the terms hereof.

## **800. TRANSFER AND ASSIGNMENT.**

801. Limitation on Licensee. The Licensee shall not sell, convey, assign, transfer, hypothecate, pledge, or otherwise dispose of (or agree to do any of the foregoing) all or any part of its interest, if any, in this Agreement, or any contractual rights or obligations related hereto, without the prior written consent of the City.

802. Limitation on City. The City may assign or transfer this Agreement to a governmental agency related to the City. The City may also assign and transfer its rights under this Agreement to a purchaser or new owner of the LPAC that assumes the obligation of City hereunder. Otherwise, the City may not assign or transfer its rights hereunder.

## **900. MISCELLANEOUS.**

901. Waiver. The waiver by either the City or the Licensee of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term

or condition of this Agreement shall be deemed to have been waived by City or the Licensee, unless such waiver is in writing signed by the party against whom such waiver is asserted.

902. Entire Agreement. This Agreement sets forth all the covenants, promises, agreements, conditions and understandings between the City and the Licensee, oral or written, relating to the subject matter of this Agreement. The City has made no representations or promises not expressly contained herein. No subsequent alterations, amendment, change or addition to this Agreement shall be binding upon the City and the Licensee unless reduced to writing and signed by them.

903. Notices. Notices, statements and other communications to be given under the terms of this Agreement shall be delivered in a timely fashion (and in any event within any time limits established elsewhere in this Agreement) and shall be in writing and delivered by hand (including pre-paid courier) or sent by a reputable overnight delivery service such as Federal Express and addressed as follows:

To City: City of Lancaster  
44933 North Fern Avenue  
Lancaster, California 93534  
Attention: City Manager

To Licensee: Attn: Jim Cohan  
Team 211 Entertainment, LLC  
dba Pour D' Vino  
741 W. Lancaster Boulevard  
Lancaster, California 93534

or at such other address as from time to time designated by the party receiving the notice in accordance with this Section 903. The date of service of such notices shall be the date such notices are delivered to the party to whom the notice is given.

904. Successors and Assigns. This Agreement is personal to the City and the Licensee and except as otherwise provided herein, the Licensee shall have no right, power or authority to assign this Agreement, or any portion hereof or any monies due or to become due hereunder, or to delegate any duties or obligations arising hereunder, either voluntarily, involuntarily or by operation of law, without the prior written approval of the City. Except as otherwise provided herein, the Licensee shall not have any right, power or authority to subcontract its services, or any portion thereof, without the prior written approval of the City. Any approval by the City of any subcontract of the Licensee's services or any part thereof shall not be construed to make the City a party to such subcontract or to expose the City to any claims or liabilities arising thereunder. Without waiver of the foregoing provisions, all of the rights, benefits, duties, liabilities and obligations of the parties hereto shall inure to the benefit of and be binding upon their respective successors and assigns.

905. Applicable Law. This Agreement and all provisions thereof, irrespective of the place of execution or performance, shall be construed and enforced in accordance with the laws



of the State of California. Venue for any action arising out of this Agreement shall be Los Angeles County.

906. Cumulative Rights. The rights and remedies conferred upon both the City and the Licensee in this Agreement and by law are cumulative.

907. Severability. If any provisions of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder or substantially increase the burden on any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

908. Further Assurances. The Licensee and the City each agree to execute and deliver from time to time, promptly following any reasonable request therefore by the other party, any and all instruments, agreements and documents, and promptly shall take such other actions as may be necessary or appropriate in the reasonable determination of the other party, to carry out the transaction described in this Agreement.

909. Possessory Interest. Pursuant to California Revenue and Taxation Code Section 107.6, the City hereby informs the Licensee that this Agreement may create a possessory interest subject to property taxation, and in such event the Licensee may be subject to the payment of property taxes levied on such interest. The parties agree that in the event possessory interest property taxes are levied against the Licensee in connection with this Agreement, such taxes shall be the Licensee's responsibility.

910. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**[Signatures begin on next page.]**

**IN WITNESS WHEREOF**, the City and the Licensee have signed this Agreement as of the date first written above.

**CITY:**

**CITY OF LANCASTER**, a California municipal corporation and charter city

By: \_\_\_\_\_  
Name: Mark V. Bozigian  
Its: City Manager

**ATTEST:**

\_\_\_\_\_  
Britt Avrit, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

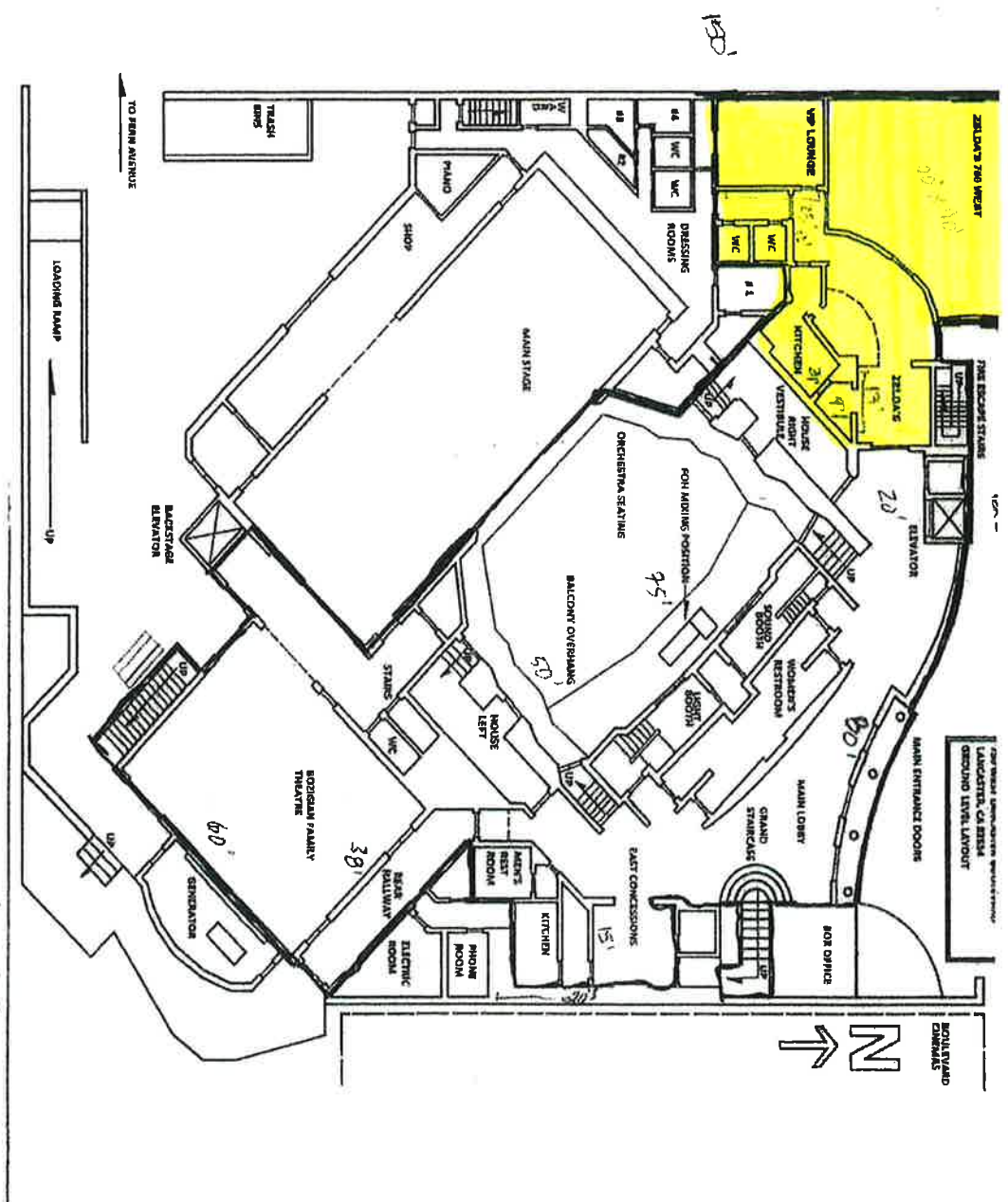
**LICENSEE:**

**TEAM 211 ENTERTAINMENT, LLC**, a limited liability company

By: \_\_\_\_\_  
Name: Jim Cohan  
Its: President/CEO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Exhibit "A"  
Zelda's License Area Detail





**STAFF REPORT**  
**City of Lancaster**

CC 14
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Jason Caudle, Deputy City Manager  
Cathy DeFalco, Lancaster Choice Energy Manager

**Subject: Approve Subscription Services Agreement Between the City of Lancaster and Google, LLC**

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**Recommendation:**

Authorize the City Manager to enter into a subscription services agreement between the City of Lancaster by and through Lancaster Choice Energy (“LCE”) and Google, LLC through its Division X (“X”) for data energy services in an amount not to exceed \$528,000.

**Fiscal Impact:**

Sufficient funds of \$528,000 are available in Lancaster Choice Energy fund balance.

**Background:**

In March 2018, California Choice Energy Authority Members approved an agreement between California Choice Energy Authority (“CCEA”) and X. CCEA provides implementation and operational support services to its associate member cities, all of which have formed Community Choice Aggregation (“CCA”) programs. Currently, CCEA has four associate member cities: the cities of Lancaster, Pico Rivera, San Jacinto, and Rancho Mirage. All four associate members have operational CCAs. The agreement between CCEA and X is for the purpose of exploring and developing technologies intended to reduce CCA operational costs through the use of various technologies, such as demand response and energy efficiency programs.

The agreement between LCE and X will use the developed platform and apply specifically to LCE customers and its energy load for the purpose of reducing costs for LCE and its customers. The platform will be offered as a subscription service to all CCEA associate member cities’ CCA programs upon successful completion of this agreement.

JC:cd

**Attachment:**

Subscription Services Agreement

## Exhibit A

This Subscription Services Agreement (“Subscription Agreement”), including all exhibits hereto is made and entered into as of the latter of the two signatures below (the “Effective Date”), by and between the City of Lancaster by and through Lancaster Choice Energy (“LCE”) and Google LLC, through its division, X (“X”), a Delaware limited liability company with offices at 1600 Amphitheatre Parkway, Mountain View, CA 94043. X and LCE are referred to collectively herein as the “parties” and individually as a “party.” Capitalized terms not defined in this Subscription Agreement shall have the meaning set forth in that certain Services Agreement (“Services Agreement”) dated \_\_\_\_\_ by and between X and California Choice Energy Authority (“CCEA”).

### 1. Definitions.

1.1 “**Authorized Users**” means the users, or number of users, permitted to access the Viaduct Platform, as set forth on a purchase order or as otherwise agreed upon mutually by the parties.

1.2 “**Developments**” means the collective ideas, know-how, or techniques developed or conceived by X as a result of providing the Viaduct Platform to LCE, including without limitation any derivative works, improvements, enhancements and/or extensions made to the X Data or Viaduct Platform (or any portion thereof), as well as all suggestions, comments, or other feedback related to the X Data or Viaduct Platform (or any portion thereof) or any other X Protected Information, and all intellectual property rights therein and thereto throughout the world. For avoidance of doubt, to the extent Developments are or are comprised of Covered Information or AM Data (as mutually determined by the Parties), X shall comply with Exhibit B to the Services Agreement with respect to such Developments.

1.3 “**LCE Subscription Data**” means any data or other content or information provided to X via the Viaduct Platform, or otherwise provided to X, by LCE or LCE’s agents or representatives.

1.4 “**Protected Information**” means any information disclosed by either party pursuant to this Subscription Agreement that is (a) is in written, graphic, machine readable or other tangible form and is marked “Confidential,” “Proprietary,” “Protected” or in some other manner to indicate its confidential nature, or (b) in the case of oral or visual disclosure is identified as confidential at the time of disclosure and reduced to tangible form, marked as confidential, and provided to the receiving party within a reasonable time not to exceed thirty days, or (c) under the circumstances should in good faith be considered to be confidential. Protected Information includes, without limitation, information related to: research, product plans, products, developments, inventions, processes, designs, markets, business plans, agreements with third parties, services, customers, marketing or finances of either party, the content or existence of any negotiations, and pricing. Notwithstanding the foregoing, all technology or proprietary information owned by X or underlying the X Data and Viaduct Platform shall be deemed Protected Information of X without any need for designating the same as confidential or proprietary.

1.5 “**Professional Services**” means the professional services set forth in an agreement, purchase order or SOW (if any).

1.6 “**SOW**” means a fully-signed statement of work, specifying the Services and Deliverables under this Subscription Agreement.

1.7 “**Viaduct Platform**” means the software applications, as set forth in the applicable agreement, purchase order or SOW, operated on X’s hosting servers or those of its hosting service provider intended to enable LCE to interact with the same via the internet. Without limiting the foregoing, the Viaduct Platform shall include the X Content. For avoidance of doubt, “Viaduct Platform” shall refer to only the specific Products (as defined in the Services Agreement) within the Viaduct Platform to which LCE has subscribed.

1.8 “**X Content**” means all content, including without limitation software (in object or source code form), script, programming code, data, information, structural hierarchies, processes, HTML code, trademarks, images, illustrations, graphics, multimedia files and/or text, contained in the Viaduct Platform (except for the LCE Subscription Data).

1.9 “**X Data**” means all data generated by the Viaduct Platform, including without limitation, service and usage data, and, to the extent permitted by applicable laws and regulations, aggregated, anonymized summaries of LCE Subscription Data.

## 2. **X Responsibilities.**

2.1 X will host and maintain the Viaduct Platform on servers operated and maintained by or at the direction of X. X may in its sole discretion modify, enhance or otherwise change the Viaduct Platform. X may delegate the performance of certain portions of the Viaduct Platform to third parties, including X’s affiliates; provided that X shall remain responsible for such obligations and for ensuring, by contractual requirement or otherwise, full compliance with all requirements to which X is subject herein, including, but not limited to, compliance with the limitations and requirements set forth in Exhibit B to the Services Agreement.

2.2 X will provide the Professional Services (if any).

## 3. **LCE’s Responsibilities.**

3.1 During the Term, and to the extent permitted by law, LCE shall use commercially reasonable efforts to cooperate with X in developing and sharing case studies, marketing materials, return-on-investment calculations, and measurement criteria for the purpose of substantiating the value, benefits, and cost savings derived from the Viaduct Platform.

3.2 The Parties acknowledge that LCE will not provide to X, any name or address data attributable to LCE’s residential customers. In the event of an inadvertent transmission of such data and as soon as reasonably practicable after learning of such inadvertent transmission, X agrees to (i) completely and permanently delete such data from its systems, and (ii) ensure any such data is not transmitted by X to any third part(ies). The Parties agree that X’s receipt of such inadvertent transmission, in and of itself, shall not be deemed a breach of this Subscription Agreement.

#### 4. **License Grants; Restrictions.**

4.1 **License to LCE.** Subject to the terms and conditions of the Services Agreement and this Subscription Agreement, X hereby grants LCE, a revocable, limited, personal, non-transferable license during the Subscription Term to: (a) access and use the Viaduct Platform; and (b) use the X Data solely to use and evaluate the Viaduct Platform. The foregoing rights are subject to LCE's full compliance with each of the following and will be exercisable by LCE solely: (x) for LCE's and each applicable CCEA AM's internal business use; (y) in accordance with the features and functionalities offered by X in connection with the Viaduct Platform; and (z) by the number of Authorized Users.

#### 4.2 **Licenses to X.**

(a) Subject to the terms and conditions of this Subscription Agreement and the requirements and limitations set forth in Exhibit B to the Services Agreement, LCE hereby grants, and represents and warrants it has all requisite rights to grant, X a limited, worldwide, non-exclusive, royalty-free license during the Term to use, reproduce, electronically distribute, transmit, have transmitted, display, store, archive, and make derivative works of the LCE Subscription Data in order to provide the Viaduct Platform, including, without limitation, the creation of X Data.

(b) Subject to the terms and conditions of this Subscription Agreement and the requirements and limitations set forth in Exhibit B to the Services Agreement, LCE hereby grants X a limited, worldwide, non-exclusive, royalty-free license to analyze anonymized and/or aggregated LCE Subscription Data, or data derived from LCE Subscription Data, as well as data about LCE's or its Authorized User's access and use of the Viaduct Platform, for purposes of providing, operating, analyzing and improving the Viaduct Platform.

4.3 **License Restrictions.** LCE shall not, and shall not permit any third party to: (a) use the X Data or Viaduct Platform (or any portion thereof) except to the extent permitted in Section 4.1 of this Subscription Agreement; (b) modify or create any derivative work of any part of X Data or Viaduct Platform (or any portion thereof); (c) market, sublicense, publish, distribute, reproduce, resell, assign, transfer, rent, lease, or loan the X Data or Viaduct Platform (or any portion thereof); or (d) use the X Data or Viaduct Platform (or any portion thereof) for commercial time-sharing or service-bureau use.

4.4 **Reservation of Rights.** X reserves all rights to the X Data or Viaduct Platform (or any portion thereof) not otherwise expressly granted in this Section 4 of this Subscription Agreement.

#### 5. **Payments, Shared Savings.**

5.1 **Base Subscription.** LCE shall pay the Base Subscription Fees (defined below) quarterly, in advance. LCE shall pay X \$0.80 U.S. Dollars per meter per month (the "**Baseline Rate**") for every meter served by the Viaduct Platform, provided, that for the first 12 months after Subscription Services Start Date, the Baseline Rate will be \$0.40 US Dollars per meter per month. LCE will provide X with the total number of meters served as set forth on Attachment 1 to this Subscription Agreement (the "**Base Subscription Fees**"); provided that X shall, during the Term



of this Subscription Agreement and for a period of six (6) months thereafter, have the right, at its expense, either directly or through an independent accounting firm to audit LCE's books and records solely for the purposes of verifying the number of eligible and served meters (an "**Audit**").

(a) **Savings Check.** LCE and X shall perform a savings check twelve (12) months from the Subscription Services Start Date (the "**Savings Check**"). If, at the time of the Savings Check, the Net Benefits exceed the Base Subscription Fees during such twelve (12) month period (\$0.40/meter/month), then X shall be entitled to a true-up from LCE (the "**True-Up**") in accordance with the following procedures and requirements:

(i) True-Up. If X determines that a True-Up is warranted, X shall provide written notice to LCE of its intent to claim True-Up, which notice shall include (a) the amount claimed; and (b) a summary of X's financial calculations, using the formulae set forth in Attachment 2 to this Subscription Agreement (the "**True-Up Claim**"). The True-Up Claim total shall not exceed an additional \$0.40/meter/month. Any disagreements as to the amount of the True-Up Claim shall be resolved by the Shared Savings Verifier pursuant the SSV Procedures. Once the True-Up Claim amount is either agreed to by LCE or confirmed by Shared Savings Verifier (the "**Final True-Up Amount**"), then LCE shall pay the Final True-Up Amount to X.

(ii) Termination. If X is not entitled to any amounts pursuant to a True Up Claim, then X may elect to terminate this Subscription Agreement without any further obligations.

(b) Audit Restrictions. Audits shall take place upon reasonable notice, during normal business hours and shall be conducted in a manner that does not unreasonably interfere with LCE's normal business operations. If any Audit conducted under this section uncovers any discrepancies, LCE shall promptly pay, as applicable, any and all amount necessary to reconcile such discrepancy. LCE may request that the Audit be performed by an independent third party auditor approved by LCE. If an Audit reveals an underpayment that is greater than five percent (5%) of the amount actually due during the period audited, then LCE shall reimburse X the actual costs of the audit.

5.2 **Shared Savings.** The parties shall share equally in any Net Benefits generated (as calculated hereunder) that exceed the Base Subscription Fees for the applicable time period. In the event that the Viaduct Net Benefits (as defined in Attachment 2 of Subscription Agreement) are greater than the Base Subscription Fees (as defined in Attachment 2 of Subscription Agreement), then LCE shall pay X fifty percent (50%) of the difference between the Viaduct Net Benefits and the Base Subscription Fees.

5.3 Taxes. LCE shall, in addition to the other amounts payable under this Agreement, pay all applicable customs, duties, sales, use, value added or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Subscription Agreement, excluding only taxes based on X's net income. LCE agrees to indemnify, defend, and hold X, its officers, directors, consultants, employees, successors and assigns harmless from all claims and liability arising from LCE's failure to report or pay any such taxes, duties or assessments.

5.4 **Payment Terms.** All amounts payable to either party under this Subscription Agreement will be due within thirty business (30) days from the date of an invoice. Overdue payments will be subject to interest at the rate of one and one-half percent (1.5%) per month, or the highest interest rate permitted by applicable law, whichever is less.

5.5 **Invoices.** Invoices shall set forth all amounts due, and shall contain sufficient detail to allow LCE to determine the accuracy of the amount(s) billed. All invoices shall be expressed and payable in U.S. dollars.

## 6. **Warranties and Disclaimers.**

6.1 **Mutual.** Each party represents and warrants that: (a) such party is duly organized, validly existing, and in good standing under the laws of the state of its incorporation, and has the full power and authority to enter into and perform its obligations under this Subscription Agreement; (b) the execution of this Subscription Agreement by such party, and the performance by such party of its obligations and duties hereunder do not and will not violate any other agreement to which such party is a party or by which it is otherwise bound; (c) when executed and delivered by such party, this Subscription Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms; and (d) such party will comply with all applicable laws and regulations, including those related to applicable import and export laws, anti-bribery laws, employment and occupational health and safety laws, and laws relating to the collection, use and sharing of data.

6.2 **X.** X represents and warrants that (a) it has and will retain all necessary rights to grant the licenses in this Subscription Agreement and provide the Professional Services to LCE and (b) it is a corporation duly organized, validly existing, and in good standing under the laws of the state of its incorporation.

6.3 **LCE.** LCE represents and warrants that the execution, delivery, and performance by LCE of this Subscription Agreement, including without limitation the provision of the AM Subscription Data, does not and will not violate any applicable statute, regulation, or law, or infringe any intellectual property right or other legal right of any third party.

6.4 **Disclaimers.** Except as provided in this section 6 to Subscription Agreement and to the maximum extent permitted by applicable law, X Data or Viaduct Platform (or any portion thereof) and all related information, technology, and services provided by or on behalf of X are provided “as is,” “as available,” and without any representations or warranties of any kind, express or implied, and X expressly disclaims any implied warranties of merchantability, fitness for a particular purpose (even if we are advised of the purpose), accuracy, and/or non-infringement. In addition, X does not warrant that access to the X Data or Viaduct Platform (or any portion thereof) will be uninterrupted or error free, that X Data or Viaduct Platform (or any portion thereof) will meet LCE’s needs, or that data will not be lost.

## 7. **Term, Termination, and Survival.**

7.1 **Term.** This Subscription Agreement shall commence on the Subscription Services Start Date, and shall continue for eighteen (18) months (the “**Initial Term**”). This Subscription Agreement shall automatically renew on a monthly basis unless one party notifies the other party

of its intent not to renew within thirty (30) days of the end of the then current-term. The Initial Term, along with any renewal terms, shall be referred to as the “**Subscription Term.**”

**7.2 Termination for Cause.** Either party may terminate this Subscription Agreement: (a) on thirty (30) days’ prior written notice if the other party materially breaches any of the terms of this Subscription Agreement and such breach remains uncured thirty (30) days following such party’s receipt of the terminating party’s notice; (b) immediately on written notice if: (i) all or substantially all of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver or trustee in bankruptcy; (d) a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within thirty (30) days; or (iii) the other party is adjudged bankrupt or insolvent.

**7.3 Termination for Convenience.** After the expiration of the Initial Term, either party may terminate this Agreement, including this Subscription Agreement, for any or no reason, upon ninety (90) days’ written notice to the other party.

**7.4 Survival.** Upon termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate. The following provisions shall survive any termination or expiration: Sections 1, 4.2, 4.3, 4.4, and 5 through 11 (inclusive) of this Subscription Agreement.

## **8. Ownership.**

**8.1 X’s Ownership Rights.** Subject only to the limited license expressly granted under Section 4 of this Subscription Agreement (License Grants; Restrictions and the requirements and limitations set forth in Exhibit B,) as between X and LCE, X shall retain all right, title, and interest in and to the X Data or Viaduct Platform (and all portions thereof) (excluding the LCE Subscription Data), and Developments, and all Intellectual Property Rights therein. Nothing in this Subscription Agreement will confer on LCE or any right of ownership or interest in the X Data or Viaduct Platform (or any portion thereof) (excluding the LCE Subscription Data), or Developments, and all Intellectual Property Rights therein. To the extent LCE have or obtain any right, title, or interest in the X Data or Viaduct Platform (or any portion thereof) (excluding the LCE Subscription Data), or Developments, or any Intellectual Property Rights therein, LCE hereby assign, and agrees to assign, without further consideration, to X all such right, title, and interest LCE may have or obtain.

**8.2 LCE’s Ownership Rights.** Subject only to the limited license expressly granted under Section 4 of this Subscription Agreement (License Grants; Restrictions) of this Subscription Agreement, as between LCE and X, LCE shall retain all right, title and interest in and to the LCE Subscription Data, and all Intellectual Property Rights therein. Nothing in the Agreement or this Subscription Agreement will or does confer on X any right of ownership or interest in the LCE Subscription Data, or the Intellectual Property Rights therein. Notwithstanding anything to the contrary in this Subscription Agreement, X may use LCE Subscription Data for the purposes of: (a) providing the Viaduct Platform and related services to LCE and CCEA; (b) for X’s internal research and development purposes; (c) enforcing its rights under this Subscription Agreement; and (d) on an aggregated and anonymized basis, to create X Data.

**8.3 Execution of Documents.** During the Term, and at any other time thereafter, at X’s request and expense, LCE shall execute any and all documents and perform any and all acts that

X may reasonably require in order to protect and perfect any X Intellectual Property Rights, or to apply for, obtain, and vest in the name of X alone all patents, copyrights, trademarks, or other similar protection for any X Intellectual Property Rights, and, when so obtained or vested, to maintain, renew, and restore the same.

## 9. Defense and Indemnity

9.1 **X-provided Indemnity.** With respect to the Viaduct Platform or Professional Services (if any), and in addition to the indemnity obligations set forth in Section 8 of the Services Agreement, X will defend and indemnify LCE and its affiliates, directors, officers, and employees against all settlement amounts approved by X and any liabilities, damages, losses, costs, fees (including legal fees), and expenses in connection with any third-party legal proceeding (including action by a government authority) (“Losses”) to the extent arising from:

(a) X’s breach of its representations and warranties in Section 6 of this Subscription Agreement (Warranties and Disclaimers), gross negligence, willful misconduct, fraud, misrepresentation, or violation of applicable law; and

(b) any allegation that use of the Professional Services or Viaduct Platform infringes or misappropriates any third party’s rights, including Intellectual Property Rights.

### 9.2 Restrictions to X-provided Indemnity.

(a) Unauthorized Modifications. The indemnification provided by X in Section 9.1 (X-provided Indemnity) of this Subscription Agreement shall not apply to the extent the underlying allegation arises from modification to the Professional Services or Viaduct Platform not authorized or made by X.

(b) Remedies. In the event any portion of the Viaduct Platform is held or believed by X to infringe intellectual property rights of any third party (such portion to be deemed the “**Infringing Materials**”) in any place where the Viaduct Platform is used or accessed, then in addition to any other rights in this Section 9 of this Subscription Agreement, X (where the Infringing Materials are the Viaduct Platform) shall, at its sole expense and at its option: (a) obtain from such third party the right for the LCE to continue to use the Infringing Materials; (b) modify the Infringing Materials to avoid and eliminate such infringement or misappropriation, as the case may be; (c) upon mutual agreement with the other party, remove and disable the Infringing Materials; or (d) terminate this Subscription Agreement and refund to LCE a pro rata portion of each of the Service Fees paid for such Service or Deliverable and refund to CCEA fifty percent (50%) of the Phase 1 Fees described in the Services Agreement.

9.3 **LCE-provided Indemnity.** LCE shall indemnify, defend, and hold X and its affiliates, and their officers, members, directors, employees, agents, successors and assigns harmless from and against all Losses arising from:

(a) LCE’s breach of its representations and warranties in Section 6 of this Subscription Agreement (Warranties and Disclaimers), gross negligence, willful misconduct, fraud, misrepresentation, or violation of applicable law;

(b) any third party's access and use of the Viaduct Platform with LCE's or one of its Authorized User's unique username, password, or other appropriate security code; or

(c) any infringement or misappropriation claim that arises from: (i) X's use of the LCE Subscription Data in accordance with this Subscription Agreement and in compliance with the requirements and limitations set forth in Exhibit B to the Services Agreement. LCE may use Viaduct software in a commercially available desktop or mobile internet browser and in conjunction with standard Microsoft Inc. and Apple Inc. productivity products.

9.4 **Process.** The indemnified party shall promptly notify the indemnifying party in writing of any claim for which it seeks indemnification hereunder; provided that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. The indemnifying party shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any such claim; provided, however, that (a) the indemnified party has the right to approve controlling counsel, such approval not to be unreasonably withheld (and which approval may be withheld or withdrawn if there is a conflict of interest); (b) the indemnified party may appoint its own non-controlling counsel, at its own cost and expense; (c) the indemnifying party shall keep the indemnified party informed of, and consult with the indemnified party in connection with the progress of such litigation or settlement and (d) the indemnifying party shall not have any right, without the indemnified party's written consent, to settle any such claim in a manner that does not unconditionally release the indemnified party. At the indemnifying party's request, the indemnified party will provide reasonable cooperation with respect to any defense or settlement.

## 10. **Confidentiality.**

10.1 **Confidentiality Obligations.** The recipient will not disclose the discloser's Confidential Information and/or Protected Information, except to Representatives (as defined in the Services Agreement)) who need to know it and who have a legal obligation to keep it confidential. The recipient will use the Confidential Information and/or Protected Information only to exercise rights and fulfill obligations under this Subscription Agreement. The recipient may disclose Confidential Information and/or Protected Information when legally compelled by a court or other government authority. To the extent permitted by law, recipient will promptly provide the discloser with sufficient notice of all available details of the legal requirement and reasonably cooperate with the discloser's efforts to challenge the disclosure, seek an appropriate protective order, or pursue such other legal action, as the discloser may deem appropriate. The recipient will ensure that its Representatives are also subject to the same non-disclosure and use obligations.

10.2 **Covered Information.** X expressly acknowledges that this Subscription Agreement calls for the disclosure to X of Covered Information; X hereby represents and warrants that at all times it shall use policies and practices that are no less protective than those that LCE uses itself and to at all times fully comply with the requirements set forth in Exhibit B to the Services Agreement.

10.3 **NDA's Incorporated by Reference.** Notwithstanding any other provision of this Subscription Agreement to the contrary, the parties hereby incorporate by reference as though set

forth in full the terms, conditions and requirements of that certain Mutual Nondisclosure Agreement dated February 14, 2017, by and between Google LLC and the City of Lancaster and incorporated herein by this reference (“**LCE NDA**”). X expressly agrees to be bound by the terms, obligations and requirements of the LCE NDA as if X had entered into such agreement as the entity defined as “Contractor”, therein.

10.4 Definition. “**Confidential Information**” means any and all information (whether furnished in written, oral, electronic or any other format) regarding this Agreement or any of the services performed hereunder which is of a non-public, proprietary, or confidential nature, furnished by or on behalf of either party (in such capacity, the “Disclosing Party”), to the other party (in such capacity, the “Receiving Party”) prior to, on or after the Effective Date, including, but not limited to, confidential information furnished by one party to the other pursuant to the LCE NDA and/or provided by CCEA on LCE’s behalf pursuant to the Services Agreement and/or the Partner NDA referenced therein. The term Confidential Information does not include: (i) information which at the time of disclosure by the Disclosing Party is or subsequently becomes publicly available other than as a result of disclosure by the Receiving Party or its Affiliates or Representatives (as such terms are defined below) in violation of this Agreement; (ii) information which is obtained by the Receiving Party on a non-confidential basis from a source (other than from the Disclosing Party or its Affiliates or Representatives) which is not, to the best of the Receiving Party’s knowledge, prohibited from disclosing such information pursuant to an obligation to the Disclosing Party, as proven by the Receiving Party’s written records; (iii) information which is developed by the Receiving Party, its Representatives, or its Affiliates independently and without use of the Confidential Information of the Disclosing Party in the creation of such information, as proven by the Receiving Party’s written records; or (iv) information which was already known or otherwise in the possession of the Receiving Party or its Affiliates prior to disclosure by the Disclosing Party, as proven by the Receiving Party’s written records. As used herein, the term “Affiliate” means, with respect to a party, any person, corporation, partnership, or other entity or association that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such party, and where control shall mean ownership, directly or indirectly, of the shares of a company representing fifty percent (50%) or more of the voting rights in such company. The term “Representatives” means a party’s or its Affiliate’s directors, officers, employees, agents, consultants, third party contractors, attorneys, lenders or financial advisors, who are assisting such party with regard to this Agreement.

10.5 Confidentiality Obligations.

(a) The Receiving Party will keep the Confidential Information in confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Receiving Party shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the Confidential Information from unauthorized access, destruction, use, modification, or disclosure and prohibit the use of the Confidential Information for purposes unrelated to the performance of its obligations under this Agreement. Specifically, the Receiving Party shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those Representatives or Affiliates of the Receiving Party who have a “need to know” such Confidential Information in the course of their duties with respect to accomplishing the purposes of this Agreement and who agree

to be bound by the nondisclosure and confidentiality obligations of this Agreement or any other agreement containing comparable non-use and non-disclosure provisions that will apply to the Confidential Information.

(b) Except as otherwise permitted herein, the Receiving Party shall not divulge any such Confidential Information or any information derived therefrom to any third person.

(c) The Receiving Party shall be liable for the actions of, or any disclosure or use by, its Representatives or Affiliates contrary to this Agreement; however, such liability shall not limit or prevent any actions by the Disclosing Party directly against such Representatives or Affiliates for improper disclosure and/or use. In no event shall the Receiving Party or its Representatives or Affiliates take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. The Receiving Party shall immediately notify the Disclosing Party in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by the Receiving Party or any of its Representatives or Affiliates. However, nothing in this Agreement shall obligate the Disclosing Party to monitor or enforce the Receiving Party's compliance with the terms of this Agreement.

(d) The Receiving Party acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to the Disclosing Party and/or its customers, the amount of which may be difficult to assess. Accordingly, the Receiving Party hereby confirms that the Disclosing Party shall be entitled to apply to a court of competent jurisdiction for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by the Receiving Party or its representatives or affiliates. Such right shall, however, be construed to be in addition to any other remedies available to the Disclosing Party, in law or equity.

(e) In addition to all other remedies, the Receiving Party shall defend and indemnify the Disclosing Party, its elected officials, officers, employees, representatives, agents and/or affiliates from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) to the extent arising out of Receiving Party's breach of this Subscription Agreement. Disclosing Party's right to be indemnified is conditioned on Disclosing Party: (a) promptly notifying the Receiving Party in writing of any allegations that preceded the legal proceeding; and (b) tendering sole control of the indemnified portion of the legal proceeding to the Receiving Party.

(f) When requested by the Disclosing Party, the Receiving Party shall, within ninety (90) days of the receipt of such request, use commercially reasonable efforts to return or destroy (and provide written certification to the Disclosing Party of such destruction) all Confidential Information then in its possession at the request of the Disclosing Party. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement. Neither party will be obligated to return or destroy Confidential Information that it cannot return or destroy using commercially reasonable efforts, provided, however, that no such Confidential Information, or any derivation of or from same, shall be reviewed, accessed, shared or used in any way by Receiving Party or any of its representatives or affiliates upon or after termination of this Agreement.

(g) The Receiving Party shall be responsible for any breaches of this Agreement by any person to whom it discloses Confidential Information as if such breaches were breaches by the Receiving Party.

(h) At all times, all parties shall comply with their respective obligations each as a Community Choice Aggregator, provider, and/or service provider, pursuant to the limitations and requirements set forth in Exhibit B to the Services Agreement.

10.6 **No Rights.**

(a) Except for the limited rights expressly conveyed under this Agreement, neither party acquires any right, title, or interest in the other party's Confidential Information.

(b) The Disclosing Party retains all right, title and interest in and to the Confidential Information and any intellectual property rights or other rights related thereto. Except as otherwise outlined herein, no license under any trademark, patent, copyright or other intellectual property right is either granted or implied by the disclosure of Confidential Information under this Agreement.

(c) Nothing in this Agreement deprives the Receiving Party of the ownership rights to any information that is not Confidential Information, including, without limitation, the rights to disclose, use, transfer or license such information.

10.7 **No Warranty.** NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT WITH REGARD TO THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION THAT MAY BE PROVIDED HEREUNDER. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS."

10.8 **Legally Required or Compelled Disclosure.** In the event that the Receiving Party or its Representatives are required, in the opinion of their legal counsel, to disclose any of the Confidential Information by applicable law (including, but not limited to, the California Public Records Act (Cal. Govt. Code §6250 *et seq.*), the Bagley-Keene Open Meeting Act (Cal. Govt. Code §11120 *et seq.*), the Brown Act (Cal. Govt. Code §54950 *et seq.*), and the Federal Freedom of Information Act), regulation or legal process, the Receiving Party will, unless a court orders that the other party not be given notice, notify the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy or, in its sole discretion, waive compliance with the terms of this Agreement. The Receiving Party will reasonably cooperate with the Disclosing Party to obtain such a protective order, at the sole cost and expense of the Disclosing Party, and, in any event, will exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information that is ultimately required to be disclosed.

10.9 **Covered Information.** X expressly acknowledges that this Agreement calls for the disclosure to X of Covered Information; X hereby agrees that at all times X shall (i) use policies and practices that are no less protective than those that LCE uses itself in the treatment of such Covered Information; (ii) at all times fully comply with the requirements and limitations set forth in Exhibit B to the Services Agreement, including but not limited to, using Covered Information



solely for one or more “Primary Purposes” as that term is defined in California Public Utilities Decision 12-08-045, Attachment B to the Services Agreement; and (iii) contractually require any third party, including, but not limited to, any vendor, consultant or subcontractor, to comply with the preceding requirements (i) and (ii) prior to conveying any Covered Information to such third party and to immediately terminate conveyance of any and all Covered Information to any third party who fails to comply with such requirements. LCE agrees that it at all times will fully comply with the requirements and limitations set forth in Exhibit B to the Services Agreement, including but not limited to, using Covered Information solely for one or more “Primary Purposes” as that term is defined in California Public Utilities Decision 12-08-045, Attachment B. The parties agree that if LCE uses new or updated policies and practices (whether voluntarily or required by law, regulation or regulatory authority), LCE immediately provide notice of such changes to X. Failure to provide such notice shall relieve X of its obligation to comply with such new or updated policies or practices.

## 11. **Intellectual Property; Data Rights.**

11.1 Ownership of IP. Neither party will own or acquire any right, title, or interest to the other party’s Background IP under this Agreement. X shall own all Deliverables and Developed IP.

### 11.2 LCE Materials.

(a) **License.** The parties acknowledge that LCE may provide to X pursuant to this Subscription Agreement, LCE’s Background IP and certain other proprietary technology of LCE and other materials and information (as it determines in its discretion) (collectively, “LCE Materials”). LCE hereby grants, and represents and warrants that it has the rights to grant, to X a limited, non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license, subject to the requirements and limitations set forth in Exhibit B to the Services Agreement, to reproduce, prepare derivative works of, internally distribute, make, use and/or import LCE Materials solely for the purpose of, and to the extent needed, to perform the Services and its obligations hereunder, and to improve the Viaduct Platform, Products and Viaduct Subscription Services.

(i) Training Algorithms. X shall further be permitted to use, subject to the requirements and limitations set forth in Exhibit B to the Services Agreement, LCE Subscription Data to train X’s machine learning models and predictive software, and the parties acknowledge and agree that X shall own all rights in works derived from the LCE Subscription Data, including, without limitation, any code, model software, model forms, and model parameters (collectively, “**Model**”). The Model shall be considered X’s Confidential Information. For avoidance of doubt, neither the foregoing nor any other provision of this Agreement grants X any ownership rights in the LCE Subscription Data itself.

(b) **LCE Subscription Data.** LCE hereby expressly acknowledges that it has authorized CCEA to convey LCE Subscription Data to X pursuant to this Subscription Agreement and Attachment 3 hereto.

11.3 Reservation of Rights. Except as otherwise expressly provided herein, nothing in this Agreement shall be deemed to grant, directly or by implication, estoppel or otherwise, any

right or license with respect to any Intellectual Property, and each party retains all right, title and interest in and to its respective Intellectual Property.

## 12. **Indemnity.**

12.1 Indemnification by X. X shall defend, indemnify and hold LCE harmless from and against any third-party action against LCE, CCEA or their respective officers, directors, employees, subcontractors, agents, members, successors and assigns to the extent based upon (a) a claim that arises out of X's breach of its representations and warranties set forth under this Agreement, (b) a third party claim that the Services or Deliverables, or LCE's use of the foregoing, infringe any copyright or trademark or misappropriate any trade secret, and (c) any breach of the obligations and requirements applicable to X as set forth in Exhibit B to the Services Agreement, provided that LCE: (a) notifies X promptly in writing of any such action, provided that LCE's failure to timely provide such notice shall not relieve X of its indemnification obligations except to the extent X can demonstrate actual prejudice as a result of such failure; (b) gives X sole control of the defense and/or settlement of such action, provided that X shall not settle any claim without LCE's prior written consent, which consent shall not be unreasonably withheld; and (c) gives X all reasonable information and assistance. Should any Service or Deliverable become, or in the opinion of X be likely to become, the subject of such an infringement claim, X may, at its option: (i) procure for LCE the right to use such Service or Deliverable at no cost to LCE; (ii) replace or modify, in whole or in part, such Service or Deliverable to make it non-infringing; or (iii) terminate this Agreement and refund a pro rata portion of each and every fee of every type paid for such Service or Deliverable. X assumes no liability hereunder (x) to the extent such liability arises from, or is based upon, LCE's breach of its warranties set forth hereunder or (y) for any combination, operation or use of the Services or Deliverables with non-X programs or data other than those intended or recommended by X, and LCE shall indemnify and hold harmless X and its officers, directors, employees, agents, successors and assigns against any damages, losses, and expenses (including reasonable attorneys' fees) arising from any third-party action to the extent based upon a claim that the Services or Deliverables infringe any copyright or trademark or misappropriates any trade secret due to any of the foregoing factors, and shall give X all reasonable information and assistance regarding such claim. **THIS SECTION 11.1 SETS FORTH X'S ENTIRE LIABILITY AND OBLIGATION AND LCE'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.**

12.2 Indemnification by LCE. LCE shall indemnify and hold X harmless from and against any third-party action against X or its officers, directors, employees, subcontractors, agents, successors and assigns to the extent based upon a claim that arises out of LCE's breach of its representations warranties set forth in this Agreement; provided that X: (a) notifies LCE promptly in writing of any such action, provided that X's failure to timely provide such notice shall not relieve LCE of its indemnification obligations except to the extent LCE can demonstrate actual prejudice as a result of such failure; (b) gives LCE sole control of the defense and/or settlement of such action, provided that LCE shall not settle any claim without X's prior written consent, which consent shall not be unreasonably withheld; and (c) gives LCE all reasonable information and assistance.

13. **General.**

13.1 **Insurance.** Both Parties will obtain and maintain insurance at their own expense and in accordance with Section 9 of the Services Agreement.

13.2 **Notices.** All notices of termination or breach must be in English, in writing, and addressed to the other party's legal department. All other notices must be in English, in writing, and addressed to the other party's primary contact. Notice can be by email and will be treated as given on receipt, as verified by written or automated receipt or by electronic log (as applicable).

13.3 **Assignment.** LCE may not assign or transfer its rights or obligations under this Subscription Agreement, and any attempt to do so is void. For avoidance of doubt, X may assign or transfer any of its rights or obligations under this Subscription Agreement to an affiliate.

13.4 **Change of Control.** If LCE experiences a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction), then LCE will give written notice to X within thirty (30) days after the change of control, and X shall be permitted to terminate this Agreement upon written notice.

13.5 **Force Majeure.** Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

13.6 **No Agency.** This Subscription Agreement does not create any agency, partnership, or joint venture between the parties.

13.7 **CCEA as Third-Party Beneficiary.** The Parties hereto hereby expressly agree that CCEA is a Third-Party Beneficiary of this Subscription Agreement. This Subscription Agreement does not confer any benefits on any other third party unless it expressly states that it does.

13.8 **Amendments.** Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Subscription Agreement.

13.9 **Severability.** If any term (or part of a term) of this Subscription Agreement is invalid, illegal or unenforceable, the rest of this Subscription Agreement will remain in effect.

13.10 **Order of Precedence.** The terms in a SOW will take precedence over conflicting terms in this Subscription Agreement only for the Professional Services identified in that SOW. The terms of this Subscription Agreement will take precedence over conflicting terms in a purchase order. The terms of the Agreement (including exhibits thereto other than this Subscription Agreement) will take precedence over conflicting terms in this Subscription Agreement.

Google LLC

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

City of Lancaster  
By and through Lancaster Choice Energy

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Attachment 1 to LCE Subscription Agreement**

**Base Subscription Fees**

<b>CCEA AM Entity</b>	<b># Meters (estimated)</b>	<b>Base Subscription Price (\$/Meter/Month)</b>	<b>Base Subscription Price (Estimated Annualized)</b>	<b>Subscription Start Date</b>
Lancaster (LCE)	51,000	\$0.80* \$0.40 for first 12 months of Service*	\$489,600	Subscription Service Start Date

\*Only for LCE and no other CCEA AMs, rate shall be reduced per Section 3.2(c) of the main body of the Services Agreement, if and for as long as required to refund to LCE the Final True-Up Amount in full.

**Attachment 2 to LCE Subscription Agreement**

**Cost Baseline and Possible Value Drivers**

Possible Value Drivers**	Cost Baseline	New Cost	Net Savings	Other Benefits	Cost of Other Benefits	Positive Margin of Other Benefits	Net Benefits
1. Peak Reduction	X	Y	Z=X-Y	A	B	C=A-B	N=Z+C
2. Negative Pricing Management							
3. Load Shifting							
4. RA Cost Reduction							
5. Ancillary Service Cost Reduction							
6. CCEA Expansion							
7. Grant Revenues							
8. Local Economic Development							

**\*\*Note:** These Possible Value Drivers are examples and the Parties shall mutually agree on the applicable Possible Value Drivers prior to execution of this Subscription Agreement.

**Attachment 3 to LCE Subscription Agreement**

**LANCASTER CHOICE ENERGY CONSENT AND AUTHORIZATION TO CONVEY  
AGGREGATED AND/OR ANONYMIZED CUSTOMER DATA**

Date: \_\_\_\_\_

Year(s) or 12-Month period(s): \_\_\_\_\_.

Non-Disclosure Agreement ("LCE NDA") form submitted?

Yes       No       Not applicable

City of Lancaster acting by and through Lancaster Choice Energy ("LCE") hereby requests and authorizes California Choice Energy Authority ("CCEA") to convey, release and share its anonymized and/or aggregated customer data to Google LLC, through its division, X ("X") pursuant to and subject to the limitations and requirements set forth in (i) that certain Services Agreement dated \_\_\_ between X and CCEA, (ii) that certain Subscription Agreement dated \_\_\_\_\_ between LCE and X, and (iii) the LCE NDA.

City of Lancaster acting by and through Lancaster Choice Energy

\_\_\_\_\_  
By: Mark V. Bozigian  
Its: City Manager

**STAFF REPORT  
City of Lancaster**

CC 15
09/25/18
MVB

Date: September 25, 2018  
To: Mayor Parris and City Council Members  
From: Ronda Perez, Parks, Recreation and Arts Department Director  
Subject: **Application for Habitat Conservation Grant Funds for the Prime Desert Woodland Preserve Trail Expansion**

---

**Recommendation:**

Adopt **Resolution No. 18-49**, approving the application for grant funds from the State of California's Habitat Conservation Fund Program. If received, this will fund a portion of the Prime Desert Woodland Preserve Trails Expansion.

**Fiscal Impact:**

None as a direct result of this action.

**Summary:**

The City of Lancaster recently purchased a 20.3-acre parcel adjacent to the Prime Desert Woodland Preserve. Staff is applying for grant funds from the State of California's Habitat Conservation Fund Program to add trails on this additional acreage. If approved, this grant will provide funds for the development of an additional 4,500 linear feet of recreational walking trails within the Preserve. Direct benefits of the trail development include safer walking routes to Nancy Cory Elementary School, Rawley Duntley Park, Antelope Valley College and Marauder Stadium, which hosts multiple events throughout the year for the youth in the area. The project will result in an increase in active transportation, recreation and outdoor educational opportunities for all local residents with an anticipated increase of 30-40 percent in visitors to the Preserve.

The grant application requests approximately \$400,000 for the Prime Desert Woodland Preserve Trails Expansion Project with the City matching 50% (\$200,000) from existing General and CIP funds.

NJ:jzs

**Attachment:**

Resolution No. 18-49



RESOLUTION NO. 18-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE STATE OF CALIFORNIA'S HABITAT CONSERVATION FUND PROGRAM

WHEREAS, the people of the State of California have enacted the California Wildlife Protection Act of 1990, which provides funds to the State of California for grants to local agencies to acquire, enhance, restore or develop facilities for public recreation and fish and wildlife habitat protection purposes; and

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility for the administration of the HCF Program, setting up necessary procedures governing project application under the HCF Program; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the applicant to certify by resolution the approval of application(s) before submission of said application(s) to the State; and

WHEREAS, the applicant will enter into a contract with the State of California to complete the project(s);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Approves the filing of an application for the Habitat Conservation Fund Program; and

Section 2. Certifies that said applicant has or will have available, prior to commencement of any work on the project included in this application, the required match and sufficient funds to complete the project; and

Section 3. Certifies that the applicant has or will have sufficient funds to operate and maintain the project(s), and

Section 4. Certifies that the applicant has reviewed, understands, and agrees to the provisions contained in the contract shown in the grant administration guide; and

Section 5. Delegates the authority to the City Manager to conduct all negotiations, execute and submit all documents, including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the project

Section 6. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

PASSED, APPROVED, and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
BRITT AVRIT, MMC  
City Clerk  
City of Lancaster

\_\_\_\_\_  
R. REX PARRIS  
Mayor  
City of Lancaster

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) ss  
CITY OF LANCASTER            )

CERTIFICATION OF RESOLUTION  
CITY COUNCIL

I, \_\_\_\_\_, \_\_\_\_\_ City of Lancaster, CA, do hereby certify that this is a true and correct copy of the original Resolution No. 18-49, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

\_\_\_\_\_

**STAFF REPORT**  
**City of Lancaster**

NB 1
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Kathy Wells, Energy Projects Coordinator

Subject: **Award of Bid – Request for Proposal No. 693-18 Small Business Direct Installation Contracting**

---

**Recommendation:**

Award Request for Proposal No. 693-18 to FESS Energy, Inc. for Small Business Direct Installation Program Services; and authorize the City Manager, or designee, to sign all documents.

**Fiscal Impact:**

\$600,000 over the three-year program from Expenditure Account No. 490-4250-770.

**Background:**

On May 9, 2017, Council approved Lancaster’s Energy Efficiency Program Plan for submittal to the California Public Utilities Commission (CPUC) requesting funding for administration of the programs. The Plan includes two programs to benefit both residential and business customers:

- The Energy Advisor – Provides Lancaster Choice Energy’s residential customers information and free site evaluation services to connect participants with applicable programs for energy efficiency upgrade measures for their homes.
- Small Commercial Direct Install - Program provides no- and low-cost energy efficiency retrofits to qualified small business customers through approved installation contractors to reduce overall energy usage and provide energy cost savings.

On April 26, 2018, the California Public Utilities Commission Energy Division approved Resolution E-4917 certifying Lancaster Choice Energy as a Program Administrator. The Commission approved the budget for Lancaster’s Energy Efficiency Program Plan for \$1,174,996 over the course of the three-year program. Funding will come from Southern California Edison’s Energy Efficiency Portfolio Budget.

From July 27, 2018 to August 24, 2018, the City solicited bids from licensed firms for the direct installation of energy efficiency measures in small commercial buildings. On August 24, 2018, at 5:00 p.m., the City recorded three (3) sealed bid packages received. Sealed bids were given to an evaluation committee for review to establish each respondent not only met the minimum requirements, but also met specific criteria as stated in the proposal document.

Fess Energy, Inc. received the highest evaluation score and has been selected as the recommended vendor for the Direct Install program. The services to be performed under the contract will include program design and implementation, including program goal and performance measuring, marketing and outreach, preparation of standard program procedures manual, and scheduling and coordinating customer enrollment in the program. The consultant will conduct an annual review of program design and assumptions and recommend adjustments that ensure electricity savings goals are met within contractual budget.

KW:te

**Attachment:**  
Professional Services Agreement

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF LANCASTER, a municipal corporation and charter city, (“City”), and FESS Energy, Inc (“Consultant”) (collectively, sometimes referred to hereinafter as the “Parties”).

RECITALS

WHEREAS, the City desires to engage Consultant to perform certain technical and professional services, as provided herein, identified as:

**SMALL COMMERCIAL DIRECT INSTALLATION (THE “SERVICES”)**

WHEREAS, the principal members of Consultant are qualified and duly registered/licensed under the laws of the State of California, and Consultant desires to accept such engagement;

NOW, THEREFORE, the parties agree as follows:

1. **Parties to the Agreement.**

The parties to this Agreement are:

- A. CITY: City of Lancaster
- B. CONSULTANT: FESS Energy, Inc.

2. **Notices.** All written notices required by or related to this Agreement shall be sent by Certified Mail, Return Receipt Requested, postage prepaid and addressed as listed below. Neither party to this Agreement shall refuse to accept such mail; parties to this Agreement shall promptly inform the other party of any changes of address. All notices required by this Agreement are effective on the day of receipt, unless otherwise indicated herein.

CITY                      City of Lancaster  
                                  Attn: Mark Bozigian  
                                  44933 North Fern Avenue  
                                  Lancaster, California 93534

CONSULTANT      FESS Energy, Inc.  
                                  Attn: Hamid Taheri, Principal  
                                  527 S. Lake Avenue, Suite 230  
                                  Pasadena, California 91101

3. **Successors and Assigns.** The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no party hereto shall assign any of the benefits and burdens hereunder, whether voluntarily or by operation of law, without prior written consent of the other party, and any such assignments without said consent shall be void.

4. **Description of Work.** The City hereby engages Consultant, and Consultant accepts such engagement, to perform the technical and professional services set forth in the “Scope of Services and Rates Schedule,” attached hereto as Exhibit “A” and incorporated herein by reference. Consultant shall perform and complete, in a manner satisfactory to the City, all work and services set forth in Exhibit “A.” The City Manager or his designee shall have the right to review and inspect the work during the course of its performance at such times as may be specified by the City Manager, or his designee.

5. **Obligations of the City.**

A. The City shall pay Consultant an amount not to exceed \$600,000 for all work necessary to complete the Services during the three-year program, as described in the Scope of Services and Rates Schedule. Payments shall be due within thirty (30) days following submittal of an invoice detailing the services performed, at the per unit rates set forth in Exhibit A.

B. No payment made hereunder by the City to Consultant, other than the final payment, shall be construed as an acceptance by the City of any work or materials, nor as evidence of satisfactory performance by Consultant of its obligations under this Agreement.

6. **Obligations of the Consultant.**

A. Consultant shall perform as required by this Agreement and in accordance with the Scope of Services and Rates Schedule set forth in Exhibit A.

B. Consultant shall be responsible for payment of all employees’ wages and benefits, and shall comply with all requirements pertaining to employer’s liability, workers’ compensation, unemployment insurance, and Social Security.

C. Consultant shall not subcontract any of the work required to perform the Services without the express prior written approval of the City.

7. **Hold Harmless and Indemnification.** Consultant agrees to indemnify and hold harmless the City, its officers and employees, from and against any and all third party claims, losses, obligations, or liabilities whatsoever, including reasonable attorney’s fees, incurred to the extent arising out of or related to Consultant’s negligent or willful wrongful acts, errors or omissions, or those of its employees or agents. Consultant agrees to defend the City, its officers and employees, using counsel of the City’s choosing, from and against any and all claims covered by the indemnity in the preceding sentence.

8. **Amendments.** Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon mutual written approval by the City and Consultant.

9. **Non-Discrimination and Equal Employment Opportunity.**

A. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, religion, ancestry, sex, national origin, physical or mental disability or age. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, sex, national origin, physical or mental disability or age. Affirmative action relating to employment shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

B. The provisions of subsection A above shall be included in all solicitations or advertisements placed by or on behalf of Consultant for personnel to perform any services under this Agreement. The City shall have access to all documents, data and records of Consultant and its subcontractors for purposes of determining compliance with the equal employment opportunity and non-discrimination provisions of this Section.

10. **Term; Effective Date.** This Agreement shall become effective and shall be in full force and effect upon the execution of the Agreement by the City and the Consultant. This Agreement shall continue in full force and effect for three (3) years, unless the Agreement is sooner terminated in accordance with this Agreement; provided, however, that the City and the Consultant may mutually agree in writing to extend the Term of this Agreement.

11. **Termination.**

A. For Convenience. The City may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the other party of such termination and specifying the effective date thereof. In the event of termination of this Agreement, Consultant will be paid on a for work completed through the date of termination within thirty (30) days following submittal of a final invoice.

B. For Cause. If Consultant fails to perform the services called for by this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, Consultant shall correct such failure within ten (10) days (or such longer period that the City may authorize in writing) after receipt of notice from the City specifying such failure. Should the failure not be corrected within this time period, the City may immediately terminate the Agreement by written notice to Consultant.

C. In the event of termination, whether for convenience or cause, reports, plans, studies and other documents related to the Services that have been delivered to the City shall become the City's property.

12. **Independent Contractor.** Consultant is an independent contractor and shall have no power or authority to incur any debt, obligation or liability on behalf of the City. It is expressly understood between the Parties to this Agreement that no employee/employer relationship is intended.

13. **Insurance.**

A. The Consultant, at its expense, shall maintain in effect at all times during the term of this Agreement the following coverage and limits of insurance, which shall be maintained with insurers listed "A-, VIII" or better in the Best's Key Rating Guide:

**Commercial General Liability**

Each Occurrence	\$1,000,000
Per Project General Aggregate	\$2,000,000
Including Products/Completed Operations; Contractual Liability/Independent Contractors; Property Damage	
<i>(Coverage shall be at least as broad as ISO form CG2010 11/85 or CG2010 07/04 and CG2037 07/04 combined, or an equivalent providing ongoing and completed operations)</i>	

**Commercial Automobile Liability**

Combined Single Limit per Accident for Bodily Injury and Property Damage	\$1,000,000
<i>(Coverage shall be at least as broad as ISO form CA00 01)</i>	

**Workers Compensation**

As Required by the State of California	Statutory Limits
--	------------------

**Employers' Liability**

Each Accident	\$1,000,000
Bodily Injury by Disease	\$1,000,000
Each Employee	\$1,000,000
<i>(A Waiver of Subrogation must be provided on behalf of the Certificate Holder for the Workers Compensation &amp; Employers' Liability policies)</i>	

**Professional Liability**

Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000

B. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

C. Professional liability and/or cyber insurance written on a "claims made" basis must be renewed for a period of three (3) years after this contract expires or is terminated. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this contract and will cover Consultant for all claims made by the City insured entities arising out of any acts or omissions of Consultant or its officers, employees, or agents during the time this Agreement was in effect.

D. Any deductibles or self-insurance retentions must be declared and approved by the City. At the City's option, either the insurer shall reduce or eliminate such deductibles or self-insured



retentions as respects the City insured entities or the insurer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

E. All insurance shall be primary and non-contributory as respects the City insured entities. Any insurance or self-insurance maintained by the City insured entities shall be in excess of the Consultant's insurance and shall not contribute with it.

F. Consultant shall furnish the City with Certificates of Insurance and with original endorsements effecting coverage required by this Agreement. Certificates of Insurance shall meet the following requirements:

(1) Show that the insurance policy has been endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after 30 days' prior written notice (10 days' written notice for non-payment) to the City of Lancaster.

(2) List in the "Descriptions of Operations/Locations/Vehicles" section:  
**"Small Commercial Direct Installation"**

The City of Lancaster, its elected officials, officers, employees and volunteers are included as additional covered parties, but only insofar as the operations under this contract are concerned."

(3) List in the "Certificate Holder" section:

The City of Lancaster, 44933 Fern Avenue, Lancaster, California 93534.

14. **Commencement and Completion of Work.** The Services to be provided by Consultant pursuant to this Agreement shall commence within 30 days after execution of this Agreement, and shall be completed over the three-year period following commencement; provided however, that the Parties may agree to extend the time for completion upon mutual written agreement.

15. **Ownership of Documents.** All plans, specifications, reports, studies, maps and other documents prepared or obtained by Consultant in the course of performing the work and are required by this Agreement to be delivered to the City shall be the property of the City. Basic sketches, charts, computations and similar data prepared or obtained by Consultant under this Agreement shall, upon request, be made available to City without restriction or limitation on their use.

16. **Data Provided to Consultant.** City shall provide to Consultant, without charge, all data, including reports, records, maps and other information, now in the City's possession which may facilitate the timely performance of the work described in Exhibit A.

17. **Consultant's Warranties and Representations.**

Consultant warrants and represents to City as follows:

A. Consultant has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement.

B. Consultant has not paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without further liability, or, in the alternative, to deduct from any sums payable hereunder the full amount or value of any such fee, commission, percentage or gift.

C. Consultant has no knowledge that any officer or employee of the City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of the Consultant, and that if any such interest comes to the knowledge of Consultant at any time, a complete written disclosure of such interest will be made to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws.

D. Upon the execution of this Agreement, Consultant has no interest, direct or indirect, in any transaction or business entity which would conflict with or in any manner hinder the performance of services and work required by this Agreement, nor shall any such interest be acquired during the term of this Agreement.

18. **Resolution of Disputes.**

A. Disputes regarding the interpretation or application of any provisions of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

B. If the parties cannot resolve the dispute through good faith negotiations, either party may give Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator. Mediation shall be conducted in Lancaster, California. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

If the dispute has not been resolved by mediation within 45 days after Notice of Dispute, or the parties are unable to agree to a mediator, within 15 days after Notice of Dispute, then, the dispute may, upon agreement of the parties be resolved by binding arbitration.

C. If any action at law or in equity is brought to enforce or interpret any provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, cost and necessary disbursements, in addition to such other relief as may be sought and awarded.

19. **Exhibits.**

The following exhibits to which reference is made in this Agreement are deemed incorporated herein in their entirety:

Exhibit "A"            Scope of Services and Rates Schedule

20. **Governing Law.**

This Agreement shall be governed by the laws of the State of California.

21. **Effective Date.**

This Agreement shall become effective as of the date set forth below on which the last of the parties, whether City or Consultant, executes said Agreement.

*[Signatures begin on next page.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their respective officers thereunto duly authorized.

CITY OF LANCASTER  
LANCASTER, CALIFORNIA

By: \_\_\_\_\_  
Mark V. Bozigian, City Manager

Dated: \_\_\_\_\_

Fess Energy, Inc.

By: \_\_\_\_\_  
Hamid Taheri, Principal

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**SCOPE OF SERVICES**  
**AND RATES SCHEDULE**



Proposal for:

## *City of Lancaster*

RFP NO. 693-18: Small Commercial Direct Installation Contracting



**PROPOSAL FROM:**



**FESS Energy, Inc.  
527 S. Lake Ave. Suite 230  
Pasadena, CA 91101  
PH: 626-308-3000**

**DUE DATE:**

August 24<sup>th</sup>, 2018 by 5:00pm

**DUE TO:**

**Office of the City Clerk  
RFP693-18 Small Commercial  
Direct Installation Contracting  
Lancaster City Hall  
44933 Fern Avenue  
Lancaster, CA 93534**



## Transmittal Letter

August 8th, 2018

**Submitted To:**

Ms. Kathy Wells  
City of Lancaster  
44933 Fern Avenue  
Lancaster, CA 93534

**Regarding: RFP NO. 693-18: Small Commercial Direct Installation Contracting**

Dear Ms. Wells:

**FESS Energy, Inc.** is pleased to submit the following proposal in response to this RFP 693-18 for Small Commercial Direct Installation Contracting.

*This proposal shall be valid for a 90-day period after the date of submittal.*

**Commitment:** FESS Energy is committed to supporting and helping the Lancaster City Council and Lancaster's CCA program, Lancaster Choice Energy, achieve your savings goals through cost effective energy efficiency services and en-route to becoming the nation's first net-zero city.

**Abilities:** FESS Energy has done EE work in Lancaster for numerous years and currently FESS continues to provide small local businesses low or no cost energy upgrades through the SCE Direct Install program. We are intimately familiar with the customers, the businesses and the EE opportunities available to help the City accomplish its goals of a being a progressive, responsible steward of its publicly entrusted resources.

**Company Information:**

FESS Energy, Inc. (FESS), located at 527 S. Lake Ave. Suite 101, Pasadena, CA 91101 and established in 2008, has completed over 55,000 energy efficiency projects over the past 10 years. We are excited to offer our services to the City of Lancaster and Lancaster Choice Energy in our relentless pursuit of unparalleled quality and uncompromising customer service.

We believe you will find that FESS Energy, with our proven record of performance, will succeed in executing your projects with the highest level of professionalism and alacrity. As the authorized contact person, I would like to thank you for this opportunity.

**Contact: Hamid Taheri, Principal at (626) 308-3000** or via e-mail at: [info@fess-energy.com](mailto:info@fess-energy.com) or via regular mail at: **527 S. Lake Ave Suite 230, Pasadena, CA 91101** if you have any questions.

Sincerely,

Hamid Taheri, CPA  
Authorized Representative  
FESS Energy, Inc.



## SIGNATURE SHEET

My signature certifies that the proposal as submitted complies with all terms and conditions as set forth in RFP No. 693 -18.

My signature certifies that this firm has no business or personal relationships with any other companies or person that could be considered a conflict of interest, or potential conflict of interest to the City of Lancaster, pertaining to any and all work or services to be performed as a result of this request and any resulting Contract with the City.

The Vendor hereby certifies that it has:

- Read each and every clause of this RFP.
- Included all costs necessary to complete the specified work in its proposed prices.
- Agreed that if it is awarded the Contract, it will make no claim against the City based upon misunderstanding of any provision of the Agreement. Should conditions turn out otherwise than anticipated by it, the Vendor agrees to assume all risks incident thereto.

I hereby certify that I am authorized to sign as a Representative for the Firm:

Name of Firm: FESS Energy, Inc.

Address: 527 S. Lake Ave. Suite 230 , Pasadena, CA 91101

Fed ID No: 26-2611092

Name (type/print): Hamid Taheri

Title: CFO

Telephone: 626-308-3000 Fax: 626-389-6265

Email: info@fess-energy.com Date: 08/08/18

To receive consideration for award, this signature sheet must be returned with the Proposal.



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## SECTION 4

### UNDERSTANDING OF REQUIREMENTS

#### STATEMENT OF WORK – Exhibit A

FESS is licensed and has extensive experience providing small-scale commercial buildings with the direct installation of energy efficiency measures, so we can efficiently provide the following services requested by the City of Lancaster and Lancaster Choice Energy.

#### **4.1 Program Design and Set-up**

##### **4.1.a - Program Implementation Plan Finalization**

FESS has been working on Southern California Edison's Direct Install Programs for nearly a decade. We will convey this knowledge and experience to finalize program design while articulating program goals, performance metrics, and energy efficiency measures and targets. In addition, FESS will create a marketing and outreach plan to help the City and the LCE meet its energy savings goals.

##### **4.1.a.i - Final Program Design**

FESS has extensive experience in helping define and arrive at the best energy efficiency (EE) measures for a program. We are flexible, willing, and have the resources available to help troubleshoot, pre-design, and help implement the Direct Installation program that the City/LCE wants to bring to fruition.

##### **4.1.a.ii - Program Goals**

FESS will work with the City to establish and finalize all program goals for the Direct Installation program prior to commencement. FESS is able to analyze historical data from its previous program work to help determine realistic goals and the anticipated measure/mix and Total Resource Cost(TRC).

##### **4.1.a.iii - Performance Metrics**

FESS currently tracks its performance metrics on a weekly basis and can help establish the appropriate or most convenient mode/method of conveying those performance metrics to the City at the detail and frequency needed to give City program directorship the confidence and surety as to the efficacy and throughput, and the estimated completion timing/budget amount left for program tracking purposes.

##### **4.1.a.iv - Marketing and Outreach Plan**

FESS will help establish and finalize all marketing and outreach plans as requested by the City. FESS also has resources to help create marketing collateral pieces to aid outreach and help finalize the outreach for consistency and per the City's requirements prior to program commencement.

##### **4.1.a.v - Program Workflow**

FESS will help establish and finalize the program workflow for the Direct Install program prior to commencement through working with the City to give a detailed overview of the strategies employed on current DI programs to achieve the savings goals on-time and on-budget. FESS can provide a Program workflow diagram or other visual aids to help detail the steps necessary throughout the process to have all stakeholders aware of process and on the same page.



**4.1.a.vi - Standard Operating Program Procedure Manual**

FESS will help establish and finalize the standard operating program procedure manual for the Direct Installation program prior to commencement and will work extensively with the City to make certain all the operational processes are sanctioned and signed off on by all stakeholders prior to start. FESS also understands that the procedure manual is a working document and understands that the City can change any operational parameters at its discretion. FESS prides itself on being flexible and can work with the City to arrive at the best solution for implementing the City's EE program.

**4.1.b – Annual Review**

FESS has constantly changed its approach to DI programs over the past 10 years to be tailor-made to the customers of the varying geographical areas, economic backgrounds and business types we encounter. Our credo is to meet the customer "where they are at" to make the programs fit within the customer schedule without impacting the customer. FESS will conduct and deliver an annual review of the program design with recommended changes/enhancements to contribute to the ongoing dialogue in how best to implement the DI program for the City and to ensure that savings goals are accomplished or exceeded. The annual review will present the savings goals as they pertain to the contract budget, utilizing the Database of Energy Efficiency Resources (DEER) and/or related Workpapers. FESS currently operates off of the DEER database with its work on the SCE Direct Install program and is comfortable working with the database and the data presented through updated and existing Workpapers.

**4.2 Customer Enrollment Process**

**4.2.a Customer Intake Process**

FESS is highly proficient in outreach and face-to-face education and interaction with the City's customer base. We have done more than 55,000 installations and customer sign-up over the past 10 years and have the ability to skillfully and quickly implement the customer intake process and facilitate all customer enrollment protocols. FESS will be the point of contact for any questions customers may have regarding the program offerings so that City staff will not be inundated with customer questions or complaints. FESS has industry relationships with suppliers to help stave off any warranty issues that might arise by helping replace any defective materials free of charge and in the quickest fashion possible. Currently FESS is tracking less than 1% customer inquiries throughout the DI customer intake and project processing phase.

**4.2.b Scheduling and Coordination of Customer Appointments**

FESS understands, accepts and prefers to take responsibility for scheduling and coordinating all appointments with customers to ensure the facilitation of an efficient, friendly and high quality Direct Install participation process.

### **4.2.c Outreach Plan**

FESS will work to target small businesses ranging from a maximum of 200kW/month with a strong focus on customers who use 20kW or less per month. FESS is intimately familiar with the City's customer base and can accomplish outreach and enrollment of specific industries, business types or geographic areas based on the City's direction and requested customer mix, ie. example: One car dealership 200kW customer for every 10 to 15 20kW or less customers.

## **4.3 Program Implementation**

FESS will always coordinate alongside the LCE staff to cultivate, uphold, and adhere to program goals, deadlines, budget, milestones, timelines, and performance metrics, and regular updates. FESS always conducts an initial site inspection to initiate an energy audit of the business and its equipment. FESS has a robust procedure for collecting and storing all energy audit outcomes that are tracked in our database. All energy audit results will be bestowed to the customer in a standard report, already created by FESS and to be approved by LCE.

### **4.3.a Program Goals and Milestones**

#### **4.3.a.i – Adherence to the Schedule and Budget**

FESS can easily ramp up or ramp down according to the City's requirements and is prepared and equipped to adhere to all schedule and budgetary requirements requested by the City/ LCE while being sensitive to customer needs and to complete all necessary goals and directives.

#### **4.3.a.ii – Communications with LCE staff**

FESS believes in and consistently employs formal communication in its current DI Program implementation and will look to continue to do so with City/LCE staff throughout the program's duration. FESS's proven experience continues to show that FESS's ability to communicate with customers and program management has helped create a collaborative and smooth-running process to help all stakeholders benefit from the program offerings.

#### **4.3.a.iii – Organize and attend meetings and workshops**

FESS is proficient in organizing meetings and workshops and our corporate culture believes in presenting information in a clear and concise way using various methods of learning, including visual, auditory and hands-on to help facilitate the learning process and help advance awareness and understanding of current EE technologies, trends, advances and benefits.

#### **4.3.a.iv – Site Audits**

FESS will perform and conduct all initial site audits and will make certain all the information gathered is protected according to the current best practices for the protection and storage of personal private information. FESS has all the equipment necessary to effectively and efficiently conduct site audits with minimal impact to customer schedules and their places of business.



#### **4.3.a.v – Audit Procedures**

FESS employs an established and robust process for collecting, maintaining, and storing energy audit results in a uniform format which is constantly tracked, collected, and stored in a single database. FESS has audit procedures that incorporate 100% customer feedback on all projects for constant improvement of our process and procedures and to enhance quality assurance.

#### **4.3.a.vi – Audit Results – Participant Education**

FESS understands the importance of customer participation, perception and the need to raise customer awareness in energy efficiency. Customers are presented the audit findings via hard copy or e-mail so that they can review the suggested designs and be comfortable/knowledgeable in what is being performed at their location. Ideally, the customer will understand the benefits of the program and inherently will want to pass the knowledge to others and engage in further energy efficiency/sustainability on their own, multiplying the positive effects of the DI program throughout the Lancaster community.

#### **4.3.a.vii – Installation**

FESS has access to resources to make certain install/construction take place in a timely fashion. Current turnaround times are at roughly two weeks from the time of audit to the time of install to help customers receive the benefits from participation as soon as possible. FESS will take away and responsibly recycle all materials removed at the time of installation.

#### **4.3.a.viii – Materials**

FESS employs resources and suppliers from Southern California to accomplish its current DI program responsibilities. FESS channels 20%+ of its contract value on the SCE Nonresidential Direct Install Program through woman and minority owned businesses. FESS is committed to maintaining this healthy ratio to evenly and equitably disperse/distribute the funds to benefit the small business community and the wider, diverse California communities and population.

#### **4.3.a.ix – Materials Storage**

FESS is able to easily store materials for the Lancaster program and has capacity and agreements in place to make certain materials are stored in a safe and convenient fashion and are of the highest quality to reduce and rework or customer dissatisfaction.

#### **4.3.a.x – Program Recommendations**

FESS has worked on approximately 5 separate DI programs and can easily provide the City/LCE with recommendations and best practices as they pertain to the program and customer base FESS serves. Energy Efficiency is FESS's passion and we have more than 40 years of combined experience to aid the City in arriving at the best thoughts and ideas for a successful implementation and completion of the program.



## **4.4 Tracking and Measuring Results**

### **4.4.a – Data Collection**

FESS excels at collaboration and data collection and will work diligently with the City to help establish the key data points and to compile all the data in a way that is acceptable to LCE and to transfer all the data in a timely, efficient and seamless fashion.

### **4.4.b – Metrics Reporting**

FESS currently reaches more than 1,000 customers per month and we believe that we can capitalize on the efficiencies of our process to report quickly and easily through our surveying web application that tracks our progress real-time and helps us make the most informed decisions regarding data process, installations/construction and current overall throughput/cashflow.

### **4.4.c – DI Customer/Program Tracking Application**

FESS's web portal will house all program data securely and this data can be transmitted to LCE at the frequency requested. This data will contain energy savings, measures/materials employed, participants, and incentive payment data and any other data LCE might request. FESS currently tracks more than 150,000 customers for our other DI programs and we believe that we will be able to work with LCE to arrive at the necessary parameters, format, frequency, and process for securely transferring all data to LCE administrators on a monthly or more frequent basis.

## **4.5 Reporting**

### **4.5.a – Monthly Reports**

Ten business days after every month's end, FESS will give LCE a report summarizing invoicing, audits, installations, incomplete installations, challenges and solutions and any other data points needed by LCE.

### **4.5.b – Annual Reports**

FESS will provide LCE with an annual report summarizing year-end service level data and monthly and quarterly performance data.

## **4.6 INSURANCE REQUIREMENTS - Exhibit B**

All insurance and bonds are up to date.

FESS will comply with the City's insurance requirements and limits.

Please see **Attachment A** for evidence of insurance.



## SECTION 5 REFERENCES

### 5.1 Three Similar Projects Performed During the Last Five Years

Reference #1		
<b>Contact Name:</b>	Amri Christianto	<b>Program</b>
<b>Title:</b>	Program Manager - Market Segments and Locational Resource Contracts	Southern California Edison Direct Install Program
<b>E-mail:</b>	Amri.Christianto@sce.com	
<b>Current Telephone Number:</b>	626-302-0718	

Reference #2		
<b>Contact Name:</b>	Jordan Monroe	<b>Program</b>
<b>Title:</b>	Senior Administrative Assistant of Public Works	Southern California Edison Avalon Partnerships Direct Install Program
<b>E-mail:</b>	jmonroe@cityofavalon.com	
<b>Current Telephone Number:</b>	310-510-0220 Ext: 128	

Reference #3		
<b>Contact Name:</b>	Alelia Parento	<b>Program</b>
<b>Title:</b>	Energy Program Supervisor	Southern California Edison Santa Barbara Partnerships Direct Install Program
<b>E-mail:</b>	AParenteau@santabarbaraca.gov	
<b>Current Telephone Number:</b>	805-564-5474	

Reference #4		
<b>Contact Name:</b>	Kim Rodriguez	<b>Program</b>
<b>Title:</b>	Principal manager, Community and Government Energy Assistance	Southern California Edison Direct Install / Schools / Partnerships Program
<b>E-mail:</b>	kimberly.rodriguez@sce.com	
<b>Current Telephone Number:</b>	626-302-0515	





## SECTION 6 QUALIFICATIONS

### 6.1 Technical Capabilities

FESS Energy, Inc. has been managing energy efficiency programs/projects for local governments, businesses, public & private schools, and independently owned utility companies since 2009. FESS Energy is a fully licensed, bonded, and insured company – led by a team with over 40 years of combined management experience.

**FESS is a C Corp, for-profit company - C3330391**

**FESS Energy, Inc. - DUNS number: 940716108**

**Contractor License C10: 958711**

### 6.2 Management and Contract Related Qualifications

FESS has managed 5 separate programs for Southern California Edison, working with more than 100,000 individual businesses, covering more than 55,000 project installations capturing more than 55,000 kW and 239 million kWh in energy savings.

### 6.3 Program Development and Implementation Experience

#### Experience 1:

**Entity:** SCE

**Company Responsible for Implementation:** FESS Energy - Prime

**Program Name:** SCE Partnership/Municipalities Nonresidential Direct Install Energy Efficiency Program

**Dates of Implementation:** 2013 to Present

**Budgeted and Actual Dollars:** \$4.7M Contract - \$2.5M Completed to date

**Measures included in the program:** Retrofit of existing lighting fixtures. Lamp for lamp fluorescent or LED tube replacements, (4 foot) de-lamping kits with reflectors: 3 to 2 lamp or 4 to 2 lamp with Low, Standard or High Ballast Factor Ballast. Screw-in or candelabra replacements with CFL or LEDs. Hi-bay 6 lamp fixtures replace HID high-pressure sodium light fixtures. Solar film, occupancy sensors and walk in cooler/freezer door closers.



**Number of Installations Completed: 400 Sites**

FESS works with 64 Cities and 7 Counties in Southern California Edison's Partnership Energy Efficiency program. FESS has done energy efficiency upgrades for over 400 buildings equaling 1,020 kW and over

4,050,000 kWh. FESS continues to successfully work with County and City SCE Partnership Representatives and a wide range of City stakeholders to efficiently schedule, coordinate and implement this highly successful and popular program.

- Adelanto
- Apple Valley
- Baldwin Park
- Beaumont
- Blythe
- Lake Elsinore
- Canyon Lake
- Carpinteria
- Duarte
- Fillmore
- Goleta
- Hemet
- Moorpark
- Moreno Valley
- Murrieta
- Oxnard
- Perris
- Redlands
- Calimesa
- San Bernardino
- San Bernardino County
- Santa Barbara
- Santa Barbara County
- Santa Paula (Hospital)
- Simi Valley
- South Pasadena
- Temecula
- Thousand Oaks
- County of Ventura
- Victorville
- Avalon
- Mammoth

**Experience 2:**

**Entity:** SCE

**Company Responsible for Implementation:** FESS Energy - Prime

**Program Name:** SCE Direct Install Program

**Dates of Implementation:** 2010 to Present

**Budgeted and Actual Dollars:** \$80M+, \$80M+ Actual

**Measures included in the program:** Retrofit of existing lighting fixtures, lamp for lamp fluorescent or LED tube replacements, (4 foot) or de-lamping kits with reflectors: 3 to 2 lamp or 4 to 2 lamp with Low, Standard or High Ballast Factor Ballast. Screw-in or candelabra replacements with CFL or LEDs. Hi-bay 6 lamp fixtures replace HID high-pressure sodium light fixtures. Additional measures included, solar film, occupancy sensors and walk in cooler/freezer door closers. Previous measures that are no longer used include programmable thermostats, plug-load sensor power strips, strip curtains and LED exit signs.

**Number of Installations Completed:** 40,000+ customer sites

FESS provided energy audits, customer liaising, construction management, construction/installation of energy efficiency measures, and program controls for small to micro-sized businesses in the SCE California service territories. Achieved 123,430,325 kWh+ energy savings.

FESS's contract amount was increased six times during the original contract 2-year period, increasing the original budget amount by over 218%. FESS was able to commit the needed amounts each time to help SCE reach its program goals.



**Experience 3:**

**Entity:** SCE

**Company Responsible for Implementation:** FESS Energy - Prime

**Program Name:** SCE Entertainment Centers Energy Efficiency Program (ENTC)

**Dates of Implementation:** 2014

**Budgeted and Actual Dollars:** \$1M Contract - \$999,944.06 Actual

**Measures included in the program:** Demand Control Ventilation /Economizer upgrade with control by CO2 sensor

**Number of Installations Completed:** 40 sites

FESS worked throughout SCE's territory helping coordinate outreach and marketing efforts for the ENTC. Through the iterative process of actively seeking customers to engage on the program, it was found that the number of available customers was limited to even less than originally estimated with the final viable list of potential customers being approximately 400 to 450 customers. Of this list of customers only roughly one third had economizers which would allow for the DCV retrofit.

FESS worked with SCE Program Management to make the program a free program which garnered better results - however this resulted in slight delay in some program functions as a change order had to be made to reduce the overall program budget and adjust the co-pay to zero. FESS worked with customers to make certain the DCV component (Measures included in program?) of the program, installed by ACCO, took predominance over lighting for kW savings. After the program became no-cost, FESS was able to sign up 40 customers within roughly two months and accomplish all construction within three. Final average kW costs were \$1,860.37 per kW. Average project size was roughly \$25,000 with gross energy savings of 623,000 kWh and gross demand reduction of 537.5 kW over the duration of the program.

**Experience 4:**

**Entity:** SCE

**Company Responsible for Implementation:** FESS Energy - Prime

**Program Name:** Palm Desert Commercial Energy Savings Program

**Dates of Implementation:** 2012

**Budgeted and Actual Dollars:** \$952,533 Contract – \$950,597.92 Actual

**Measures included in the program:** Retrofit of existing lighting fixtures, predominantly lamp for lamp fluorescent replacements, (4 foot) or de-lamping kits with reflectors: 3 to 2 lamp or 4 to 2 lamp with Low, Standard or High Ballast Factor Ballast, Screw-in replacements with CFL or LEDs, Solar film, plug load sensor power strips and LED pool lights.

**Number of Installations Completed:** 86

FESS was chosen to help establish a pilot program targeting customers in the 100 kW or greater range. The program parameters also included an added complication of 10% customer co-pay. FESS worked in concert with SCE management, BCD representatives, the Energy Coalition and the City of Palm Desert to institute and market the program to all qualifying customers. FESS helped expedite program forms and marketing materials through SCE's legal department for distribution in the city while working in coordination with the "Set to Save" initiative which was in its final program year. FESS achieved 2,315,810 kWh in gross energy savings over 9 months.



### **Experience 5:**

**Entity:** SCE

**Company Responsible for Implementation:** FESS Energy - Prime

**Program Name:** SCE Public Pre-Schools, Elementary and Secondary Schools Program

**Dates of Implementation:** 2012

**Budgeted and Actual Dollars:** \$2.3M Contract - \$2.3M Actual

**Measures included in the program:** Retrofit of existing lighting fixtures, predominantly lamp for lamp fluorescent replacements, (4 foot) or de-lamping kits with reflectors: 3 to 2 lamp or 4 to 2 lamp with Low, Standard or High Ballast Factor Ballast and Screw-in replacements with CFL.

**Number of Installations Completed:** 93 Buildings

FESS was called upon through contract to the Direct Install Program, to be one of three contractors engaged to complete the schools program by December 2012. FESS inherited 11 separate school districts in various stages of completion and participation with the task of committing/completing \$1.8M worth of new construction while reviewing and cleaning up existing issues/punch list items via a \$200k T&M budget. FESS worked with SCE management and BCD representatives to gain audiences with school districts and to get FESS systems and paperwork consistent with SCE program parameters. Contract value was increased to \$2.3M due to a greater portion of work found at site.





## SECTION 7

### OTHER INFORMATION

#### 7.1 Key Personnel for FESS Energy, Inc.

Jim Crossman MBA, LEED AP – Executive Manager

**EDUCATION**

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M.B.A., University of Denver, Denver CO 1984

B.A., Economics, Bowdoin College, Brunswick, ME

**EXPERIENCE**

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As original founder (1984) and president of Financial Energy Management, Inc. Mr. Crossman has developed and constructed hundreds of energy efficiency retrofits in multi-family, commercial, industrial, medical, and governmental facilities. In this position, and as President of FESS Energy, Mr. Crossman has designed and successfully implemented seven utility company demand side management and energy conservation contracts (programs) over the past 27 years.

Ken Schumann P.E., MBA, LEED AP – Quality Assurance

**EDUCATION**

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M.B.A., California Polytechnic State University, San Luis Obispo, 1989

B.S., Architectural Engineering, California Polytechnic State University, San Luis Obispo, 1985

Registration: Registered Civil Engineer in California, No. 44938

**EXPERIENCE**

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Over 25 years of public and private sector experience in design, management, marketing and operations in the engineering and construction industry. More than 15 years of experience in contract administration on various programs and projects. Manager for FESS on the current SCE Direct Install program. Responsible for building and managing technical teams of up to 60 people.



Matt Henkelmann PMP, LEED AP – Program/Project Manager

***EDUCATION***

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B.S. Northwestern University, Evanston, IL

***EXPERIENCE***

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Over 10 years of operations and project/program management experience. Provided program management through FESS Energy for SCE's Schools Energy Efficiency program in 2013. Responsibilities included 7 school districts with captured savings of over 600 kW and over 4 Million kWh for this \$2.1M effort.

Hamid Taheri CPA, MBA – Financial Systems & Compliance

***EDUCATION***

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M.B.A., Finance, Illinois State University

B.S., Business Administration, Illinois State University

B.S., Accounting, Illinois State University

***EXPERIENCE***

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Over 25 years of diverse experience in management, accounting and program systems. Financial management for FESS on the current SCE Direct Install program. Responsible for the design, development and implementation of the database system used by FESS to manage the SCE DI program. More than 12 years of experience with Public Works capital projects in the design, implementation, and operation of integrated project controls systems for more than 500 projects.

Mike Chan – Operations Manager

***EXPERIENCE***

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Over 5 years of expanding responsibility in managing customer accounts and maintaining program metrics/analytics and production. Successfully helped manage the SCE Schools program and all corresponding paperwork/invoicing.

Responsibilities also include day to day operations of the FESS office and field staff. Experienced in working with numerous materials suppliers, updating measure pricing while managing the inventory levels and of several subcontractors simultaneously.



## SECTION 8

### COST PROPOSAL

Please find FESS's cost proposal and measure cost pricing for the City's review and consideration.

- Measure Cost
- Other Cost

Measure	Cost \$/Unit	Unit (per ft. each, etc.)	Proposed	Existing	Installed
Integrated Occupancy Sensor (fixture wattage >= 150 Watts) Controls	\$ 76.13	Per Sensor	LT-41007	Nothing	Integrated sensor
Plug Load Occupancy Sensor Control	\$ 84.76	Per Sensor	OE-49878	Nothing	Plug Load Occupancy Sensor Controls
Wall Mounted Occupancy Sensor Control	\$ 90.46	Per Sensor	LT-58209	Std. Switch	Wall Mounted Occupancy Sensor Controls
Seaback Programmable Thermostat Control	\$ 323.89	Per Thermostat	AC-73932	Std. Stat	Seaback Programmable Thermostat Controls
<b>Reach-In Display Cases</b>					
48in Medium Temp Canopy LED	\$ 100.69	Per Unit	LT-17642	2L4T8 Cold Canopy	1L4 LED Canopy
48in Medium Temp Canopy LED	\$ 100.04	Per Unit	LT-89513	2L48" Med Temp Canopy	1L LED Med Temp Canopy
48in Medium Temp Canopy LED	\$ 100.04	Per Unit	LT-97154	48" T-12 Med Temp Canopy	48" LED Med Temp Canopy
48in Medium Temp Shelf LED	\$ 93.92	Per Unit	LT-30954	1L48" T8 Med Temp Shelf	1L48" LED Med Temp Shelf
60in Retrofits in Low Temp LED	\$ 102.83	Per Unit	LT-78303	60" T8-LT-Case	60" LED-LT-Case
60in Retrofits in Medium Temp LED	\$ 108.96	Per Unit	LT-84544	60" T-12-MT-Case	60" LED-MT-Case
72in Retrofits in Low Temp LED	\$ 111.74	Per Unit	LT-93848	72" T-12 Low Temp	72" LED Low Temp
72in Retrofits in Medium Temp LED	\$ 117.87	Per Unit	LT-79548	72" T-12-MT-Case	72" LED-MT-Case
<b>Instant Start Ballast</b>					
24in F17 Premium High Light Output T8 Linear Fluorescent	\$ 48.87	Per Fixture	LT-18943	1L2T12	1L17W2T8-Low Ballast Factor Ballast or equiv.
24in Premium Reduced Light Output T8 Linear Fluorescent	\$ 80.61	Per Fixture	LT-59482	2-UJ6 lamps	Fluorescents
36in Reduced Light Output T8 Linear Fluorescent	\$ 49.90	Per Fixture	LT-83912	1L3T12	1L3T8-Low Ballast Factor Ballast
48in Premium Reduced Light Output T8 Linear Fluorescent	\$ 52.46	Per Fixture	LT-39875	4L4T12	2L4T8-Standard Ballast Factor Ballast - De-Lamp
48in Premium Reduced Light Output w/ Reflector T8 Linear Fluorescent	\$ 69.96	Per Fixture	LT-30765	4L4T12	2L28W4T8-Standard Ballast Factor Ballast - De-Lamp with Reflector
48in Reduced 28 Watt w/ Reflectors T8 Linear Fluorescent	\$ 69.96	Per Fixture	LT-57432	4L4T8	2L4T28W8-High Ballast Factor Ballast-De-Lamp with Reflector
48in Reduced 28 Watt High Light Output T8 Linear Fluorescent	\$ 48.31	Per Fixture	LT-90462	2L-4T-8	1L-4T8 De-Lamp
48in Reduced 28 Watt High Light Output w/ Reflectors T8 Linear Fluorescent	\$ 78.02	Per Fixture	LT-89122	4L4T8	2L4T28W8-Standard Ballast Factor Ballast - De-Lamp with Reflector
48in Reduced 28 Watt Normal Light Output T8 Linear Fluorescent	\$ 52.46	Per Fixture	LT-89122	4L4T8	2L28W4T8-Standard Ballast Factor Ballast - De-Lamp
48in Reduced 28 Watt Normal Light Output w/ Reflectors T8 Linear Fluorescent	\$ 78.02	Per Fixture	LT-98687	4L4T8	2L28W4T8-Standard Ballast Factor Ballast - De-Lamp with Reflector
48in Reduced 28 Watt Reduced Light Output T8 Linear Fluorescent	\$ 52.46	Per Fixture	LT-32845	4L4T8	2L28W4T8-High Ballast Factor Ballast - De-Lamp with Reflector
48in Reduced 28 Watt T8 Linear Fluorescent	\$ 52.46	Per Fixture	LT-32645	2L4T8	(2) 48in Reduced 28 Watt (1) Instant Start Ballast - Reduced Light Output T8 Linear Fluorescent replacing (2) 48in T8 Linear Fluorescent
48in Reduced Light Output T8 Linear Fluorescent	\$ 52.46	Per Fixture	LT-60432	2L4T12	(2) 48in Reduced 28 Watt (1) Instant Start Ballast T8 Linear Fluorescent replacing (2) 48in T12 Linear Fluorescent
48in Reduced Light Output T8 Linear Fluorescent	\$ 52.46	Per Fixture	LT-71214	3L4T12	(2) 48in Reduced 28 Watt (1) Instant Start Ballast T8 Linear Fluorescent replacing (3) 48in T12 Linear Fluorescent
96in Reduced Light Output T8 Linear Fluorescent	\$ 88.48	Per Fixture	LT-27685	2L8T12-HO	2L59W8T8-Low Ballast Factor Ballast or equiv.
U-Tube Reduced Light Output T8 Linear Fluorescent	\$ 80.88	Per Fixture	LT-91429	2L2-U6-T12	2L2-T8 with Reflector
<b>Interior Fixture</b>					
Up to 192 Watt T5 Linear Fluorescent	\$ 310.85	Per Hi-bay (fixture)	LT-84912	250WPSMH	New 4L32W4T8-2 High Ballast Factor Ballasts -Hi-bay
Up to 244 Watt T5 Linear Fluorescent	\$ 317.67	Per Hi-bay (fixture)	LT-26100	400W HID	New 6L32W4T8-2 High Ballast Factor Ballasts -Hi-bay
245 to 360 Watt T5 Linear Fluorescent	\$ 326.47	Per Hi-bay (fixture)	LT-55943	400W/HID	6L4T5-High Ballast Factor Ballast -Hi-bay
<b>Candelabra LED</b>					
1 Watt to < 2 Watt	\$ 23.83	Per Lamp	LT-18876	Inc.	LED Candelabra <3W
2 Watt to < 3 Watt	\$ 23.83	Per Lamp	LT-18876	Inc.	LED Candelabra <3W MF
3 Watt to < 4 Watt	\$ 23.83	Per Lamp	LT-18876	Inc.	
>= 4 Watt	\$ 23.83	Per Lamp	LT-18878	Inc.	
<b>Integral Spiral</b>					
14-26 watts with Reflector CFL	\$ 36.23	Per Lamp	LT-27012	Inc.	14-26 watts Integral Spiral with Reflector CFL
5-13 watts with Reflector CFL	\$ 36.23	Per Lamp	LT-66394	Inc.	5-13 watts Integral Spiral with Reflector CFL
<b>LED High/Low Bay</b>					
>160 to 187 Watts	\$ 281.76	Per Hi-bay (fixture)	LT-99280	250W PSMH	160W LED Highbay
>187 to 225 Watts	\$ 387.09	Per Hi-bay (fixture)	LT-54307	300W-400W MH	200W LED Highbay
>220 to 260 Watts	\$ 431.08	Per Hi-bay (fixture)	LT-54307	300W-400W MH	250W LED Highbay
>262 to 280 Watts	\$ 183.05	Per Hi-bay (fixture)	LT-28589	400W MH	280W LED Highbay
>280 to 320 Watts	\$ 183.05	Per Hi-bay (fixture)		500W MH	300W LED Highbay
>320 to 500 Watts	\$ 183.05	Per Hi-bay (fixture)		500W-1000W MH	385W LED Highbay
>500 to 750 Watts	\$ 183.05	Per Hi-bay (fixture)		500W-1000W MH	500W LED Highbay
> 15 to 21 Watt PAR30 LED	\$ 36.94	Per Lamp	LT-18741	Inc.	LED PAR30: 12 to <13 Watts
> 17 to 25 Watt PAR38 LED	\$ 43.14	Per Lamp	LT-18769	Inc.	LED PAR38: 18 to <19 Watts
> 6 to 10 Watt MR16 LED	\$ 26.93	Per Lamp	LT-19877	MR-16 < 35W	MR-16 LED 6 W
10 Watt to 30 Watt A-Lamp LED	\$ 27.64	Per Lamp	LT-18700	Inc.	13-Watt LED A-Lamp 1050-1489 Lumens
Main Cooler Door Auto Closer	\$ 183.57	Per Closer	RF-16925	Nothing	Cooler Door Auto Closer
Main Freezer Door Auto Closer	\$ 183.57	Per Closer	RF-32156	Nothing	Freezer Door Auto Closer
< 15 cubic feet Solid-Door Reach-In Refrigerator	\$ 1,584.12	Per Refrigerator		Nothing	<15 cubic feet Solid-Door Reach-In Refrigerator
15 - 29 cubic feet Solid-Door Reach-In Refrigerator	\$ 2,243.92	Per Refrigerator		Nothing	15 -29 cubic feet Solid-Door Reach-In Refrigerator



**Additional Proposed Measures:**

Measure	Cost \$/Unit	Unit (per ft, each, etc.)	Proposed	Existing	Installed
24in F17 Premium High Light Output T8 Linear LED	\$25.50	Per Lamp			
24in Premium Reduced Light Output T8 Linear LED	\$25.50	Per Lamp			
36in Reduced Light Output T8 Linear LED	\$26.50	Per Lamp			
Replace existing 48in T8 Fluorescent to 48in 12 watt LED Tube	\$15.00	Per Lamp			
4 lamp 48 inch T12 to 4 Lamp 12 watt LED Tubes and Low Ballast Factor Ballast	\$65.93	Per Fixture			
3 lamp 48 inch T12 to 3 Lamp 12 watt LED Tubes and Low Ballast Factor Ballast	\$59.53	Per Fixture			
2 lamp 48 inch T12 to 2 Lamp 12 watt LED Tubes and Low Ballast Factor Ballast	\$52.32	Per Fixture			
1 lamp 48 inch T12 to 1 Lamp 12 watt LED Tubes and Low Ballast Factor Ballast	\$46.40	Per Fixture			
4 lamp 48in 28Watt Fluorescent Standard Ballast Factor to 2 lamp 12 watt LED tube - with Low Ballast Factor Ballast	\$57.16	Per Fixture			
3 lamp 48in 28Watt Fluorescent Standard Ballast Factor to 2 lamp 12 watt LED tube - with Low Ballast Factor Ballast	\$52.90	Per Fixture			
4 lamp 48 in 28 Watt Fluorescent Standard Ballast Factor to 2 lamp 12 watt LED tube - with High Ballast Factor Ballast	\$57.16	Per Fixture			
3 lamp 48in 28Watt Fluorescent Standard Ballast Factor to 2 lamp 12 watt LED tube - with High Ballast Factor Ballast	\$56.02	Per Fixture			
2 Lamp 8 ft T12 to 4 lamp T8 LED Tube Conversion	\$123.37	Per Fixture			
1 Lamp 8 ft T12 to 2 lamp T8 LED Tube Conversion	\$89.57	Per Fixture			
U-Tube Reduced Light Output T8 Linear LED	\$42.90	Per Lamp			
Up to 192 Watt Equivalent Highbay	\$359.52	Per Fixture			
Up to 244 Watt Equivalent LED Highbay	\$959.52	Per Fixture			
245 to 360 Watt Equivalent LED Highbay	\$413.72	Per Fixture			
14-25 watts lamp with Reflector LED	\$21.44	Per Lamp			
5-13 watt lamp with Reflector LED	\$21.44	Per Lamp			



# ATTACHMENT A

## EVIDENCE OF INSURANCE



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/19/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Pinnacle Brokers Insurance Solutions, LLC. 1330 North Broadway, Suite 204 Walnut Creek, CA 94596		<b>CONTACT NAME:</b> Pinnacle Brokers Insurance Solutions, LLC. <b>PHONE (A/C, No, Ext):</b> 925-952-8680 <b>FAX (A/C, No):</b> 925-952-8681 <b>E-MAIL ADDRESS:</b> certs@pinnbrokers.com	
www.pinnbrokers.com	0165808	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> FESS Energy, Inc. 527 S. Lake Avenue, Suite 101 Pasadena CA 91101		<b>INSURER A:</b> Continental Casualty Company      20443	
		<b>INSURER B:</b> Transportation Insurance Company      20494	
		<b>INSURER C:</b> National Fire Insurance Co of Hartford      20478	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 41437345

REVISION NUMBER:


THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATION MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6011175816	12/20/2017	12/20/2018	EACH OCCURRENCE	\$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$300,000
							MED EXP (Any one person)	\$10,000
							PERSONAL & ADV INJURY	\$2,000,000
							GENERAL AGGREGATE	\$4,000,000
							PRODUCTS - COM/OP AGG	\$4,000,000
								\$
A	<input type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			6011175816	12/20/2017	12/20/2018	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$			6011175864	12/20/2017	12/20/2018	EACH OCCURRENCE	\$1,000,000
							AGGREGATE	\$1,000,000
								\$
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	6020858123	12/20/2017	12/20/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
			N/A				E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Evidence of Coverage Only

**CERTIFICATE HOLDER****CANCELLATION**

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	<b>AUTHORIZED REPRESENTATIVE</b>  Ed Schumann

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# STAFF REPORT

## City of Lancaster

NB 2
09/25/18
MVB

Date: September 25, 2018

To: Mayor Parris and City Council Members

From: Chenin Dow, Economic Development Manager

Subject: **Disposition and Development Agreements with Cornerstone Investment Group, LLC**

---

### **Recommendation:**

Approve two Disposition and Development Agreements with Cornerstone Investment Group, LLC for the sale and subsequent development of two commercial parcels located in the Front Row Center area; and authorize the City Manager, or his designee, to execute all related documents.

### **Fiscal Impact:**

The sale of the two parcels will yield \$1,808,611.20. Development of a hotel on each parcel will generate transient occupancy tax (TOT) estimated at \$500,000 annually for both hotels combined.

### **Background:**

Front Row Center, the area generally bounded by Avenue I and Lancaster Boulevard along Valley Central Way, has long been regarded as a key growth opportunity for commerce and entertainment in the Antelope Valley. Featuring such destinations as Lancaster Municipal Stadium and Cinemark 22 Theatres, as well as optimal proximity to the 14 Freeway, Front Row Center is ripe for further development.

Cornerstone Investment Group, LLC has made an offer for full appraised value of parcels 3153-015-958 and -959, which together constitute 6.92 acres located in the heart of Front Row Center. Cornerstone plans to construct two new hotels on the property. While specific flags must be approved by the respective brands following acquisition of the property, Cornerstone's goal is to construct two "upscale" or better hotels on the industry-standard STR chain scales. Well-known examples of this classification include Courtyard, Double Tree, and Radisson.

Each hotel will feature 90-120 rooms and is anticipated to create 25-30 full-time jobs, as well as approximately 35 part-time jobs. Together with two existing Hilton properties, Hampton Inn & Suites and Homewood Suites, these new properties will form a "hotel row" located adjacent to Lancaster Municipal Stadium.

If approved, the sale of the parcels will take place under two separate disposition and development agreements (DDAs), which will bind Cornerstone Investment Group to develop them as hotels.

The City acquired these properties for the express purpose of future development. Now that both the regional real estate market and the demand for local hotel rooms have reached their highest levels in a decade, the time is ideal to sell these parcels and collaborate with the developer to ensure a development that will positively impact our community well into the future.

CD:te

**Attachments:**

Disposition and Development Agreement with Cornerstone Investment Group, LLC for APN 3153-015-958

Disposition and Development Agreement with Cornerstone Investment Group, LLC for APN 3153-015-959

**DISPOSITION AND DEVELOPMENT AGREEMENT**

By and Between

**THE CITY OF LANCASTER**

and

**CORNERSTONE INVESTMENT GROUP, LLC**

**(APN 3153-015-958)**

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## DISPOSITION AND DEVELOPMENT AGREEMENT

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (this “Agreement”) is entered into and effective as of September 11, 2018 (the “Date of Agreement”), by and between the **CITY OF LANCASTER**, a charter city and California municipal corporation (“City”), and **CORNERSTONE INVESTMENT GROUP, LLC**, a California limited liability company (“Developer”), with reference to the following facts, intentions and understandings.

### RECITALS

A. City is the fee owner of that certain property defined as the “Site”, which property is depicted in the “Site Map” (Exhibit C) and described in the “Site Legal Description” (Exhibit D).

B. Developer has proposed to City that Developer shall purchase the Site from City, upon which occurrence Developer shall proceed to construct certain improvements described herein as the “Developer Improvements” and to cause the opening of a “Conforming Hotel”, as defined below. The sale of the Site to Developer shall be accomplished at a price which constitutes a fair value price based upon the market value of the Site. No assistance is being provided to Developer under this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

### 100. DEFINITIONS

“**Adjusted Purchase Price**” has the meaning set forth therefor in Section 201.

“**Agreement**” means this Disposition and Development Agreement by and between City and Developer.

“**Appraiser**” is defined in Section 201.

“**Approved Developer Broker Commission**” means that amount hereafter approved by the City Manager as payable to Developer’s Broker from the proceeds of sale of the Site.

“**Approved Operator**” means a corporation or other business entity which has substantial experience in the operation of hotels that are Approved Products and which is approved by the City Manager.

“**Approved Product**” means (i) a hotel with the brand of DoubleTree, Hilton Garden Inn, or Hyatt and which is classified as upscale or better on the STR chain scale or (ii) such other hotel having a brand or similar designation as may be approved by the City Manager acting in his sole discretion.

“**City**” means the City of Lancaster, a charter city and California municipal corporation.

“**City Code**” means the Municipal Code of the City of Lancaster, including the Uniform Codes, all as amended from time to time.

“**City Manager**” means the City Manager of the City, or his or her designee.

“**City’s Conditions Precedent**” is defined in Section 206.1.

**“Closing”** is defined in Section 203.4.

**“Closing Date”** is defined in Section 203.4.

**“Conforming Hotel Facility”** means a hotel which conforms to all of the following: (i) the improvements conform to the Scope of Development; (ii) the cost of the hotel shall not be less than the Minimum Required Cost; and (iii) the hotel is an Approved Product and is to be operated by an Approved Operator.

**“Developer’s Conditions Precedent”** is defined in Section 206.2.

**“Developer Improvements”** has the meaning established therefor in the Scope of Development.

**“Environmental Consultant”** is defined in Section 209.2.

**“Escrow”** is defined in Section 203.

**“Escrow Agent”** is defined in Section 203.

**“Exceptions”** is defined in Section 204.

**“Governmental Requirement(s)”** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Los Angeles, City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer or the Site.

**“Hazardous Materials”** means any substance, material or waste which is or becomes, prior to the Closing, regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq.* (42 U.S.C. Section 6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 6901, *et seq.*

**“Minimum Required Cost”** means a cost that meets both of the following criteria: (i) not less than Eighty Six Thousand Dollars (\$86,000.00) per room (as calculated by dividing the sum of the cost for the shell, on-site improvements, and furnishings, fixtures and equipment, by the number of rentable

rooms with sleeping quarters), and (ii) not less than Eight Million, One Hundred Seventy Thousand Dollars (\$8,170,000.00) as aggregated as to shell construction cost.

**“Outside Date”** means the first anniversary of the Date of Agreement.

**“Principals”** means Bobby Damani.

**“Purchase Price”** means the following: (i) provided that the Site is conveyed to Developer on or before the Outside Date, the sum of Seven Hundred Eighty One Thousand, Four Hundred Sixty- Six Dollars and Forty Cents (\$781,466.40) (the “Base Purchase Price”) or, if the Site is conveyed to Developer after the Outside Date, that amount determined as the “Adjusted Purchase Price” as provided in Section 201.

**“Site”** means that certain property which is described in the Site Legal Description attached hereto as Exhibit “G.”

**“Site Grant Deed”** means a grant deed substantially in the form of Exhibit “E” to this Agreement.

**“Release of Construction Covenants”** means the Release of Construction Covenants attached to this Agreement as Exhibit “F.”

**“Report”** is defined in Section 204.

**“Right of Entry Agreement”** is defined in Section 207.

**“Schedule of Performance”** means that Exhibit “A” to this Agreement.

**“Scope of Development”** means Exhibit “B” to this Agreement.

**“Site Map”** means Exhibit “C” to this Agreement.

**“Title Company”** is defined in Section 204.

**“Title Policy”** is defined in Section 205.

**“Uniform Codes”** mean each of the following as in effect from time to time as approved by City: the Uniform Building Code, the Uniform Housing Code, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, and the Uniform Code for Abatement of Dangerous Buildings.

## **101. Representations and Warranties.**

### **101.1 City Representations.** City represents and warrants to Developer as follows:

(a) **Authority.** City is a municipal corporation which has been authorized to transact business pursuant to action of City. City has full right, power and lawful authority to acquire the Site and thereafter convey the Site, including portions thereof, as provided herein and the execution, performance, and delivery of this Agreement by City has been fully authorized by all requisite actions

on the part of City. The parties who have executed this Agreement on behalf of City are authorized to bind City by their signatures hereto.

(b) Litigation. To the best of City's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(c) No Conflict. To the best of City's knowledge, City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(d) No City Bankruptcy. City is not the subject of a bankruptcy proceeding.

Until the Closing, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 101.1 not to be true as of the Closing, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation shall not be deemed a breach by City hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of property to be conveyed under the Closing. If Developer elects to accept the conveyance of the Site and the possession of the following disclosure of such information, City's representations and warranties contained herein shall be deemed to have been made as of such the Closing, subject to such exception(s). The representations and warranties set forth in this Section 101.1 shall survive the Closing.

**101.2 Developer Representations.** Developer represents and warrants to City as follows:

(a) Authority. Developer is a duly organized limited liability company organized within and in good standing under the laws of the State of California. Developer has full right, power and lawful authority to acquire and accept title to and possession of the Site, including portions thereof, and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

(b) Litigation. To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site, the Principals, or Developer at law or in equity before any court or governmental agency, domestic or foreign.

(c) No Conflict. To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer or any of the Principals is a party or by which it is bound.

(d) No Developer Bankruptcy. Neither Developer nor any of the Principals is not the subject of a bankruptcy proceeding.

(e) Developer Experience; Sophisticated Party. Developer and each of the Principals is a sophisticated party, with substantial experience in the acquisition, rehabilitation, development, financing, obtaining financing for, and marketing of hotels has obtained advice from any advisers of its own choosing in connection with this Agreement.

(f) Due Authorization and Execution; Studies Completed. Developer has duly authorized the execution of this Agreement, including without limitation the attachments hereto.

Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 101.2 not to be true as of such Disposition Conveyance, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Site. If Developer elects to accept the Site and the possession of the Site following disclosure of such information, City's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). The representations and warranties set forth in this Section 101.2 shall survive the Closing.

## **200. DISPOSITION OF SITE**

**201. Disposition of Site to Developer.** Developer agrees to purchase the Site from City and City agrees to sell the Site to Developer, in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, for the Purchase Price. It is mutually agreed between City and Developer that provided the conveyance of the Site to Developer occurs on or before the Outside Date, the Base Purchase Price shall constitute the Purchase Price. In the event the conveyance of the Site to Developer occurs later than the Outside Date, the purchase price shall be deemed to be an amount equal to the greater of: (i) the Base Purchase Price, or (ii) that amount determined by an appraiser hereafter retained by the City Manager (the "Appraiser") on behalf of City to represent the market value of the Site as of the date on which it is anticipated that the conveyance of the Site to Developer will take place (the latter constituting the "Adjusted Purchase Price"). The Purchase Price shall apply without regard to the square footage determined to constitute the Site.

**202. Payment of the Purchase Price.** Developer shall pay the Purchase Price in cash, to be deposited into the Escrow prior and as a condition to the Closing.

**203. Escrow.** By the time established therefor in the Schedule of Performance, City shall open escrow (the "Escrow") with First American Title Company of Los Angeles or another escrow company mutually satisfactory to both parties (the "Escrow Agent").

**203.1 Costs of Escrow.** City and Developer shall pay their respective portions of the premium for the Title Policy as set forth in Section 205, City shall pay the documentary transfer taxes, if any, due with respect to the conveyance of the Site, Developer shall pay an amount equal to that expended or incurred by City or that amount required to be paid by City to the Appraiser hired pursuant to Section 201 hereof, City shall absorb from the proceeds of sale of the Site the Approved Developer Broker Commission, if any, and City and Developer each agree to pay one half of all other usual fees, charges, and costs which arise from the Escrow.

**203.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of City and Developer, and the Escrow Agent to whom these instructions are delivered is hereby

empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close the Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and City will cancel its own policies after the Closing. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

If in the opinion of either party it is necessary or convenient in order to accomplish the Closing, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when both City's Conditions Precedent and Developer's Conditions Precedent as set forth in Section 206 have been satisfied. The Escrow Agent is instructed to release City's escrow closing and Developer's escrow closing statements to the respective parties.

**203.3 Authority of Escrow Agent.** The Escrow Agent is authorized to, and shall:

(a) Pay and charge City for the premium of the Title Policy as set forth in Section 205, any amount necessary to place title to the Site in the condition necessary to satisfy Section 204, and the Approved Developer Broker Commission (as determined by the City Manager).

(b) Pay and charge City and Developer for their respective shares of any escrow fees, charges, and costs payable under Section 203.1.

(c) Pay and charge Developer for the cost of an ALTA policy (if any) and for any endorsements to the Title Policy which are requested by Developer as set forth in Section 205 and which are in excess of the premium for the Title Policy payable by City pursuant to Section 205.

(d) Charge the Developer for that amount City Manager informs Escrow Agent as having been expended or incurred by City for the Appraiser under Section 201.

(e) Disburse funds and deliver and record the Site Grant Deed when both City's Conditions Precedent and Developer's Conditions Precedent have been fulfilled or waived by City and Developer.

(f) Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations with respect to the Site under this Agreement.

(g) Within the discretion of the Escrow Agent and, if necessary, direct City and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. City agrees to execute a Certificate of Non-Foreign Status and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by the Escrow Agent, on a form or forms to be supplied by the Escrow Agent.

(h) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

(i) Verify that this Agreement has been properly executed by the parties prior to the Closing.

**203.4 Closing.** The conveyance of the Site shall close by accomplishment of conveyance of the Site to Developer and receipt by City of the Purchase Price (the "Closing") within thirty (30) days after the satisfaction of all of City's and Developer's Conditions Precedent as set forth in Section 206 and no later than the Outside Date; provided that, notwithstanding the foregoing, the Closing may occur after the Outside Date provided that the City Manager designates in writing to the Escrow Holder the Adjusted Purchase Price (as the Purchase Price) and Developer agrees in writing to such Adjusted Purchase Price shall constitute the Purchase Price. The "Closing" shall mean the time and day the Site Grant Deed is filed for record with the Los Angeles County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

**203.5 Termination.** If the Escrow is not in condition to close by the Outside Date, then either party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate the Escrow. If either party makes a written demand for return of documents or properties, Escrow shall not terminate until five (5) days after the Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, the Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of the Escrow shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

**203.6 Closing Procedure.** The Escrow Agent shall close the Escrow for the Site as follows:

- (a) Verify execution of this Agreement by the parties;
- (b) Record the Site Grant Deed, with instructions for the Recorder of Los Angeles County, California to deliver the Site Grant Deed to Developer;
- (c) Instruct the Title Company to deliver the Title Policy to Developer;
- (d) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;
- (e) Deliver the FIRPTA Certificate, if any, to Developer;
- (f) Forward to both City and Developer a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into the Escrow, with such recording and filing date and information endorsed thereon; and
- (g) Record documents requested by Developer subsequent to the recordation of the Site Grant Deed.

**204. Review of Title.** Within sixty (60) days after the Date of Agreement, City shall cause First American Title Company (the "Title Company"), to deliver to Developer an ALTA preliminary title report (the "Report") with respect to the title to the Site, together with legible copies of the

documents underlying the exceptions (“Exceptions”) set forth in the Report. Developer shall have the right to reasonably approve or disapprove the Exceptions.

Within the time set forth in the Schedule of Performance, Developer shall give written notice to City and the Escrow Agent of Developer’s approval or disapproval of any of such Exceptions. Developer’s failure to give written disapproval of the Report within such time limit shall be deemed approval of the Report and the Exceptions set forth therein. If Developer notifies City of its disapproval of any Exceptions in the Report, City shall have the right, but not the obligation, to remove any disapproved Exceptions within five (5) days after receiving written notice of Developer’s disapproval or provide assurances reasonably satisfactory to Developer that such Exception(s) will be removed on or before the Closing. If City cannot or does not elect to remove any of the disapproved Exceptions within that period, City shall provide written notice of such election to Developer within such five (5) day period. Developer shall then have ten (10) business days after the expiration of such five (5) business day period to either give City written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give City written notice that Developer elects to terminate this Agreement. Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company after Developer has approved the Report for the Site (which are not created by Developer). City shall not voluntarily create any new exceptions to title following the Date of Agreement.

**205. Title Insurance.** Concurrently with recordation of the Site Grant Deed conveying title to the Site to Developer, there shall be issued to Developer a CLTA owner’s policy of title insurance (the “Title Policy”), together with such endorsements as are reasonably requested by Developer, issued by the Title Company insuring that the title to the Site is vested in Developer in the condition required by Section 204. The Title Company shall provide City with a copy of the Title Policy. The Title Policy shall be in the amount of the Purchase Price. City shall pay that portion of the premium for the Title Policy equal to the cost of a CLTA standard coverage title policy in the amount of the Purchase Price. Any additional costs, including the cost of an ALTA policy or any endorsements requested by Developer, shall be borne by Developer.

**206. Conditions of Closing.** The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

**206.1 City’s Conditions of Closing.** City’s obligation to proceed with the Closing of the conveyance of the Site is subject to the fulfillment, or waiver by City in writing, of each and all of the conditions precedent (a) through (l), inclusive, described below (the “City’s Conditions Precedent”), which are solely for the benefit of City, and which shall be fulfilled or waived in writing by City by the time periods provided for herein, or if no time period is provided, prior to the Closing:

(a) *No Default.* Prior to the Closing, Developer is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

(b) *Execution of Documents.* Developer shall have executed and delivered into Escrow this Agreement, and any other documents required pursuant to the terms of this Agreement.

(c) *Payment of Closing Costs.* Not later than three (3) business days prior to the Closing, Developer shall have delivered to Escrow its share of costs of the Closing which are



Developer's obligation in accordance with Section 203.1, as well as the cost for the Appraiser if applicable under Section 201.

(d) *Title Policy.* The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide the Title Policy for the Site upon the Closing, in accordance with Section 205.

(e) *Condition of Site.* Developer shall have approved of the physical and environmental condition of the Site.

(f) *Land Use Approvals.* Developer shall have received all land use approvals for the Developer Improvements required pursuant to Section 303 hereof.

(g) *Plans and Permits.* Developer shall have obtained approval of its final building plans for the Developer Improvements and grading, building and other required permits, as applicable, shall be ready to be issued (upon payment of requisite fees, posting of security and similar items).

(h) *Financing.* Developer shall have provided proof satisfactory to City that Developer has sufficient internal funds and/or has obtained a loan or other financing for acquisition of the Site and construction and operation of the Developer Improvements pursuant to Section 309 hereof, the financing is for a Conforming Hotel Facility, and such financing shall close and fund and shall be available to Developer upon the Closing.

(i) *Approved Product.* Developer shall have provided proof satisfactory to City that Developer has secured binding written commitments assuring that a hotel will be developed on the Site that will be a Conforming Hotel Facility (including an Approved Product).

(j) *Approved Operator.* Developer shall have provided proof satisfactory to City that Developer has entered into a binding written agreement or will, upon the conveyance of the Site, enter into such a binding written agreement, with an Approved Operator for operation of a Conforming Hotel Facility in conformity with this Agreement.

(k) *Proof of Insurance.* Developer shall have provided, for City's review and approval, proof of insurance reasonably satisfactory to City in accordance with Section 307.

(l) *Approval of Preliminary Title Report.* Developer shall have approved the Report.

**206.2 Developer's Conditions of Closing.** Developer's obligation to accept conveyance of the Site is subject to the fulfillment or waiver by Developer in writing of each and all of the conditions precedent (a) through (k), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived in writing by Developer by the time periods provided for herein:

(a) *No Default.* City is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of City contained herein shall be true and correct and not misleading in all material respects.

(b) *Execution of Documents.* City shall have executed and delivered into Escrow this Agreement, the Site Grant Deed, and any other documents required pursuant to the terms of this Agreement.

(c) *Payment of Closing Costs.* Prior to the Closing, City has paid or submitted into Escrow all costs of the Closing which are City's obligation in accordance with Section 203.1.

(d) *Title Policy.* The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide the Title Policy for the Site upon the Closing, in accordance with Section 205.

(e) *Environmental Condition of Site.* Developer shall have approved of the environmental condition of the Site.

(f) *Land Use Approvals.* Developer shall have received all land use approvals for the Developer Improvements required pursuant to Section 303.

(g) *Plans and Permits.* Developer shall have obtained approval of its final building plans for the Developer Improvements and grading, building and other required permits, as applicable, shall be ready to be issued (upon payment of requisite fees, posting of security and similar items).

(h) *Financing.* Developer shall have provided proof satisfactory to City that Developer has sufficient internal funds and/or has obtained a loan or other financing for acquisition of the Site and construction and operation of the Developer Improvements pursuant to Section 306 hereof, and such financing shall close and fund and shall be available to Developer upon the Closing.

(i) *Approval of Preliminary Title Report.* Developer shall have approved the Report.

**207. Studies and Reports.** Prior to the Closing and upon Developer's execution of a right of entry agreement to be provided by City (the "Right of Entry Agreement"), representatives of Developer shall have the right of access to all portions of the Site owned by City for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Any preliminary work undertaken on the Site by Developer prior to the Closing shall be done at the sole expense of Developer and Developer shall defend, indemnify and hold City harmless from any claims resulting from all preliminary work, access or use of the Site undertaken pursuant to this Section 207. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

**208. Taxes and Assessments.** Ad valorem taxes and assessments, if any, on the Site levied, assessed, or imposed for any period prior to the Closing, shall be borne by City. All ad valorem taxes and assessments levied or imposed for any period after the Closing shall be paid by Developer.

**209. Condition of the Site.**

**209.1 As-Is Condition.** Notwithstanding any provisions of this Agreement to the contrary (except as set forth in Section 624.2(d) of this Agreement), the Site shall be conveyed in an "as is" condition, with no warranty, express or implied by City, as to the condition of improvements

on the Site, the soil, its geology, the presence of known or unknown faults or Hazardous Materials or toxic substances, and Developer agrees to and shall indemnify and hold City harmless from and against all liability, loss, damages, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the existence of such faults or substances. Notwithstanding the foregoing, Developer shall not be responsible for matters related to any environmental contamination which existed prior to the Closing. It shall be the sole responsibility of Developer at its expense to investigate and determine the soil and improvement conditions for the development to be constructed. If the soil and environmental condition is not in all respects entirely suitable for the use or uses to which the Site will be put, then it is the sole responsibility and obligation of Developer to take such action as may be necessary to place the soil and environmental conditions of the Site in a condition entirely suitable for its development.

**209.2 Investigation of Site.** Developer, upon execution of the Right of Entry Agreement, shall have the right, at its sole cost and expense, to engage its own environmental consultant (the "Environmental Consultant") to make such investigations as Developer deems necessary, including any "Phase I" or "Phase II" investigations of the Site. Developer shall provide City with a copy of any and all studies and reports provided to Developer by the Environmental Consultant, or such other consultant engaged by Developer. The Site is to be sold on a where is, as is basis with no representations as to the Site or its condition being made by City.

**209.3 Approval of Environmental Condition of Site.** Developer shall have the right to approve the environmental condition of the Site prior to Developer's obligation to acquire the Site. Developer shall approve or disapprove of the environmental condition of the Site within ninety (90) days after the Date of Agreement. Developer's approval of the environmental condition of the Site shall be Developer's Condition Precedent to Closing, as set forth in Section 206.2 hereof.

**209.4 Developer's Precautions after Closing.** Upon the Closing, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials in, on or under the Site.

**209.5 Required Disclosures After Closing.** After the Closing, Developer shall notify City, and provide to City a copy or copies, of all notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Developer shall report to City, as soon as possible after each incident, any known Hazardous Materials release or known circumstances which would potentially lead to such a release.

**209.6 Developer Indemnity - Hazardous Materials.** Upon the Closing, Developer agrees to indemnify, defend and hold City, and its respective officers, employees, agents, representatives and volunteers, harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the following occurring subsequent to the Closing (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials

to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment.

### **300. DEVELOPMENT OF PROJECT SITE**

**301. Scope of Development.** Developer shall within the time set forth in the Schedule of Performance develop or cause the development of the Developer Improvements in accordance with the Scope of Development, City Code, all entitlements and approvals for the Site, and the plans, drawings and documents submitted by Developer and approved by City as set forth herein. Developer shall, without limitation, apply for and secure, and pay all costs, charges and fees associated therewith, all permits and fees required by City, County, and other governmental agencies with jurisdiction over the Developer Improvements.

**302. Construction Drawings and Related Documents.** Prior to commencement of construction, Developer shall prepare and submit to City, design development drawings, construction drawings, landscape plans, and related documents required for the development of the Site and the construction of the Developer Improvements (the "Construction Drawings"). City shall have the right of review of all Construction Drawings, including any proposed changes therein. City shall not be responsible either to Developer or to third parties in any way for any defects in the Construction Drawings, nor for any structural or other defects in any work done according to the approved Construction Drawings, nor for any delays reasonably caused by the review and approval processes conducted by City. Any and all change orders or revisions required by City and its inspectors under the City Code, including without limitation, all applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by Developer in its Construction Drawings and other required submittals and shall be completed during the construction of the Developer Improvements.

**302.1 City Review and Approval.** City shall, under its police powers and without regard to other provisions set forth in this Agreement, to review and approve, conditionally approve, or disapprove the Construction Drawings and all other submittals as provided under the City Code; nothing set forth in this Agreement shall be deemed to constitute, *ipso facto*, approval by City of the Construction Drawings or other submittals.

**303. Land Use Approvals.** Prior to commencement of construction of the Developer Improvements or other works of improvement upon the Site by Developer, Developer shall, at its own expense, secure or cause to be secured any and all land use approvals, encroachments permits (if applicable), and other entitlements, and approvals, including environmental approvals, which may be required by City and/or any other governmental agency affected by such construction or work for the Developer Improvements. Developer shall, without limitation, apply for and secure all permits required by City, the County and other governmental agencies with jurisdiction over the Developer Improvements.

**304. Schedule of Performance.** Developer shall submit the Construction Drawings, commence and complete all construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance. During the course of construction and prior to issuance of the Release of Construction Covenants, Developer shall provide timely reports of the progress of construction when requested by the City Manager. Developer shall complete construction of all of the Developer Improvements within the respective times established therefor in the Schedule of Performance. The Schedule of Performance is subject to revision from time-to-time as mutually agreed upon in writing by Developer and City and City is authorized to make such revisions as it deems reasonably necessary.

**305. Cost of Construction.** All of the cost of planning, designing, developing and constructing the Developer Improvements shall be borne solely by Developer.

**306. Financing of the Developer Improvements.**

**306.1 Approval of Financing.** As required herein and as one of City's Conditions Precedent, Developer shall submit evidence that Developer has or has obtained sufficient equity capital and/or has obtained firm and binding commitments for construction financing necessary to undertake the acquisition and development of the Site and the construction and operation of the Developer Improvements in accordance with this Agreement, to City for review and approval. Such review and approval or disapproval of financing commitments shall be made within fifteen (15) days of receipt of a complete submission. City shall not unreasonably withhold, delay or condition such approval. If City shall disapprove any such evidence of financing, it shall do so by notice to Developer stating the reasons for such disapproval, in which event Developer shall use commercially reasonable efforts to promptly obtain and submit new evidence of financing. City shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 306.1 for the approval or disapproval of the evidence of financing as initially submitted. Developer shall close any approved construction financing prior to or concurrently with the Closing.

Such evidence of financing shall include the following: (a) a copy of an enforceable loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for construction financing for the Developer Improvements, subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) evidence reasonably acceptable to City that Developer has sufficient funds for such construction, and that such funds have been committed to such construction, and/or other documentation satisfactory to City as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the acquisition of the Site and construction and completion of the Developer Improvements, less financing authorized by those loans set forth in subparagraph (a) above, and (c) evidence of sufficient capital to operate the Developer Improvements in accordance with the Scope of Development.

**306.2 Holder Not Obligated to Construct Improvements.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Developer Improvements or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement. Notwithstanding the foregoing, City shall reasonably cooperate with Developer's construction and permanent lenders

in connection with the permitted use or uses to which such lender may devote the Site following a foreclosure or deed in lieu of foreclosure.

**306.3 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.** With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever City may deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Developer Improvements, City shall at the same time deliver to each holder of record of any mortgage or deed of trust a copy of such notice or demand. Each such holder shall (insofar as the rights granted by City are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Developer Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City by written agreement reasonably satisfactory to City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 312, to a Release of Construction Covenants.

**307. Insurance Requirements.** Developer shall take out and maintain or shall cause its contractor to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 312, a comprehensive general liability policy in the amount of Two Million Dollars (\$2,000,000.00) combined single limit policy, and a comprehensive automobile liability policy in the amount of Five Hundred Thousand Dollars (\$500,000.00), combined single limit, or such other policy limits as City may approve at its discretion, including contractual liability, as shall protect Developer and City from claims for such damages. Such policy or policies shall be written on an occurrence form. Developer shall also furnish or cause to be furnished to City evidence satisfactory to City that Developer and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Developer shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City. The required certificate shall be furnished by Developer prior to the commencement of construction of the Developer Improvements.

**308. Indemnity.** Developer shall defend (by counsel satisfactory to City), indemnify and save and hold harmless City and its officers, contractors, agents and employees (collectively, the "Indemnitees") from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising from or relating to: (i)

this Agreement (including all provisions hereof); (ii) compliance with applicable laws; (iii) a claim, demand or cause of action that any person has or asserts against Developer; (iv) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Site; (v) those matters set forth in Section 101.2 hereof; or (vi) the ownership, occupancy or use of the Site and any portions thereof. Notwithstanding the foregoing, Developer shall not be obligated to indemnify City with respect to the consequences of any act of gross negligence not contributed to by Developer or willful misconduct of City. Developer's obligations under this Section 308 shall survive the issuance of the Release of Construction Covenants and termination of this Agreement; the requirements under this Section 308 are in addition to and do not limit the obligations of Developer under the Site Grant Deed.

Developer shall reimburse City immediately upon written demand for all costs reasonably incurred by City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the this Agreement and all related matters including the following: (a) City's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to this Agreement or the Site Grant Deed, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under this Agreement or the Site Grant Deed. Such reimbursement obligations shall bear interest at the rate of seven percent (7%) simple per annum (or, if lower, the highest non-usurious interest rate that may be charged) based upon the amounts and times of disbursement by City, provided that City gives written demand to Developer. Such reimbursement obligations shall survive the issuance of the Release of Construction Covenants and termination of this Agreement and are in addition to and do not limit the obligations of Developer under the Site Grant Deed or other instruments associated with the conveyance of any portion of the Site.

Upon the Closing, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials. Notwithstanding anything contained herein to the contrary, Developer shall not indemnify City for any claims arising from City's gross and active negligence or City's willful misconduct so long as the loss alleged is not caused or contributed to by Developer and the foregoing indemnification shall not apply to the presence, use, release, escape, seepage, leakage, spillage, emission, or discharge of any Hazardous Materials in, on, under, or about the Site where such Hazardous Material existed on the property prior to the Closing.

**308.1 Developer's Indemnity.** Developer shall defend, indemnify, assume all responsibility for, and hold harmless City, and its representatives, volunteers, officers, employees and agents, from and against all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which are legally caused by any acts or omissions of Developer under this Agreement, whether such activities or performance thereof be by Developer or by anyone directly or indirectly employed or contracted with by Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement.

**308.2 City's Indemnity.** City shall defend, indemnify, assume all responsibility for, and hold harmless Developer, and its representatives, volunteers, officers, employees and agents, from and against all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which are legally caused by any acts or omissions of City under this Agreement, whether such activities or performance thereof be by City or by anyone directly or indirectly employed or contracted with by City and whether such damage shall accrue or be discovered before or after termination of this Agreement.

**309. Rights of Access.** Representatives of City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Developer Improvements so long as City representatives comply with all generally applicable safety rules.

**310. Compliance with Laws.** Developer shall carry out the design and construction of the Developer Improvements in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of City Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Sections 12101, et seq., California Government Code Sections 4450, et seq., California Government Code Sections 11135, et seq., and the Unruh Civil Rights Act, California Civil Code Sections 51, et seq.

**310.1 Nondiscrimination in Employment.** Developer certifies and agrees that, to the extent applicable to it, all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Sections 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Sections 12900, et seq., the California Equal Pay Law, California Labor Code Sections 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, et seq., and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of City access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by City.

**310.2 Public Works Requirements.** Developer shall carry out the construction of the Developer Improvements and the development of the Site in conformity with all applicable federal and state labor laws (including, without limitation, if applicable, the requirement under California law to pay prevailing wages and to hire apprentices). Although the parties believe that the Developer Improvements are not considered to be a "public work" under California law because the Site is being sold for a price not less than the appraised fair market value of the Site, Developer shall be solely responsible for determining and effectuating compliance with such laws, and City makes no representation as to the applicability or non-applicability of any of such laws to the Developer Improvements or any part thereof. Developer hereby expressly acknowledges and agrees that City has



not previously affirmatively represented to Developer or its contractor(s) for the construction or development of the Developer Improvements, in writing or otherwise, in a call for bids or otherwise, that the work to be covered by this Agreement is not a "public work," as defined in Section 1720 of the Labor Code. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. Developer shall indemnify, protect, defend and hold harmless City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 310.2, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Developer Improvements by Developer.

**311. Taxes and Assessments.** Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site incurred after the Closing. Developer shall remove or have removed any levy or attachment for any taxes and assessments incurred after the Closing, made on the Site, or any part thereof, or assure the satisfaction thereof within a reasonable time.

**312. Release of Construction Covenants.** Promptly after completion of the Developer Improvements in conformity with this Agreement, City shall furnish Developer with the Release of Construction Covenants. City shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Developer Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those matters which constitute continuing obligations of Developer under the Site Grant Deed or otherwise under this Agreement. If City refuses or fails to furnish the Release of Construction Covenants for the Site after written request from Developer, City shall, within thirty (30) working days of such written request, provide Developer with a written statement setting forth the reasons City has refused or failed to furnish the Release of Construction Covenants for the Site. The statement shall also contain a list of the actions Developer must take to obtain a Release of Construction Covenants.

Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code, Section 3093.

#### **400. COVENANTS AND RESTRICTIONS**

##### **401. [Reserved].**

**402. Maintenance Covenants.** Developer covenants and agrees for itself, its successors and assigns and any successor in interest to the Site or part thereof to maintain the Site and all improvements thereon in compliance with all applicable provisions of the City Code.

**403. Nondiscrimination Covenants.** Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site. The foregoing covenants shall run with the land.

Developer shall refrain from restricting the rental, sale or lease of the Site on any of the bases listed above in this Section 403. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds. "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases. "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased

nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 premises herein leased.”

(c) In contracts. “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

**404. Effect of Violation of the Terms and Provisions of this Agreement.** City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether City has been, remains or is an owner of any land or interest therein in the Site. City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

## **500. DEFAULTS, REMEDIES, AND TERMINATION**

**501. Default Remedies.** Subject to the extensions of time set forth in Section 702 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a “Default” under this Agreement. A party claiming a Default (the “Claimant”) shall give written notice to the other party specifying the alleged grounds for the Default (the “Default Notice”). Except as otherwise expressly provided in this Agreement, the Claimant shall not institute any proceeding against any other party and the other party shall not be in Default if such party within forty-five (45) days from receipt of the notice required by this Section 501 immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

**502. Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Central District of California.

**503. Termination by Developer.** In the event that as of the time designated therefor in this Agreement (and if no time is described below, the time established in this Agreement for the satisfaction of the City’s Conditions Precedent):

**503.1 Termination Prior to the Closing.** In the event that prior to the Closing:

- (a) Developer is not in default under this Agreement, Developer has not notified City that the condition of the Site is acceptable; or
- (b) Developer is not in default under this Agreement and City does not execute the Site Grant Deed and attempt to effect the conveyance of the Site to Developer in the manner and condition and by the date provided in this Agreement; or
- (c) in the event of any default of City prior to the conveyance of the Site which is not cured within the time set forth in Section 501 hereof; and

any such failure is not cured within the applicable time period after written demand by Developer, then this Agreement may, at the option of Developer, be terminated by Notice thereof to City. From the date of the Notice of termination of this Agreement by Developer to City and thereafter, and this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties.

**504. Termination by City.**

**504.1 Termination Prior to the Closing.** In the event that as of the time established therefor in this Agreement, but not later than the time established for the satisfaction of the City's Conditions Precedent:

- (a) Developer (or any successor in interest) assigns this Agreement or any rights therein or in the Site in violation of this Agreement; or
- (b) City has not received notification from Developer that the condition of the Site is satisfactory; or
- (c) One of more of the City's Conditions Precedent is not satisfied; or
- (d) Developer fails to execute the Site Grant Deed; or
- (e) Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof;

then this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site (including without limitation all attachments to this Agreement), shall, at the option of City, be terminated by City by Notice thereof to Developer. From the date of the Notice of termination of this Agreement by City to Developer and thereafter this Agreement (including without limitations all attachments hereto) shall be deemed terminated excepting that Developer shall have conveyed or caused to be conveyed to City (or a nominee designated by City for such purpose) the Site, unless Developer is otherwise instructed by the City Manager in writing that mentions this Section 504 and there shall be no further rights or obligations among the parties, except that City may pursue any remedies it has hereunder.

**505. Reentry and Revesting of Title in City after the Closing and Prior to Completion of Construction.** City has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in City the estate conveyed to Developer if after the

Closing and prior to the issuance of the Release of Construction Covenants, Developer (or its successors in interest) shall:

(a) fail to start the construction of the Developer Improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from City; or

(b) abandon or substantially suspend construction of the Developer Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from City;

(c) fail to complete the Developer Improvements required by this Agreement within the time frame set forth in the Schedule of Performance; or

(d) transfer or suffer any involuntary transfer of the Site or any part thereof in violation of Section 625 of this Agreement.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit: (i) any mortgage or deed of trust permitted by this Agreement; or (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Site Grant Deed shall contain appropriate reference and provision to give effect to City's right as set forth in this Section 505, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in City the estate conveyed to Developer. Upon the revesting in City of title to the Site as provided in this Section 505, City shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as City shall find feasible, to a qualified and responsible party or parties (as determined by City) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to City. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(i) First, to reimburse City, on its own behalf or on behalf of City, all costs and expenses incurred by City, excluding City staff costs, but specifically, including, but not limited to, any expenditures by City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by City from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Developer has not paid (or, in the event that the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by City, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Developer Improvements or any part thereof; and any amounts otherwise owing City, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the

improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by City as its property. The rights established in this Section 505 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that City will have conveyed the Site to Developer for economic development purposes, and not for speculation in undeveloped land.

**506. Acceptance of Service of Process.** In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer or in such other manner as may be provided by law.

**507. Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**508. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**509. Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

## **600. GENERAL PROVISIONS**

**601. Notices, Demands and Communications between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Agreement must be in writing and shall be sufficiently given if delivered by hand (and a receipt therefor is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by telecopy or overnight delivery service to:

To City:           City of Lancaster  
                      44933 North Fern Avenue  
                      Lancaster, California 93534  
                      Attention: City Manager

To Developer: Cornerstone Investment Group, LLC  
Attention: Bobby Damani  
1712 N. Beverly Glen Blvd.  
Bel Air, California 90077

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 601.

**602. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; delays of any contractor, sub-contractor or supplier; or withdrawal of financing not caused by any act or omission of Developer; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within forty-five (45) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Developer Improvements shall not constitute valid grounds of enforced delay pursuant to this Section 602.

**603. Non Liability of Officials and Employees of City.** No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due under the terms of this Agreement.

**604. Relationship between Parties.** It is hereby acknowledged that the relationship between the parties is not that of a partnership or joint venture and that no party shall be deemed or construed for any purpose to be the agent of any other party. Accordingly, except as expressly provided herein or in the Exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site. Developer agrees to indemnify, hold harmless and defend City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Developer with respect to the development, operation, maintenance or management of the Site.

**605. City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

**606. Commencement of City Review Period.** The time periods set forth herein for City's approval of agreements, plans, drawings, or other information submitted to City by Developer and for any other City consideration and approval hereunder which is contingent upon documentation required

to be submitted by Developer shall only apply and commence upon Developer's complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any of City's obligations of review and/or approval hereunder; provided, however, that City shall notify Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for City's action on the particular item in question.

**607. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in two (2) originals, each of which is deemed to be an original.

**608. Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**609. [Intentionally Omitted.]**

**610. Real Estate Brokerage Commission.** As of the date of this Agreement, the only real estate broker involved with this project is Charles Hoey & Associates ("Developer's Broker"). Provided that the sale of the Site to Developer is accomplished in accordance with this Agreement, Developer's Broker is to receive a commission as more particularly described in Section 203 of this Agreement; no remuneration of any kind shall be payable to Developer's Broker in the event that, for whatever reason, the conveyance of the Site from City to Developer is not accomplished. Except only for the commission for the Developer's Broker as described in Section 203 of this Agreement but in no event to exceed the Approved Developer Broker Commission, Developer agrees to indemnify, defend, and hold harmless City and its officials, employees, agents and representatives from and against any real estate broker or finder's commissions or fees or claims thereto alleged to be owed in connection with the Site, which may be the responsibility of Developer.

**611. Administration.** This Agreement shall be administered and executed by City Manager, or his or her designated representative, following approval of this Agreement by City. City shall maintain authority of this Agreement through the City Manager (or his or her authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of City so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to City as specified herein as agreed to by the City Council, and such amendments may include extensions of time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the City Council.

**612. Amendments of Agreement.** The parties agree to mutually consider reasonable requests for amendments to this Agreement. Developer shall be responsible for the costs incurred by City, including without limitation attorneys' fees (the "Developer Costs"), in connection with any amendments to this Agreement which are requested by Developer (the "Developer Request"). Developer shall be responsible for payment of Developer Costs as provided in this Section 612 regardless of the outcome of Developer Request.



**613. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**614. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by the parties.

**615. No Waiver.** A waiver by any party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**616. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**617. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**618. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**619. Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**620. Time of Essence.** Time is expressly made of the essence with respect to the performance of each and every obligation and condition of this Agreement.

**621. Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**622. Conflicts of Interest.** No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee

participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**623. Time for Acceptance of Agreement by City.** This Agreement, when executed by Developer and delivered to City, must be authorized, executed and delivered by City within forty five (45) days or this Agreement shall be void, except to the extent that the parties shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

**624. Representations and Warranties.**

**624.1 Developer's Representations and Warranties.** Developer hereby makes the representations and warranties contained below in this Section 624.1. All of the representations and warranties set forth in this Section 624.1 are effective as of the Date of Agreement. All of the representations and warranties set forth in this Section 624.1 are made with the acknowledgment that they are material, and with the intention that City shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 624.1 shall each survive the execution of this Agreement without limitation as to time.

(a) *Authority.* Developer is a California limited liability company. Developer has full right, power and lawful authority to undertake all obligations as provided herein.

(b) *No Conflict.* Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) *No Bankruptcy.* Developer is not the subject of a bankruptcy proceeding.

(d) *Deliveries.* All documents, instruments and other information delivered by Developer to City pursuant to this Agreement are true, correct and complete.

Each of the foregoing items (a) to (d), inclusive shall be deemed to be an ongoing representation and warranty. Developer shall advise City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (d), inclusive.

**624.2 City's Representations and Warranties.** City hereby makes the representations and warranties contained below in this Section 624.2. All of the representations and warranties set forth in this Section 624.2 are effective as of the Date of Agreement. All of the representations and warranties set forth in this Section 624.2 are made with the acknowledgment that they are material, and with the intention that Developer shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 624.2 shall each survive the execution of this Agreement without limitation as to time.

(a) *Authority.* City has full right, power and lawful authority to undertake all obligations as provided herein.

(b) *No Conflict.* City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(c) *Deliveries.* All documents, instruments and other information delivered by City to Developer pursuant to this Agreement are true, correct and complete.

(d) *Knowledge.* City is not aware of any existing state or condition of the property, including, but not limited to the presence of Hazardous Materials or toxic substances, that may preclude Developer from carrying out the Developer Improvements as contemplated in this Agreement.

Each of the foregoing items (a) to (d), inclusive shall be deemed to be an ongoing representation and warranty. City shall advise Developer in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (d), inclusive.

## **625. Transfers of Interest in Site or Agreement.**

**625.1 Prohibition.** The qualifications and identity of Developer are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with Developer. For the period commencing upon the Date of Agreement and until the issuance of the Release of Construction Covenants, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, grant, transfer, conveyance, assignment, subdivision or lease of the whole or any part of the Site or the Developer Improvements without prior written approval of City, except as expressly set forth herein.

**625.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Site or the Developer Improvements, or any part thereof, shall not be required in connection with any of the following:

(a) The conveyance or dedication of any portion of the Site to City or other appropriate governmental agency, or the granting of easements or permits necessary in order to facilitate construction of the Developer Improvements.

(b) Any transfer to an entity or entities in which Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

**625.3 City Consideration of Requested Transfer.** City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 625, provided Developer delivers written notice to City requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 625 and as reasonably determined by City. City shall evaluate each proposed transferee or assignee on the basis of its development and/or operational qualifications and experience and its financial commitments and resources, and may reasonably disapprove any proposed transferee or

assignee, during the period for which this Section 625 applies, which City determines does not possess equal or better qualifications than Developer. An assignment and assumption agreement in a form satisfactory to City's legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of Developer's written notice requesting City approval of an assignment or transfer pursuant to this Section 625, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to City such further information as may be reasonably requested.

**625.4 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted and/or approved successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted and/or approved successors and assigns as herein provided.

**625.5 Assignment by City.** City may assign or transfer any of its rights or obligations under this Agreement at its sole discretion.

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

**CITY:**

**CITY OF LANCASTER**, a charter city and  
California municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**DEVELOPER:**

**CORNERSTONE INVESTMENT GROUP, LLC**,  
a California limited liability company

By: Benedict A. D'Amico  
Its: PRESIDENT & CEO

## EXHIBIT A

### SCHEDULE OF PERFORMANCE

For the purposes of this Schedule of Performance, the "Date of Agreement" is September 11, 2018. The City Manager may extend by not more than three hundred sixty (360) days, as all such extensions are aggregated, the time under this Schedule of Performance by which any obligation of Developer shall be performed; provided that it is contemplated that the discretion of the City Manager to extend times for performance shall not be exercised absent exigent circumstances.

1. Submittal for Land Use Approvals. On or before March 11, 2019.  
Developer submits to City for all land use approvals required for the Developer Improvements, including, if applicable, any conditional use permits.
2. Opening of Escrow. Escrow opened as to the Site. Within ten (10) days after Developer submits to City for all land use approvals required for the Developer Improvements.
3. Developer Approval as to Title, Condition of Site. Developer confirms in writing to the City Manager that the condition of the Site and the condition of title are acceptable. On or before March 11, 2019, and in any event, before the Closing.
4. Conditions Precedent are Satisfied. The City's Conditions precedent and the Developer's Conditions precedent are satisfied. On or before September 11, 2019, and in any event, prior to Closing.
5. The Site Grant Deed is Recorded. The Site Grant Deed is recorded. Within thirty (30) days after the City's Conditions Precedent are satisfied and not later than the first anniversary of the Date of Agreement.
6. Commencement of Construction. The Developer shall have commenced construction of the Developer Improvements. Within thirty (30) days after the Closing.
7. Completion of Construction. Developer shall complete construction of the Developer Improvements. By the earlier to occur of: (i) the first anniversary of the Closing or (ii) the second anniversary of the Date of Agreement.

## EXHIBIT B

### SCOPE OF DEVELOPMENT

#### I. GENERAL DESCRIPTION

The Site is specifically delineated on the Site Map and the Site Legal Description.

#### II. DEVELOPMENT

The Developer shall construct a hotel consisting of between 90 and 120 rooms available for rental occupancy, with the hotel to consist of 4 stories. The hotel shall include parking, landscaping and such offsite improvements as are required, including without limitation landscaping and all features, including without limitation mitigation measures, offsite improvements, and payment of fees, in connection with the City approval (acting in its police power and not by the approval of this Agreement) of the development of the Site. In addition, the hotel shall include all features necessary in order for the hotel to meet the specifications for a hotel that is an Approved Product classified as upscale or better on the STR chain scale. A hotel facility meeting the foregoing shall constitute a "Conforming Hotel Facility."

All such approvals, including without limitation, the payment of fees to governmental agencies required in connection therewith, shall constitute the "Developer Improvements." The quality of construction shall be of a high level. Construction shall conform to such Construction Drawings, if any, as are hereafter approved by City.

The Developer shall be responsible for any demolition, grubbing, and grading as necessary to accomplish the construction of the Developer Improvements.

The Developer shall commence and complete the Developer Improvements by the respective times established therefor in the Schedule of Performance.

#### III. DEVELOPMENT STANDARDS

The Improvements shall conform to all applicable state laws and regulations and to local zoning, applicable provisions of the City Code and the following development standards:

##### A. General Requirements:

1. **Design.** The design of the development shall conform to the general design for the Front Row Center area created by CSA Partners Ltd.

2. **Vehicular Access.** The placement of vehicular driveways shall be coordinated with the needs of proper street traffic flow as approved by City. In the interest of minimizing traffic congestion, City will control the number and location of curb breaks for access to the Site for off-street parking and truck loading. The planning for vehicular areas shall specifically address the use of bicycles. All access driveways shall require written approval of City staff.

3. **Building Signs.** Signs shall be limited in size, subdued and otherwise designed to contribute positively to the environment. Signs identifying the building use will be permitted, but

their height, size, location, color, lighting and design will be subject to City staff approval, and signs must conform to the City Code.

**4. Screening.** All outdoor storage of materials or equipment shall be enclosed or screened to the extent and in the manner required by City staff and the Lancaster Business Park Specific Plan.

**5. Landscaping.** The Developer shall provide and maintain landscaping within the Site, including the public rights-of-way and within setback area along all street frontages and conforming to the plans as hereafter approved by City. Landscaping shall consist of trees, drought-tolerant plants, and installation of an automatic irrigation system adequate to maintain such plant material. The type and size of trees to be planted, together with a landscaping plan, shall be subject to City staff approval prior to planting.

**6. Utilities.** All utilities on the Site shall be underground at Developer's expense.

**7. Building Design.** Buildings shall be constructed such that the Developer Improvements shall be of high architectural quality, and shall be effectively and aesthetically designed and in conformance with City approvals.

**8. Mitigation Measures.** Mitigation measures approved in connection with the development of the Site under the California Environmental Quality Act (CEQA).

**B. Design Features:**

The following design features are considered essential components to the Improvements:

Security - The details of security will be reviewed upon submission of the detailed plans.

Overall Design Quality, Materials, Colors, Design Features - Quality of design is important, materials and colors are to be approved by City.

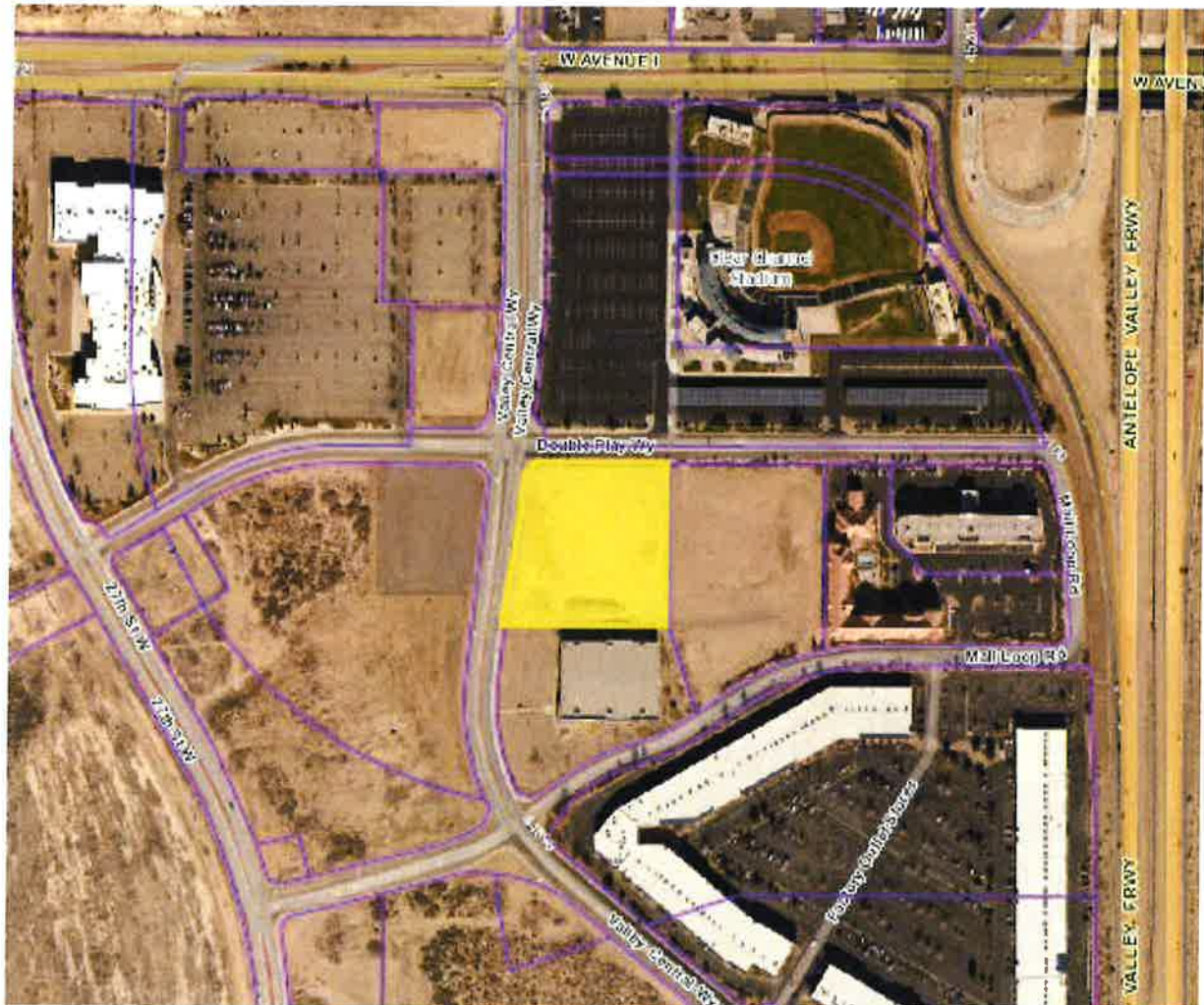
**IV. DEMOLITION AND SOILS**

The Developer assumes all responsibility for surface and subsurface conditions at the Site, and the suitability of the Site for the Improvements. The Developer has undertaken all investigation of the Site as it shall deem necessary and has not received or relied upon any representations of City, or its respective officers, agents and employees.



**EXHIBIT C**

**SITE MAP**



**EXHIBIT D**

**SITE LEGAL DESCRIPTION**

The South half of Parcel 5 of Parcel Map No. 24368, in the County of Los Angeles, State of California, as per map recorded in Book 273, Pages 65-70 of maps, in the office of the County Recorder of said County.

APN: 3153-015-958

**EXHIBIT E**  
**SITE GRANT DEED**

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

Cornerstone Investment Group, LLC  
Attention: Bobby Damani  
1712 N. Beverly Glen Blvd.  
Bel Air, California 90077

---

[Space above for recorder.]

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged, the **CITY OF LANCASTER**, a charter city and California municipal corporation (the "Grantor"), hereby grants to **CORNERSTONE INVESTMENT GROUP, LLC**, a California limited liability company (the "Grantee"), the real property hereinafter referred to as the "Site," described in Attachment No. 1 attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

1. Grantor excepts and reserves from the conveyance herein described all interest of Grantor in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet below the surface, together with the right to drill into, through and to use and occupy all parts of the Site lying more than five hundred (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said Site or other lands, but without, however, any right to use either the surface of the Site or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the Site in such a manner as to create a disturbance to the use or enjoyment of the Site.

2. The Site is conveyed in accordance with and subject to the Disposition and Development Agreement entered into between Grantor and Grantee dated September 11, 2018 (the "DDA"), a copy of which is on file with Grantor at its offices as a public record and which is incorporated herein by reference. All terms used herein shall have the same meaning as those used in the DDA

3. Grantor has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in Grantor the estate conveyed to Grantee if after the Closing but prior to the issuance and recordation of the Release of Construction Covenants, Grantee (or its successors in interest) shall:

- a. Fail to start the construction of the Developer Improvements as required by the DDA for a period of thirty (30) days after written notice thereof from City; or

- b. Abandon or substantially suspend construction of the Developer Improvements required by the DDA for a period of thirty (30) days after written notice thereof from City; or
- c. Fail to complete construction of the Developer Improvements required by the DDA within the time frame set forth in the Schedule of Performance contained therein; or
- d. Transfer or suffer any involuntary transfer of the Site or any part thereof in violation of Section 625 of the DDA.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit: (i) any mortgage or deed of trust permitted by the DDA; or (ii) any rights or interests provided in the DDA for the protection of the holders of such mortgages or deeds of trust.

Upon the revesting in Grantor of title to the Site as provided in this Section 3, Grantor shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site for fair market value as soon and in such manner as Grantor shall find feasible to a qualified and responsible party or parties (as determined by Grantor) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to Grantor. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

- i. First, to reimburse Grantor all costs and expenses reasonably incurred by Grantor, excluding City staff costs, but specifically, including, but not limited to, any expenditures by Grantor in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by Grantor from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Grantee has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by Grantor, an amount, if paid, equal to such taxes, assessments or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in Grantor, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing Grantor, and in the event additional proceeds are thereafter available, then
- ii. Second, to reimburse Grantee, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Grantee from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Grantor as its property. The rights established in this Section 3 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that Grantor will have conveyed the Site to Grantee for economic development purposes, and not for speculation in undeveloped land.

4. Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site. The foregoing covenants shall run with the land.

Grantee shall refrain from restricting the rental, sale or lease of the Site on any of the bases listed above in this Section 4. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds. "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases. "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 premises herein leased."

(c) In contracts. "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

**GRANTOR:**

**CITY OF LANCASTER**, a charter city and  
California municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**GRANTEE:**

**CORNERSTONE INVESTMENT GROUP, LLC**,  
a California limited liability company

By: Badriddin A. Damani  
Its: PRESIDENT & CEO

**ATTACHMENT NO. 1**

**SITE LEGAL DESCRIPTION**

The South half of Parcel 5 of Parcel Map No. 24368, in the County of Los Angeles, State of California, as per map recorded in Book 273, Pages 65-70 of maps, in the office of the County Recorder of said County.

APN: 3153-015-958

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES ) ss.  
 )

On AUGUST 28, 2018, before me, MARIA J. MORRIS, Notary Public,  
(Print Name of Notary Public)

personally appeared BADRUDDIN SAMANI

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

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



WITNESS my hand and official seal.

Maria J. Morris

Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above



**EXHIBIT F**

**RELEASE OF CONSTRUCTION COVENANTS**

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

Cornerstone Investment Group, LLC  
Attention: Bobby Damani  
1712 N. Beverly Glen Blvd.  
Bel Air, California 90077

[Space above for recorder.]

**RELEASE OF CONSTRUCTION COVENANTS**

**THIS RELEASE OF CONSTRUCTION COVENANTS** (the “Release”) is made by the **CITY OF LANCASTER**, a charter city and California municipal corporation (“City”), in favor of **CORNERSTONE INVESTMENT GROUP, LLC**, a California limited liability company (“Developer”), as of the date set forth below.

**RECITALS**

A. City and Developer have entered into that certain Disposition and Development Agreement (the “DDA”) dated September 11, 2018, concerning the redevelopment of certain real property situated in the City of Lancaster, California as more fully described in Attachment No. 1 attached hereto and made a part hereof. All capitalized terms utilized herein and not otherwise defined shall have the same meaning as set forth in the DDA.

B. As referenced in Section 412 of the DDA, City is required to furnish Developer or its successors with a Release of Construction Covenants upon completion of construction of the Developer Improvements which Release is required to be in such form as to permit it to be recorded in the Recorder’s Office of Los Angeles County. This Release is conclusive determination of satisfactory completion of the construction and development required by the DDA.

C. City has conclusively determined that such construction and development has been satisfactorily completed.

**NOW, THEREFORE**, City hereby certifies as follows:

1. The Developer Improvements to be constructed by Developer have been fully and satisfactorily completed in conformance with the DDA. All covenants relating to operating requirements, and use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the DDA.

IN WITNESS WHEREOF, City has executed this Release this day of \_\_\_\_\_, 201\_\_.

**CITY:**

**CITY OF LANCASTER**, a charter city and California municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ATTACHMENT NO. 1**  
**SITE LEGAL DESCRIPTION**

The South half of Parcel 5 of Parcel Map No. 24368, in the County of Los Angeles, State of California, as per map recorded in Book 273, Pages 65-70 of maps, in the office of the County Recorder of said County.

APN: 3153-015-958

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

**DISPOSITION AND DEVELOPMENT AGREEMENT**

By and Between

**THE CITY OF LANCASTER**

and

**CORNERSTONE INVESTMENT GROUP, LLC**

(APN 3153-015-959)

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## DISPOSITION AND DEVELOPMENT AGREEMENT

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (this “Agreement”) is entered into and effective as of September 11, 2018 (the “Date of Agreement”), by and between the **CITY OF LANCASTER**, a charter city and California municipal corporation (“City”), and **CORNERSTONE INVESTMENT GROUP, LLC**, a California limited liability company (“Developer”), with reference to the following facts, intentions and understandings.

### RECITALS

A. City is the fee owner of that certain property defined as the “Site”, which property is depicted in the “Site Map” (Exhibit C) and described in the “Site Legal Description” (Exhibit D).

B. Developer has proposed to City that Developer shall purchase the Site from City, upon which occurrence Developer shall proceed to construct certain improvements described herein as the “Developer Improvements” and to cause the opening of a “Conforming Hotel”, as defined below. The sale of the Site to Developer shall be accomplished at a price which constitutes a fair value price based upon the market value of the Site. No assistance is being provided to Developer under this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereto agree as follows:

### 100. DEFINITIONS

**“Adjusted Purchase Price”** has the meaning set forth therefor in Section 201.

**“Agreement”** means this Disposition and Development Agreement by and between City and Developer.

**“Appraiser”** is defined in Section 201.

**“Approved Developer Broker Commission”** means that amount hereafter approved by the City Manager as payable to Developer’s Broker from the proceeds of sale of the Site.

**“Approved Operator”** means a corporation or other business entity which has substantial experience in the operation of hotels that are Approved Products and which is approved by the City Manager.

**“Approved Product”** means (i) a hotel with the brand of DoubleTree, Hilton Garden Inn, or Hyatt and which is classified as upscale or better on the STR chain scale or (ii) such other hotel having a brand or similar designation as may be approved by the City Manager acting in his sole discretion.

**“City”** means the City of Lancaster, a charter city and California municipal corporation.

**“City Code”** means the Municipal Code of the City of Lancaster, including the Uniform Codes, all as amended from time to time.

**“City Manager”** means the City Manager of the City, or his or her designee.

**“City’s Conditions Precedent”** is defined in Section 206.1.



**“Closing”** is defined in Section 203.4.

**“Closing Date”** is defined in Section 203.4.

**“Conforming Hotel Facility”** means a hotel which conforms to all of the following: (i) the improvements conform to the Scope of Development; (ii) the cost of the hotel shall not be less than the Minimum Required Cost; and (iii) the hotel is an Approved Product and is to be operated by an Approved Operator.

**“Developer’s Conditions Precedent”** is defined in Section 206.2.

**“Developer Improvements”** has the meaning established therefor in the Scope of Development.

**“Environmental Consultant”** is defined in Section 209.2.

**“Escrow”** is defined in Section 203.

**“Escrow Agent”** is defined in Section 203.

**“Exceptions”** is defined in Section 204.

**“Governmental Requirement(s)”** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State of California, the County of Los Angeles, City or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Developer or the Site.

**“Hazardous Materials”** means any substance, material or waste which is or becomes, prior to the Closing, regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq.* (42 U.S.C. Section 6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 6901, *et seq.*

**“Minimum Required Cost”** means a cost that meets both of the following criteria: (i) not less than Eighty Six Thousand Dollars (\$86,000.00) per room (as calculated by dividing the sum of the cost for the shell, on-site improvements, and furnishings, fixtures and equipment, by the number of rentable

rooms with sleeping quarters), and (ii) not less than Eight Million, One Hundred Seventy Thousand Dollars (\$8,170,000.00) as aggregated as to shell construction cost.

**“Outside Date”** means the first anniversary of the Date of Agreement.

**“Principals”** means Bobby Damani.

**“Purchase Price”** means the following: (i) provided that the Site is conveyed to Developer on or before the Outside Date, the sum of One Million, Twenty Seven Thousand, One Hundred Forty-Four Dollars and Eighty Cents (\$1,027,144.80) (the “Base Purchase Price”) or, if the Site is conveyed to Developer after the Outside Date, that amount determined as the “Adjusted Purchase Price” as provided in Section 201.

**“Site”** means that certain property which is described in the Site Legal Description attached hereto as Exhibit “G.”

**“Site Grant Deed”** means a grant deed substantially in the form of Exhibit “E” to this Agreement.

**“Release of Construction Covenants”** means the Release of Construction Covenants attached to this Agreement as Exhibit “F.”

**“Report”** is defined in Section 204.

**“Right of Entry Agreement”** is defined in Section 207.

**“Schedule of Performance”** means that Exhibit “A” to this Agreement.

**“Scope of Development”** means Exhibit “B” to this Agreement.

**“Site Map”** means Exhibit “C” to this Agreement.

**“Title Company”** is defined in Section 204.

**“Title Policy”** is defined in Section 205.

**“Uniform Codes”** mean each of the following as in effect from time to time as approved by City: the Uniform Building Code, the Uniform Housing Code, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, and the Uniform Code for Abatement of Dangerous Buildings.

## **101. Representations and Warranties.**

### **101.1 City Representations.** City represents and warrants to Developer as follows:

(a) **Authority.** City is a municipal corporation which has been authorized to transact business pursuant to action of City. City has full right, power and lawful authority to acquire the Site and thereafter convey the Site, including portions thereof, as provided herein and the execution, performance, and delivery of this Agreement by City has been fully authorized by all requisite actions

on the part of City. The parties who have executed this Agreement on behalf of City are authorized to bind City by their signatures hereto.

(b) Litigation. To the best of City's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site or any portion thereof, at law or in equity before any court or governmental agency, domestic or foreign.

(c) No Conflict. To the best of City's knowledge, City's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(d) No City Bankruptcy. City is not the subject of a bankruptcy proceeding.

Until the Closing, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 101.1 not to be true as of the Closing, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation shall not be deemed a breach by City hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of property to be conveyed under the Closing. If Developer elects to accept the conveyance of the Site and the possession of the following disclosure of such information, City's representations and warranties contained herein shall be deemed to have been made as of such the Closing, subject to such exception(s). The representations and warranties set forth in this Section 101.1 shall survive the Closing.

**101.2 Developer Representations.** Developer represents and warrants to City as follows:

(a) Authority. Developer is a duly organized limited liability company organized within and in good standing under the laws of the State of California. Developer has full right, power and lawful authority to acquire and accept title to and possession of the Site, including portions thereof, and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of Developer. The parties who have executed this Agreement on behalf of Developer are authorized to bind Developer by their signatures hereto.

(b) Litigation. To the best of Developer's knowledge, there are no actions, suits, material claims, legal proceedings, or any other proceedings affecting the Site, the Principals, or Developer at law or in equity before any court or governmental agency, domestic or foreign.

(c) No Conflict. To the best of Developer's knowledge, Developer's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer or any of the Principals is a party or by which it is bound.

(d) No Developer Bankruptcy. Neither Developer nor any of the Principals is not the subject of a bankruptcy proceeding.

(e) Developer Experience; Sophisticated Party. Developer and each of the Principals is a sophisticated party, with substantial experience in the acquisition, rehabilitation, development, financing, obtaining financing for, and marketing of hotels has obtained advice from any advisers of its own choosing in connection with this Agreement.

(f) Due Authorization and Execution; Studies Completed. Developer has duly authorized the execution of this Agreement, including without limitation the attachments hereto.

Until the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 101.2 not to be true as of such Disposition Conveyance, immediately give written notice of such fact or condition to City. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Site. If Developer elects to accept the Site and the possession of the Site following disclosure of such information, City's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). The representations and warranties set forth in this Section 101.2 shall survive the Closing.

## **200. DISPOSITION OF SITE**

**201. Disposition of Site to Developer.** Developer agrees to purchase the Site from City and City agrees to sell the Site to Developer, in accordance with and subject to all of the terms, covenants, and conditions of this Agreement, for the Purchase Price. It is mutually agreed between City and Developer that provided the conveyance of the Site to Developer occurs on or before the Outside Date, the Base Purchase Price shall constitute the Purchase Price. In the event the conveyance of the Site to Developer occurs later than the Outside Date, the purchase price shall be deemed to be an amount equal to the greater of: (i) the Base Purchase Price, or (ii) that amount determined by an appraiser hereafter retained by the City Manager (the "Appraiser") on behalf of City to represent the market value of the Site as of the date on which it is anticipated that the conveyance of the Site to Developer will take place (the latter constituting the "Adjusted Purchase Price"). The Purchase Price shall apply without regard to the square footage determined to constitute the Site.

**202. Payment of the Purchase Price.** Developer shall pay the Purchase Price in cash, to be deposited into the Escrow prior and as a condition to the Closing.

**203. Escrow.** By the time established therefor in the Schedule of Performance, City shall open escrow (the "Escrow") with First American Title Company of Los Angeles or another escrow company mutually satisfactory to both parties (the "Escrow Agent").

**203.1 Costs of Escrow.** City and Developer shall pay their respective portions of the premium for the Title Policy as set forth in Section 205, City shall pay the documentary transfer taxes, if any, due with respect to the conveyance of the Site, Developer shall pay an amount equal to that expended or incurred by City or that amount required to be paid by City to the Appraiser hired pursuant to Section 201 hereof, City shall absorb from the proceeds of sale of the Site the Approved Developer Broker Commission, if any, and City and Developer each agree to pay one half of all other usual fees, charges, and costs which arise from the Escrow.

**203.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of City and Developer, and the Escrow Agent to whom these instructions are delivered is hereby

empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close the Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and City will cancel its own policies after the Closing. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account.

If in the opinion of either party it is necessary or convenient in order to accomplish the Closing, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when both City's Conditions Precedent and Developer's Conditions Precedent as set forth in Section 206 have been satisfied. The Escrow Agent is instructed to release City's escrow closing and Developer's escrow closing statements to the respective parties.

**203.3 Authority of Escrow Agent.** The Escrow Agent is authorized to, and shall:

(a) Pay and charge City for the premium of the Title Policy as set forth in Section 205, any amount necessary to place title to the Site in the condition necessary to satisfy Section 204, and the Approved Developer Broker Commission (as determined by the City Manager).

(b) Pay and charge City and Developer for their respective shares of any escrow fees, charges, and costs payable under Section 203.1.

(c) Pay and charge Developer for the cost of an ALTA policy (if any) and for any endorsements to the Title Policy which are requested by Developer as set forth in Section 205 and which are in excess of the premium for the Title Policy payable by City pursuant to Section 205.

(d) Charge the Developer for that amount City Manager informs Escrow Agent as having been expended or incurred by City for the Appraiser under Section 201.

(e) Disburse funds and deliver and record the Site Grant Deed when both City's Conditions Precedent and Developer's Conditions Precedent have been fulfilled or waived by City and Developer.

(f) Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations with respect to the Site under this Agreement.

(g) Within the discretion of the Escrow Agent and, if necessary, direct City and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated thereunder. City agrees to execute a Certificate of Non-Foreign Status and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by the Escrow Agent, on a form or forms to be supplied by the Escrow Agent.

(h) Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

(i) Verify that this Agreement has been properly executed by the parties prior to the Closing.

**203.4 Closing.** The conveyance of the Site shall close by accomplishment of conveyance of the Site to Developer and receipt by City of the Purchase Price (the "Closing") within thirty (30) days after the satisfaction of all of City's and Developer's Conditions Precedent as set forth in Section 206 and no later than the Outside Date; provided that, notwithstanding the foregoing, the Closing may occur after the Outside Date provided that the City Manager designates in writing to the Escrow Holder the Adjusted Purchase Price (as the Purchase Price) and Developer agrees in writing to such Adjusted Purchase Price shall constitute the Purchase Price. The "Closing" shall mean the time and day the Site Grant Deed is filed for record with the Los Angeles County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

**203.5 Termination.** If the Escrow is not in condition to close by the Outside Date, then either party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate the Escrow. If either party makes a written demand for return of documents or properties, Escrow shall not terminate until five (5) days after the Escrow Agent shall have delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, the Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Termination of the Escrow shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

**203.6 Closing Procedure.** The Escrow Agent shall close the Escrow for the Site as follows:

- (a) Verify execution of this Agreement by the parties;
- (b) Record the Site Grant Deed, with instructions for the Recorder of Los Angeles County, California to deliver the Site Grant Deed to Developer;
- (c) Instruct the Title Company to deliver the Title Policy to Developer;
- (d) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;
- (e) Deliver the FIRPTA Certificate, if any, to Developer;
- (f) Forward to both City and Developer a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into the Escrow, with such recording and filing date and information endorsed thereon; and
- (g) Record documents requested by Developer subsequent to the recordation of the Site Grant Deed.

**204. Review of Title.** Within sixty (60) days after the Date of Agreement, City shall cause First American Title Company (the "Title Company"), to deliver to Developer an ALTA preliminary title report (the "Report") with respect to the title to the Site, together with legible copies of the

documents underlying the exceptions (“Exceptions”) set forth in the Report. Developer shall have the right to reasonably approve or disapprove the Exceptions.

Within the time set forth in the Schedule of Performance, Developer shall give written notice to City and the Escrow Agent of Developer’s approval or disapproval of any of such Exceptions. Developer’s failure to give written disapproval of the Report within such time limit shall be deemed approval of the Report and the Exceptions set forth therein. If Developer notifies City of its disapproval of any Exceptions in the Report, City shall have the right, but not the obligation, to remove any disapproved Exceptions within five (5) days after receiving written notice of Developer’s disapproval or provide assurances reasonably satisfactory to Developer that such Exception(s) will be removed on or before the Closing. If City cannot or does not elect to remove any of the disapproved Exceptions within that period, City shall provide written notice of such election to Developer within such five (5) day period. Developer shall then have ten (10) business days after the expiration of such five (5) business day period to either give City written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give City written notice that Developer elects to terminate this Agreement. Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company after Developer has approved the Report for the Site (which are not created by Developer). City shall not voluntarily create any new exceptions to title following the Date of Agreement.

**205. Title Insurance.** Concurrently with recordation of the Site Grant Deed conveying title to the Site to Developer, there shall be issued to Developer a CLTA owner’s policy of title insurance (the “Title Policy”), together with such endorsements as are reasonably requested by Developer, issued by the Title Company insuring that the title to the Site is vested in Developer in the condition required by Section 204. The Title Company shall provide City with a copy of the Title Policy. The Title Policy shall be in the amount of the Purchase Price. City shall pay that portion of the premium for the Title Policy equal to the cost of a CLTA standard coverage title policy in the amount of the Purchase Price. Any additional costs, including the cost of an ALTA policy or any endorsements requested by Developer, shall be borne by Developer.

**206. Conditions of Closing.** The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

**206.1 City’s Conditions of Closing.** City’s obligation to proceed with the Closing of the conveyance of the Site is subject to the fulfillment, or waiver by City in writing, of each and all of the conditions precedent (a) through (l), inclusive, described below (the “City’s Conditions Precedent”), which are solely for the benefit of City, and which shall be fulfilled or waived in writing by City by the time periods provided for herein, or if no time period is provided, prior to the Closing:

(a) *No Default.* Prior to the Closing, Developer is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

(b) *Execution of Documents.* Developer shall have executed and delivered into Escrow this Agreement, and any other documents required pursuant to the terms of this Agreement.

(c) *Payment of Closing Costs.* Not later than three (3) business days prior to the Closing, Developer shall have delivered to Escrow its share of costs of the Closing which are

Developer's obligation in accordance with Section 203.1, as well as the cost for the Appraiser if applicable under Section 201.

(d) *Title Policy.* The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide the Title Policy for the Site upon the Closing, in accordance with Section 205.

(e) *Condition of Site.* Developer shall have approved of the physical and environmental condition of the Site.

(f) *Land Use Approvals.* Developer shall have received all land use approvals for the Developer Improvements required pursuant to Section 303 hereof.

(g) *Plans and Permits.* Developer shall have obtained approval of its final building plans for the Developer Improvements and grading, building and other required permits, as applicable, shall be ready to be issued (upon payment of requisite fees, posting of security and similar items).

(h) *Financing.* Developer shall have provided proof satisfactory to City that Developer has sufficient internal funds and/or has obtained a loan or other financing for acquisition of the Site and construction and operation of the Developer Improvements pursuant to Section 309 hereof, the financing is for a Conforming Hotel Facility, and such financing shall close and fund and shall be available to Developer upon the Closing.

(i) *Approved Product.* Developer shall have provided proof satisfactory to City that Developer has secured binding written commitments assuring that a hotel will be developed on the Site that will be a Conforming Hotel Facility (including an Approved Product).

(j) *Approved Operator.* Developer shall have provided proof satisfactory to City that Developer has entered into a binding written agreement or will, upon the conveyance of the Site, enter into such a binding written agreement, with an Approved Operator for operation of a Conforming Hotel Facility in conformity with this Agreement.

(k) *Proof of Insurance.* Developer shall have provided, for City's review and approval, proof of insurance reasonably satisfactory to City in accordance with Section 307.

(l) *Approval of Preliminary Title Report.* Developer shall have approved the Report.

**206.2 Developer's Conditions of Closing.** Developer's obligation to accept conveyance of the Site is subject to the fulfillment or waiver by Developer in writing of each and all of the conditions precedent (a) through (k), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived in writing by Developer by the time periods provided for herein:

(a) *No Default.* City is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of City contained herein shall be true and correct and not misleading in all material respects.



(b) *Execution of Documents.* City shall have executed and delivered into Escrow this Agreement, the Site Grant Deed, and any other documents required pursuant to the terms of this Agreement.

(c) *Payment of Closing Costs.* Prior to the Closing, City has paid or submitted into Escrow all costs of the Closing which are City's obligation in accordance with Section 203.1.

(d) *Title Policy.* The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to provide the Title Policy for the Site upon the Closing, in accordance with Section 205.

(e) *Environmental Condition of Site.* Developer shall have approved of the environmental condition of the Site.

(f) *Land Use Approvals.* Developer shall have received all land use approvals for the Developer Improvements required pursuant to Section 303.

(g) *Plans and Permits.* Developer shall have obtained approval of its final building plans for the Developer Improvements and grading, building and other required permits, as applicable, shall be ready to be issued (upon payment of requisite fees, posting of security and similar items).

(h) *Financing.* Developer shall have provided proof satisfactory to City that Developer has sufficient internal funds and/or has obtained a loan or other financing for acquisition of the Site and construction and operation of the Developer Improvements pursuant to Section 306 hereof, and such financing shall close and fund and shall be available to Developer upon the Closing.

(i) *Approval of Preliminary Title Report.* Developer shall have approved the Report.

**207. Studies and Reports.** Prior to the Closing and upon Developer's execution of a right of entry agreement to be provided by City (the "Right of Entry Agreement"), representatives of Developer shall have the right of access to all portions of the Site owned by City for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Any preliminary work undertaken on the Site by Developer prior to the Closing shall be done at the sole expense of Developer and Developer shall defend, indemnify and hold City harmless from any claims resulting from all preliminary work, access or use of the Site undertaken pursuant to this Section 207. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

**208. Taxes and Assessments.** Ad valorem taxes and assessments, if any, on the Site levied, assessed, or imposed for any period prior to the Closing, shall be borne by City. All ad valorem taxes and assessments levied or imposed for any period after the Closing shall be paid by Developer.

**209. Condition of the Site.**

**209.1 As-Is Condition.** Notwithstanding any provisions of this Agreement to the contrary (except as set forth in Section 624.2(d) of this Agreement), the Site shall be conveyed in an "as is" condition, with no warranty, express or implied by City, as to the condition of improvements

on the Site, the soil, its geology, the presence of known or unknown faults or Hazardous Materials or toxic substances, and Developer agrees to and shall indemnify and hold City harmless from and against all liability, loss, damages, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the existence of such faults or substances. Notwithstanding the foregoing, Developer shall not be responsible for matters related to any environmental contamination which existed prior to the Closing. It shall be the sole responsibility of Developer at its expense to investigate and determine the soil and improvement conditions for the development to be constructed. If the soil and environmental condition is not in all respects entirely suitable for the use or uses to which the Site will be put, then it is the sole responsibility and obligation of Developer to take such action as may be necessary to place the soil and environmental conditions of the Site in a condition entirely suitable for its development.

**209.2 Investigation of Site.** Developer, upon execution of the Right of Entry Agreement, shall have the right, at its sole cost and expense, to engage its own environmental consultant (the "Environmental Consultant") to make such investigations as Developer deems necessary, including any "Phase I" or "Phase II" investigations of the Site. Developer shall provide City with a copy of any and all studies and reports provided to Developer by the Environmental Consultant, or such other consultant engaged by Developer. The Site is to be sold on a where is, as is basis with no representations as to the Site or its condition being made by City.

**209.3 Approval of Environmental Condition of Site.** Developer shall have the right to approve the environmental condition of the Site prior to Developer's obligation to acquire the Site. Developer shall approve or disapprove of the environmental condition of the Site within ninety (90) days after the Date of Agreement. Developer's approval of the environmental condition of the Site shall be Developer's Condition Precedent to Closing, as set forth in Section 206.2 hereof.

**209.4 Developer's Precautions after Closing.** Upon the Closing, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials in, on or under the Site.

**209.5 Required Disclosures After Closing.** After the Closing, Developer shall notify City, and provide to City a copy or copies, of all notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. Developer shall report to City, as soon as possible after each incident, any known Hazardous Materials release or known circumstances which would potentially lead to such a release.

**209.6 Developer Indemnity - Hazardous Materials.** Upon the Closing, Developer agrees to indemnify, defend and hold City, and its respective officers, employees, agents, representatives and volunteers, harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon the following occurring subsequent to the Closing (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials

to or from, the Site, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site. This indemnity shall include, without limitation, any damage, liability, fine, penalty, parallel indemnity after closing cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment.

### **300. DEVELOPMENT OF PROJECT SITE**

**301. Scope of Development.** Developer shall within the time set forth in the Schedule of Performance develop or cause the development of the Developer Improvements in accordance with the Scope of Development, City Code, all entitlements and approvals for the Site, and the plans, drawings and documents submitted by Developer and approved by City as set forth herein. Developer shall, without limitation, apply for and secure, and pay all costs, charges and fees associated therewith, all permits and fees required by City, County, and other governmental agencies with jurisdiction over the Developer Improvements.

**302. Construction Drawings and Related Documents.** Prior to commencement of construction, Developer shall prepare and submit to City, design development drawings, construction drawings, landscape plans, and related documents required for the development of the Site and the construction of the Developer Improvements (the "Construction Drawings"). City shall have the right of review of all Construction Drawings, including any proposed changes therein. City shall not be responsible either to Developer or to third parties in any way for any defects in the Construction Drawings, nor for any structural or other defects in any work done according to the approved Construction Drawings, nor for any delays reasonably caused by the review and approval processes conducted by City. Any and all change orders or revisions required by City and its inspectors under the City Code, including without limitation, all applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by Developer in its Construction Drawings and other required submittals and shall be completed during the construction of the Developer Improvements.

**302.1 City Review and Approval.** City shall, under its police powers and without regard to other provisions set forth in this Agreement, to review and approve, conditionally approve, or disapprove the Construction Drawings and all other submittals as provided under the City Code; nothing set forth in this Agreement shall be deemed to constitute, *ipso facto*, approval by City of the Construction Drawings or other submittals.

**303. Land Use Approvals.** Prior to commencement of construction of the Developer Improvements or other works of improvement upon the Site by Developer, Developer shall, at its own expense, secure or cause to be secured any and all land use approvals, encroachments permits (if applicable), and other entitlements, and approvals, including environmental approvals, which may be required by City and/or any other governmental agency affected by such construction or work for the Developer Improvements. Developer shall, without limitation, apply for and secure all permits required by City, the County and other governmental agencies with jurisdiction over the Developer Improvements.

**304. Schedule of Performance.** Developer shall submit the Construction Drawings, commence and complete all construction of the Developer Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefor in the Schedule of Performance. During the course of construction and prior to issuance of the Release of Construction Covenants, Developer shall provide timely reports of the progress of construction when requested by the City Manager. Developer shall complete construction of all of the Developer Improvements within the respective times established therefor in the Schedule of Performance. The Schedule of Performance is subject to revision from time-to-time as mutually agreed upon in writing by Developer and City and City is authorized to make such revisions as it deems reasonably necessary.

**305. Cost of Construction.** All of the cost of planning, designing, developing and constructing the Developer Improvements shall be borne solely by Developer.

**306. Financing of the Developer Improvements.**

**306.1 Approval of Financing.** As required herein and as one of City's Conditions Precedent, Developer shall submit evidence that Developer has or has obtained sufficient equity capital and/or has obtained firm and binding commitments for construction financing necessary to undertake the acquisition and development of the Site and the construction and operation of the Developer Improvements in accordance with this Agreement, to City for review and approval. Such review and approval or disapproval of financing commitments shall be made within fifteen (15) days of receipt of a complete submission. City shall not unreasonably withhold, delay or condition such approval. If City shall disapprove any such evidence of financing, it shall do so by notice to Developer stating the reasons for such disapproval, in which event Developer shall use commercially reasonable efforts to promptly obtain and submit new evidence of financing. City shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 306.1 for the approval or disapproval of the evidence of financing as initially submitted. Developer shall close any approved construction financing prior to or concurrently with the Closing.

Such evidence of financing shall include the following: (a) a copy of an enforceable loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for construction financing for the Developer Improvements, subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) evidence reasonably acceptable to City that Developer has sufficient funds for such construction, and that such funds have been committed to such construction, and/or other documentation satisfactory to City as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the acquisition of the Site and construction and completion of the Developer Improvements, less financing authorized by those loans set forth in subparagraph (a) above, and (c) evidence of sufficient capital to operate the Developer Improvements in accordance with the Scope of Development.

**306.2 Holder Not Obligated to Construct Improvements.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Developer Improvements or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement. Notwithstanding the foregoing, City shall reasonably cooperate with Developer's construction and permanent lenders

in connection with the permitted use or uses to which such lender may devote the Site following a foreclosure or deed in lieu of foreclosure.

**306.3** Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure. With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever City may deliver any notice or demand to Developer with respect to any breach or default by Developer in completion of construction of the Developer Improvements, City shall at the same time deliver to each holder of record of any mortgage or deed of trust a copy of such notice or demand. Each such holder shall (insofar as the rights granted by City are concerned) have the right, at its option, within sixty (60) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Developer Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City by written agreement reasonably satisfactory to City. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 312, to a Release of Construction Covenants.

**307. Insurance Requirements.** Developer shall take out and maintain or shall cause its contractor to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 312, a comprehensive general liability policy in the amount of Two Million Dollars (\$2,000,000.00) combined single limit policy, and a comprehensive automobile liability policy in the amount of Five Hundred Thousand Dollars (\$500,000.00), combined single limit, or such other policy limits as City may approve at its discretion, including contractual liability, as shall protect Developer and City from claims for such damages. Such policy or policies shall be written on an occurrence form. Developer shall also furnish or cause to be furnished to City evidence satisfactory to City that Developer and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Developer shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Developer shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City. The required certificate shall be furnished by Developer prior to the commencement of construction of the Developer Improvements.

**308. Indemnity.** Developer shall defend (by counsel satisfactory to City), indemnify and save and hold harmless City and its officers, contractors, agents and employees (collectively, the "Indemnitees") from and against all claims, damages, demands, actions, losses, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising from or relating to: (i)

this Agreement (including all provisions hereof); (ii) compliance with applicable laws; (iii) a claim, demand or cause of action that any person has or asserts against Developer; (iv) any act or omission of Developer, any contractor, subcontractor or material supplier, engineer, architect or other person with respect to the Site; (v) those matters set forth in Section 101.2 hereof; or (vi) the ownership, occupancy or use of the Site and any portions thereof. Notwithstanding the foregoing, Developer shall not be obligated to indemnify City with respect to the consequences of any act of gross negligence not contributed to by Developer or willful misconduct of City. Developer's obligations under this Section 308 shall survive the issuance of the Release of Construction Covenants and termination of this Agreement; the requirements under this Section 308 are in addition to and do not limit the obligations of Developer under the Site Grant Deed.

Developer shall reimburse City immediately upon written demand for all costs reasonably incurred by City (including the reasonable fees and expenses of attorneys, accountants, appraisers and other consultants, whether the same are independent contractors or employees of City) in connection with the enforcement of the this Agreement and all related matters including the following: (a) City's commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights or obligations of the parties to this Agreement or the Site Grant Deed, and (b) all claims, demands, causes of action, liabilities, losses, commissions and other costs against which City is indemnified under this Agreement or the Site Grant Deed. Such reimbursement obligations shall bear interest at the rate of seven percent (7%) simple per annum (or, if lower, the highest non-usurious interest rate that may be charged) based upon the amounts and times of disbursement by City, provided that City gives written demand to Developer. Such reimbursement obligations shall survive the issuance of the Release of Construction Covenants and termination of this Agreement and are in addition to and do not limit the obligations of Developer under the Site Grant Deed or other instruments associated with the conveyance of any portion of the Site.

Upon the Closing, Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials. Notwithstanding anything contained herein to the contrary, Developer shall not indemnify City for any claims arising from City's gross and active negligence or City's willful misconduct so long as the loss alleged is not caused or contributed to by Developer and the foregoing indemnification shall not apply to the presence, use, release, escape, seepage, leakage, spillage, emission, or discharge of any Hazardous Materials in, on, under, or about the Site where such Hazardous Material existed on the property prior to the Closing.

**308.1 Developer's Indemnity.** Developer shall defend, indemnify, assume all responsibility for, and hold harmless City, and its representatives, volunteers, officers, employees and agents, from and against all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which are legally caused by any acts or omissions of Developer under this Agreement, whether such activities or performance thereof be by Developer or by anyone directly or indirectly employed or contracted with by Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement.

**308.2 City's Indemnity.** City shall defend, indemnify, assume all responsibility for, and hold harmless Developer, and its representatives, volunteers, officers, employees and agents, from and against all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which are legally caused by any acts or omissions of City under this Agreement, whether such activities or performance thereof be by City or by anyone directly or indirectly employed or contracted with by City and whether such damage shall accrue or be discovered before or after termination of this Agreement.

**309. Rights of Access.** Representatives of City shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Developer Improvements so long as City representatives comply with all generally applicable safety rules.

**310. Compliance with Laws.** Developer shall carry out the design and construction of the Developer Improvements in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of City Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Sections 12101, et seq., California Government Code Sections 4450, et seq., California Government Code Sections 11135, et seq., and the Unruh Civil Rights Act, California Civil Code Sections 51, et seq.

**310.1 Nondiscrimination in Employment.** Developer certifies and agrees that, to the extent applicable to it, all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Sections 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Sections 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, California Government Code Sections 12900, et seq., the California Equal Pay Law, California Labor Code Sections 1197.5, California Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Sections 12101, et seq., and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Developer shall allow representatives of City access to its employment records related to this Agreement during regular business hours to verify compliance with these provisions when so requested by City.

**310.2 Public Works Requirements.** Developer shall carry out the construction of the Developer Improvements and the development of the Site in conformity with all applicable federal and state labor laws (including, without limitation, if applicable, the requirement under California law to pay prevailing wages and to hire apprentices). Although the parties believe that the Developer Improvements are not considered to be a "public work" under California law because the Site is being sold for a price not less than the appraised fair market value of the Site, Developer shall be solely responsible for determining and effectuating compliance with such laws, and City makes no representation as to the applicability or non-applicability of any of such laws to the Developer Improvements or any part thereof. Developer hereby expressly acknowledges and agrees that City has

not previously affirmatively represented to Developer or its contractor(s) for the construction or development of the Developer Improvements, in writing or otherwise, in a call for bids or otherwise, that the work to be covered by this Agreement is not a "public work," as defined in Section 1720 of the Labor Code. Developer hereby agrees that Developer shall have the obligation to provide any and all disclosures or identifications required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. Developer shall indemnify, protect, defend and hold harmless City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorneys' fees, court and litigation costs, and fees of expert witnesses) which, in connection with the development, construction (as defined by applicable law) and/or operation of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Developer of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages and to hire apprentices); (2) the implementation of Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (3) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the parties that, in connection with the development and construction (as defined by applicable law) of the Developer Improvements, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages and hiring of apprentices under California law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section 310.2, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction and development of the Developer Improvements by Developer.

**311. Taxes and Assessments.** Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site incurred after the Closing. Developer shall remove or have removed any levy or attachment for any taxes and assessments incurred after the Closing, made on the Site, or any part thereof, or assure the satisfaction thereof within a reasonable time.

**312. Release of Construction Covenants.** Promptly after completion of the Developer Improvements in conformity with this Agreement, City shall furnish Developer with the Release of Construction Covenants. City shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Developer Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those matters which constitute continuing obligations of Developer under the Site Grant Deed or otherwise under this Agreement. If City refuses or fails to furnish the Release of Construction Covenants for the Site after written request from Developer, City shall, within thirty (30) working days of such written request, provide Developer with a written statement setting forth the reasons City has refused or failed to furnish the Release of Construction Covenants for the Site. The statement shall also contain a list of the actions Developer must take to obtain a Release of Construction Covenants.



Such Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Release of Construction Covenants is not a notice of completion as referred to in the California Civil Code, Section 3093.

#### **400. COVENANTS AND RESTRICTIONS**

##### **401. [Reserved].**

**402. Maintenance Covenants.** Developer covenants and agrees for itself, its successors and assigns and any successor in interest to the Site or part thereof to maintain the Site and all improvements thereon in compliance with all applicable provisions of the City Code.

**403. Nondiscrimination Covenants.** Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site. The foregoing covenants shall run with the land.

Developer shall refrain from restricting the rental, sale or lease of the Site on any of the bases listed above in this Section 403. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds. "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases. "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased

nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 premises herein leased.”

(c) In contracts. “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

**404. Effect of Violation of the Terms and Provisions of this Agreement.** City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether City has been, remains or is an owner of any land or interest therein in the Site. City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

## **500. DEFAULTS, REMEDIES, AND TERMINATION**

**501. Default Remedies.** Subject to the extensions of time set forth in Section 702 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a “Default” under this Agreement. A party claiming a Default (the “Claimant”) shall give written notice to the other party specifying the alleged grounds for the Default (the “Default Notice”). Except as otherwise expressly provided in this Agreement, the Claimant shall not institute any proceeding against any other party and the other party shall not be in Default if such party within forty-five (45) days from receipt of the notice required by this Section 501 immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

**502. Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Central District of California.

**503. Termination by Developer.** In the event that as of the time designated therefor in this Agreement (and if no time is described below, the time established in this Agreement for the satisfaction of the City’s Conditions Precedent):

**503.1 Termination Prior to the Closing.** In the event that prior to the Closing:

(a) Developer is not in default under this Agreement, Developer has not notified City that the condition of the Site is acceptable; or

(b) Developer is not in default under this Agreement and City does not execute the Site Grant Deed and attempt to effect the conveyance of the Site to Developer in the manner and condition and by the date provided in this Agreement; or

(c) in the event of any default of City prior to the conveyance of the Site which is not cured within the time set forth in Section 501 hereof; and

any such failure is not cured within the applicable time period after written demand by Developer, then this Agreement may, at the option of Developer, be terminated by Notice thereof to City. From the date of the Notice of termination of this Agreement by Developer to City and thereafter, and this Agreement shall be deemed terminated and there shall be no further rights or obligations among the parties.

**504. Termination by City.**

**504.1 Termination Prior to the Closing.** In the event that as of the time established therefor in this Agreement, but not later than the time established for the satisfaction of the City's Conditions Precedent:

(a) Developer (or any successor in interest) assigns this Agreement or any rights therein or in the Site in violation of this Agreement; or

(b) City has not received notification from Developer that the condition of the Site is satisfactory; or

(c) One of more of the City's Conditions Precedent is not satisfied; or

(d) Developer fails to execute the Site Grant Deed; or

(e) Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof;

then this Agreement and any rights of Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site (including without limitation all attachments to this Agreement), shall, at the option of City, be terminated by City by Notice thereof to Developer. From the date of the Notice of termination of this Agreement by City to Developer and thereafter this Agreement (including without limitations all attachments hereto) shall be deemed terminated excepting that Developer shall have conveyed or caused to be conveyed to City (or a nominee designated by City for such purpose) the Site, unless Developer is otherwise instructed by the City Manager in writing that mentions this Section 504 and there shall be no further rights or obligations among the parties, except that City may pursue any remedies it has hereunder.

**505. Reentry and Revesting of Title in City after the Closing and Prior to Completion of Construction.** City has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in City the estate conveyed to Developer if after the

Closing and prior to the issuance of the Release of Construction Covenants, Developer (or its successors in interest) shall:

- (a) fail to start the construction of the Developer Improvements as required by this Agreement for a period of thirty (30) days after written notice thereof from City; or
- (b) abandon or substantially suspend construction of the Developer Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from City;
- (c) fail to complete the Developer Improvements required by this Agreement within the time frame set forth in the Schedule of Performance; or
- (d) transfer or suffer any involuntary transfer of the Site or any part thereof in violation of Section 625 of this Agreement.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit: (i) any mortgage or deed of trust permitted by this Agreement; or (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Site Grant Deed shall contain appropriate reference and provision to give effect to City's right as set forth in this Section 505, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all improvements thereon, and to terminate and revest in City the estate conveyed to Developer. Upon the revesting in City of title to the Site as provided in this Section 505, City shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as City shall find feasible, to a qualified and responsible party or parties (as determined by City) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to City. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

(i) First, to reimburse City, on its own behalf or on behalf of City, all costs and expenses incurred by City, excluding City staff costs, but specifically, including, but not limited to, any expenditures by City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by City from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Developer has not paid (or, in the event that the Site is exempt from taxation or assessment of such charges during the period of ownership thereof by City, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in City, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Developer Improvements or any part thereof; and any amounts otherwise owing City, and in the event additional proceeds are thereafter available, then

(ii) Second, to reimburse Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the

improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by City as its property. The rights established in this Section 505 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that City will have conveyed the Site to Developer for economic development purposes, and not for speculation in undeveloped land.

**506. Acceptance of Service of Process.** In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer or in such other manner as may be provided by law.

**507. Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**508. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**509. Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

## **600. GENERAL PROVISIONS**

**601. Notices, Demands and Communications between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") required or permitted under this Agreement must be in writing and shall be sufficiently given if delivered by hand (and a receipt therefor is obtained or is refused to be given) or dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by telecopy or overnight delivery service to:

To City: City of Lancaster  
44933 North Fern Avenue  
Lancaster, California 93534  
Attention: City Manager

To Developer: Cornerstone Investment Group, LLC  
Attention: Bobby Damani  
1712 N. Beverly Glen Blvd.  
Bel Air, California 90077

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section 601.

**602. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; delays of any contractor, sub-contractor or supplier; or withdrawal of financing not caused by any act or omission of Developer; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; unusually severe weather; acts or omissions of the other party; acts or failures to act of City or any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within forty-five (45) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Developer Improvements shall not constitute valid grounds of enforced delay pursuant to this Section 602.

**603. Non Liability of Officials and Employees of City.** No member, official or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due under the terms of this Agreement.

**604. Relationship between Parties.** It is hereby acknowledged that the relationship between the parties is not that of a partnership or joint venture and that no party shall be deemed or construed for any purpose to be the agent of any other party. Accordingly, except as expressly provided herein or in the Exhibits hereto, City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Site. Developer agrees to indemnify, hold harmless and defend City from any claim made against City arising from a claimed relationship of partnership or joint venture between City and Developer with respect to the development, operation, maintenance or management of the Site.

**605. City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by City, the City Manager is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

**606. Commencement of City Review Period.** The time periods set forth herein for City's approval of agreements, plans, drawings, or other information submitted to City by Developer and for any other City consideration and approval hereunder which is contingent upon documentation required to be submitted by Developer shall only apply and commence upon Developer's complete submittal of all the required information. In no event shall an incomplete submittal by Developer trigger any of City's obligations of review and/or approval hereunder; provided, however, that City shall notify Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for City's action on the particular item in question.

**607. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in two (2) originals, each of which is deemed to be an original.

**608. Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**609. [Intentionally Omitted.]**

**610. Real Estate Brokerage Commission.** As of the date of this Agreement, the only real estate broker involved with this project is Charles Hoey & Associates ("Developer's Broker"). Provided that the sale of the Site to Developer is accomplished in accordance with this Agreement, Developer's Broker is to receive a commission as more particularly described in Section 203 of this Agreement; no remuneration of any kind shall be payable to Developer's Broker in the event that, for whatever reason, the conveyance of the Site from City to Developer is not accomplished. Except only for the commission for the Developer's Broker as described in Section 203 of this Agreement but in no event to exceed the Approved Developer Broker Commission, Developer agrees to indemnify, defend, and hold harmless City and its officials, employees, agents and representatives from and against any real estate broker or finder's commissions or fees or claims thereto alleged to be owed in connection with the Site, which may be the responsibility of Developer.

**611. Administration.** This Agreement shall be administered and executed by City Manager, or his or her designated representative, following approval of this Agreement by City. City shall maintain authority of this Agreement through the City Manager (or his or her authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of City so long as such actions do not substantially change the uses or development permitted on the Site, or add to the costs to City as specified herein as agreed to by the City Council, and such amendments may include extensions of time specified in the Schedule of Performance. All other waivers or amendments shall require the written consent of the City Council.

**612. Amendments of Agreement.** The parties agree to mutually consider reasonable requests for amendments to this Agreement. Developer shall be responsible for the costs incurred by City, including without limitation attorneys' fees (the "Developer Costs"), in connection with any amendments to this Agreement which are requested by Developer (the "Developer Request"). Developer shall be responsible for payment of Developer Costs as provided in this Section 612 regardless of the outcome of Developer Request.

**613. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**614. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context

so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by the parties.

**615. No Waiver.** A waiver by any party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**616. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**617. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**618. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term “holiday” shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**619. Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**620. Time of Essence.** Time is expressly made of the essence with respect to the performance of each and every obligation and condition of this Agreement.

**621. Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**622. Conflicts of Interest.** No member, official or employee of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**623. Time for Acceptance of Agreement by City.** This Agreement, when executed by Developer and delivered to City, must be authorized, executed and delivered by City within forty five (45) days or this Agreement shall be void, except to the extent that the parties shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.



## 624. Representations and Warranties.

**624.1 Developer's Representations and Warranties.** Developer hereby makes the representations and warranties contained below in this Section 624.1. All of the representations and warranties set forth in this Section 624.1 are effective as of the Date of Agreement. All of the representations and warranties set forth in this Section 624.1 are made with the acknowledgment that they are material, and with the intention that City shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 624.1 shall each survive the execution of this Agreement without limitation as to time.

(a) *Authority.* Developer is a California limited liability company. Developer has full right, power and lawful authority to undertake all obligations as provided herein.

(b) *No Conflict.* Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Developer is a party or by which it is bound.

(c) *No Bankruptcy.* Developer is not the subject of a bankruptcy proceeding.

(d) *Deliveries.* All documents, instruments and other information delivered by Developer to City pursuant to this Agreement are true, correct and complete.

Each of the foregoing items (a) to (d), inclusive shall be deemed to be an ongoing representation and warranty. Developer shall advise City in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (d), inclusive.

**624.2 City's Representations and Warranties.** City hereby makes the representations and warranties contained below in this Section 624.2. All of the representations and warranties set forth in this Section 624.2 are effective as of the Date of Agreement. All of the representations and warranties set forth in this Section 624.2 are made with the acknowledgment that they are material, and with the intention that Developer shall rely upon them as inducements to enter into this Agreement and to perform its obligations hereunder and to close the transactions contemplated herein. The representations and warranties contained in this Section 624.2 shall each survive the execution of this Agreement without limitation as to time.

(a) *Authority.* City has full right, power and lawful authority to undertake all obligations as provided herein.

(b) *No Conflict.* City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(c) *Deliveries.* All documents, instruments and other information delivered by City to Developer pursuant to this Agreement are true, correct and complete.

(d) *Knowledge.* City is not aware of any existing state or condition of the property, including, but not limited to the presence of Hazardous Materials or toxic substances, that

may preclude Developer from carrying out the Developer Improvements as contemplated in this Agreement.

Each of the foregoing items (a) to (d), inclusive shall be deemed to be an ongoing representation and warranty. City shall advise Developer in writing if there is any change pertaining to any matters set forth or referenced in the foregoing items (a) to (d), inclusive.

**625. Transfers of Interest in Site or Agreement.**

**625.1 Prohibition.** The qualifications and identity of Developer are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with Developer. For the period commencing upon the Date of Agreement and until the issuance of the Release of Construction Covenants, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, nor shall Developer make any total or partial sale, grant, transfer, conveyance, assignment, subdivision or lease of the whole or any part of the Site or the Developer Improvements without prior written approval of City, except as expressly set forth herein.

**625.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, City approval of an assignment of this Agreement or conveyance of the Site or the Developer Improvements, or any part thereof, shall not be required in connection with any of the following:

(a) The conveyance or dedication of any portion of the Site to City or other appropriate governmental agency, or the granting of easements or permits necessary in order to facilitate construction of the Developer Improvements.

(b) Any transfer to an entity or entities in which Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

**625.3 City Consideration of Requested Transfer.** City agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 625, provided Developer delivers written notice to City requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable City to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 625 and as reasonably determined by City. City shall evaluate each proposed transferee or assignee on the basis of its development and/or operational qualifications and experience and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 625 applies, which City determines does not possess equal or better qualifications than Developer. An assignment and assumption agreement in a form satisfactory to City's legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of Developer's written notice requesting City approval of an assignment or transfer pursuant to this Section 625, City shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, City requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, Developer shall promptly furnish to City such further information as may be reasonably requested.

**625.4 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its permitted and/or approved successors and assigns. Whenever the term “Developer” is used in this Agreement, such term shall include any other permitted and/or approved successors and assigns as herein provided.

**625.5 Assignment by City.** City may assign or transfer any of its rights or obligations under this Agreement at its sole discretion.

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

**CITY:**

**CITY OF LANCASTER**, a charter city and  
California municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**DEVELOPER:**

**CORNERSTONE INVESTMENT GROUP, LLC**,  
a California limited liability company

By: Barbara A. Damico  
Its: PRESIDENT + CEO

## EXHIBIT A

### SCHEDULE OF PERFORMANCE

For the purposes of this Schedule of Performance, the "Date of Agreement" is September 11, 2018. The City Manager may extend by not more than three hundred sixty (360) days, as all such extensions are aggregated, the time under this Schedule of Performance by which any obligation of Developer shall be performed; provided that it is contemplated that the discretion of the City Manager to extend times for performance shall not be exercised absent exigent circumstances.

1. Submittal for Land Use Approvals. On or before March 11, 2019.  
Developer submits to City for all land use approvals required for the Developer Improvements, including, if applicable, any conditional use permits.
2. Opening of Escrow. Escrow opened as to the Site. Within ten (10) days after Developer submits to City for all land use approvals required for the Developer Improvements.
3. Developer Approval as to Title, Condition of Site. Developer confirms in writing to the City Manager that the condition of the Site and the condition of title are acceptable. On or before March 11, 2019, and in any event, before the Closing.
4. Conditions Precedent are Satisfied. The City's Conditions precedent and the Developer's Conditions precedent are satisfied. On or before September 11, 2019, and in any event, prior to Closing.
5. The Site Grant Deed is Recorded. The Site Grant Deed is recorded. Within thirty (30) days after the City's Conditions Precedent are satisfied and not later than the first anniversary of the Date of Agreement.
6. Commencement of Construction. The Developer shall have commenced construction of the Developer Improvements. Within thirty (30) days after the Closing.
7. Completion of Construction. Developer shall complete construction of the Developer Improvements. By the earlier to occur of: (i) the first anniversary of the Closing or (ii) the second anniversary of the Date of Agreement.

## EXHIBIT B

### SCOPE OF DEVELOPMENT

#### I. GENERAL DESCRIPTION

The Site is specifically delineated on the Site Map and the Site Legal Description.

#### II. DEVELOPMENT

The Developer shall construct a hotel consisting of between 90 and 120 rooms available for rental occupancy, with the hotel to consist of 4 stories. The hotel shall include parking, landscaping and such offsite improvements as are required, including without limitation landscaping and all features, including without limitation mitigation measures, offsite improvements, and payment of fees, in connection with the City approval (acting in its police power and not by the approval of this Agreement) of the development of the Site. In addition, the hotel shall include all features necessary in order for the hotel to meet the specifications for a hotel that is an Approved Product classified as upscale or better on the STR chain scale. A hotel facility meeting the foregoing shall constitute a "Conforming Hotel Facility."

All such approvals, including without limitation, the payment of fees to governmental agencies required in connection therewith, shall constitute the "Developer Improvements." The quality of construction shall be of a high level. Construction shall conform to such Construction Drawings, if any, as are hereafter approved by City.

The Developer shall be responsible for any demolition, grubbing, and grading as necessary to accomplish the construction of the Developer Improvements.

The Developer shall commence and complete the Developer Improvements by the respective times established therefor in the Schedule of Performance.

#### III. DEVELOPMENT STANDARDS

The Improvements shall conform to all applicable state laws and regulations and to local zoning, applicable provisions of the City Code and the following development standards:

##### A. General Requirements:

1. **Design.** The design of the development shall conform to the general design for the Front Row Center area created by CSA Partners Ltd.

2. **Vehicular Access.** The placement of vehicular driveways shall be coordinated with the needs of proper street traffic flow as approved by City. In the interest of minimizing traffic congestion, City will control the number and location of curb breaks for access to the Site for off-street parking and truck loading. The planning for vehicular areas shall specifically address the use of bicycles. All access driveways shall require written approval of City staff.

3. **Building Signs.** Signs shall be limited in size, subdued and otherwise designed to contribute positively to the environment. Signs identifying the building use will be permitted, but

their height, size, location, color, lighting and design will be subject to City staff approval, and signs must conform to the City Code.

**4. Screening.** All outdoor storage of materials or equipment shall be enclosed or screened to the extent and in the manner required by City staff and the Lancaster Business Park Specific Plan.

**5. Landscaping.** The Developer shall provide and maintain landscaping within the Site, including the public rights-of-way and within setback area along all street frontages and conforming to the plans as hereafter approved by City. Landscaping shall consist of trees, drought-tolerant plants, and installation of an automatic irrigation system adequate to maintain such plant material. The type and size of trees to be planted, together with a landscaping plan, shall be subject to City staff approval prior to planting.

**6. Utilities.** All utilities on the Site shall be underground at Developer's expense.

**7. Building Design.** Buildings shall be constructed such that the Developer Improvements shall be of high architectural quality, and shall be effectively and aesthetically designed and in conformance with City approvals.

**8. Mitigation Measures.** Mitigation measures approved in connection with the development of the Site under the California Environmental Quality Act (CEQA).

**B. Design Features:**

The following design features are considered essential components to the Improvements:

Security - The details of security will be reviewed upon submission of the detailed plans.

Overall Design Quality, Materials, Colors, Design Features - Quality of design is important, materials and colors are to be approved by City.

**IV. DEMOLITION AND SOILS**

The Developer assumes all responsibility for surface and subsurface conditions at the Site, and the suitability of the Site for the Improvements. The Developer has undertaken all investigation of the Site as it shall deem necessary and has not received or relied upon any representations of City, or its respective officers, agents and employees.

**EXHIBIT C**

**SITE MAP**





**EXHIBIT D**

**SITE LEGAL DESCRIPTION**

The North half of Parcel 5 of Parcel Map No. 24368, in the County of Los Angeles, State of California, as per map recorded in Book 273, Pages 65-70 of maps, in the office of the County Recorder of said County.

APN: 3153-015-959

**EXHIBIT E**  
**SITE GRANT DEED**

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

Cornerstone Investment Group, LLC  
Attention: Bobby Damani  
1712 N. Beverly Glen Blvd.  
Bel Air, CA 90077

[Space above for recorder.]

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged, the **CITY OF LANCASTER**, a charter city and California municipal corporation (the "Grantor"), hereby grants to **CORNERSTONE INVESTMENT GROUP, LLC**, a California limited liability company (the "Grantee"), the real property hereinafter referred to as the "Site," described in Attachment No. 1 attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

1. Grantor excepts and reserves from the conveyance herein described all interest of Grantor in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet below the surface, together with the right to drill into, through and to use and occupy all parts of the Site lying more than five hundred (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said Site or other lands, but without, however, any right to use either the surface of the Site or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the Site in such a manner as to create a disturbance to the use or enjoyment of the Site.

2. The Site is conveyed in accordance with and subject to the Disposition and Development Agreement entered into between Grantor and Grantee dated September 11, 2018 (the "DDA"), a copy of which is on file with Grantor at its offices as a public record and which is incorporated herein by reference. All terms used herein shall have the same meaning as those used in the DDA

3. Grantor has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in Grantor the estate conveyed to Grantee if after the Closing but prior to the issuance and recordation of the Release of Construction Covenants, Grantee (or its successors in interest) shall:

- a. Fail to start the construction of the Developer Improvements as required by the DDA for a period of thirty (30) days after written notice thereof from City; or

- b. Abandon or substantially suspend construction of the Developer Improvements required by the DDA for a period of thirty (30) days after written notice thereof from City; or
- c. Fail to complete construction of the Developer Improvements required by the DDA within the time frame set forth in the Schedule of Performance contained therein; or
- d. Transfer or suffer any involuntary transfer of the Site or any part thereof in violation of Section 625 of the DDA.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit: (i) any mortgage or deed of trust permitted by the DDA; or (ii) any rights or interests provided in the DDA for the protection of the holders of such mortgages or deeds of trust.

Upon the revesting in Grantor of title to the Site as provided in this Section 3, Grantor shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site for fair market value as soon and in such manner as Grantor shall find feasible to a qualified and responsible party or parties (as determined by Grantor) who will assume the obligation of making or completing the Developer Improvements, or such improvements in their stead as shall be satisfactory to Grantor. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

- i. First, to reimburse Grantor all costs and expenses reasonably incurred by Grantor, excluding City staff costs, but specifically, including, but not limited to, any expenditures by Grantor in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by Grantor from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which Grantee has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by Grantor, an amount, if paid, equal to such taxes, assessments or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time of revesting of title thereto in Grantor, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Site, or part thereof; and any amounts otherwise owing Grantor, and in the event additional proceeds are thereafter available, then
- ii. Second, to reimburse Grantee, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by Grantee from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by Grantor as its property. The rights established in this Section 3 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that Grantor will have conveyed the Site to Grantee for economic development purposes, and not for speculation in undeveloped land.

4. Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Site. The foregoing covenants shall run with the land.

Grantee shall refrain from restricting the rental, sale or lease of the Site on any of the bases listed above in this Section 4. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) In deeds. "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases. "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 premises herein leased."

(c) In contracts. "There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

**GRANTOR:**

**CITY OF LANCASTER**, a charter city and  
California municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**GRANTEE:**

**CORNERSTONE INVESTMENT GROUP, LLC**,  
a California limited liability company

By: *Bedford A. D...*  
Its: *PRESIDENT & CEO*

*7/11*

**ATTACHMENT NO. 1**

**SITE LEGAL DESCRIPTION**

The North half of Parcel 5 of Parcel Map No. 24368, in the County of Los Angeles, State of California, as per map recorded in Book 273, Pages 65-70 of maps, in the office of the County Recorder of said County.

APN: 3153-015-959

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF LOS ANGELES )

) ss.

On AUGUST 28, 2018, before me, MARIA J. MORRIS, Notary Public,  
(Print Name of Notary Public)

personally appeared BADRUDDIN DAMANI

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

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



WITNESS my hand and official seal.

*Maria J. Morris*

Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

#### CAPACITY CLAIMED BY SIGNER

- Individual  
 Corporate Officer

Title(s)

- Partner(s)       Limited       General  
 Attorney-In-Fact  
 Trustee(s)  
 Guardian/Conservator  
 Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

#### DESCRIPTION OF ATTACHED DOCUMENT

Title Or Type Of Document

Number Of Pages

Date Of Documents

Signer(s) Other Than Named Above

**EXHIBIT F**

**RELEASE OF CONSTRUCTION COVENANTS**

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

Cornerstone Investment Group, LLC  
Attention: Bobby Damani  
1712 N. Beverly Glen Blvd.  
Bel Air, CA 90077

[Space above for recorder.]

**RELEASE OF CONSTRUCTION COVENANTS**

**THIS RELEASE OF CONSTRUCTION COVENANTS** (the “Release”) is made by the **CITY OF LANCASTER**, a charter city and California municipal corporation (“City”), in favor of **CORNERSTONE INVESTMENT GROUP, LLC**, a California limited liability company (“Developer”), as of the date set forth below.

**RECITALS**

A. City and Developer have entered into that certain Disposition and Development Agreement (the “DDA”) dated September 11, 2018, concerning the redevelopment of certain real property situated in the City of Lancaster, California as more fully described in Attachment No. 1 attached hereto and made a part hereof. All capitalized terms utilized herein and not otherwise defined shall have the same meaning as set forth in the DDA.

B. As referenced in Section 412 of the DDA, City is required to furnish Developer or its successors with a Release of Construction Covenants upon completion of construction of the Developer Improvements which Release is required to be in such form as to permit it to be recorded in the Recorder’s Office of Los Angeles County. This Release is conclusive determination of satisfactory completion of the construction and development required by the DDA.

C. City has conclusively determined that such construction and development has been satisfactorily completed.

**NOW, THEREFORE**, City hereby certifies as follows:

1. The Developer Improvements to be constructed by Developer have been fully and satisfactorily completed in conformance with the DDA. All covenants relating to operating requirements, and use, maintenance and nondiscrimination covenants contained in the DDA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the DDA.



IN WITNESS WHEREOF, City has executed this Release this day of \_\_\_\_\_, 201\_\_.

**CITY:**

**CITY OF LANCASTER**, a charter city and California municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**ATTACHMENT NO. 1**

**SITE LEGAL DESCRIPTION**

The North half of Parcel 5 of Parcel Map No. 24368, in the County of Los Angeles, State of California, as per map recorded in Book 273, Pages 65-70 of maps, in the office of the County Recorder of said County.

APN: 3153-015-959

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

**MEMORANDUM  
CITY OF LANCASTER, CA**

TO: Mayor Parris and City Council Members

FROM: Vice Mayor Marvin Crist  
Council Member Angela Underwood-Jacobs

DATE: September 25, 2018

SUBJECT: **Report on the Activities of the Board of Directors for the Antelope Valley Transit Authority**

---

**Recommendation:**

Receive a report of the proceedings and issues discussed at the June regular Board of Directors meeting of the Antelope Valley Transit Authority (AVTA).

**Background:**

The Antelope Valley Transit Authority is a distinct government entity created under a joint powers authority agreement between the City of Lancaster, the City of Palmdale, and Los Angeles County that provides public transit services. Vice Mayor Marvin Crist serves as the Chairman and Council Member Angela Underwood-Jacobs serves as a Director on the AVTA Board for the City of Lancaster. Council Member Raj Malhi serves as an Alternate Director.

**The following significant events took place at the regular June Board meeting:**

**Present:** Chairman Marvin Crist  
Vice Chair Dianne Knippel  
Director Angela Underwood-Jacobs  
Director Michelle Flanagan

**Absent:** Director Steve Hofbauer

**Special Presentation to Outgoing Board of Director Austin Bishop.**

Vice Chair Knippel recognized and thanked Director Bishop for his service as an AVTA Board Member. Mr. Bishop thanked the Board and stated it was an honor to work with the Board and staff.

**Special Presentation to Previous Executive Director/CEO Len Engel for his Dedication and Exemplary Service to the AVTA.**

Vice Chair Knippel recognized Mr. Engel for his dedicated service, focus and hard work that led the Agency on the path to having a fully electric fleet. Chairman Crist added that Mr. Engel helped change the world. The AVTA is the first transit agency to have a fully electric fleet and Mr. Engel's leadership made this happen. Mr. Engel stated that his time at AVTA has been the capstone of his career and expressed his sincere appreciation to the Board.

**Memorandum of Understanding (MOU) with the City of Palmdale to Provide Bus Stop Maintenance Services.**

Authorized the Executive Director/CEO to execute an MOU with the City of Palmdale to provide bus stop maintenance services for a three-year term.

Approved (4-0-0-1).

**Consulting Agreement with Len Engel.**

Authorized the Executive Director/CEO to enter into the Consulting Services Agreement with Len Engel and adopt Resolution 2018-15, a Resolution of the Board of Directors requesting a 180-day wait period exception.

Approved (4-0-0-1).

**Contract Amendment #2 Under AVTA Contract #2017-37 to Moore and Associates for Planning and Operations Support Services.**

Authorized the Executive Director/CEO to execute Contract Amendment #2 for an additional amount of \$75,000 and a six-month time extension to Moore and Associates, Santa Clarita, CA, under AVTA Contract #2017-37, to complete additional planning and support services.

Approved (4-0-0-1).

**Amended Classification and Salary Schedule.**

Approved the amended classification and salary schedule.

Approved (4-0-0-1).

**MEMORANDUM  
CITY OF LANCASTER, CA**

TO: Mayor Parris and City Council Members

FROM: Vice Mayor Marvin Crist  
Council Member Angela Underwood-Jacobs

DATE: September 25, 2018

SUBJECT: **Report on the Activities of the Board of Directors for the Antelope Valley Transit Authority**

---

**Recommendation:**

Receive a report of the proceedings and issues discussed at the July regular Board of Directors meeting of the Antelope Valley Transit Authority (AVTA).

**Background:**

The Antelope Valley Transit Authority is a distinct government entity created under a joint powers authority agreement between the City of Lancaster, the City of Palmdale, and Los Angeles County that provides public transit services. Vice Mayor Marvin Crist serves as the Chairman and Council Member Angela Underwood-Jacobs serves as a Director on the AVTA Board for the City of Lancaster. Council Member Raj Malhi serves as an Alternate Director.

**The following significant events took place at the regular July Board meeting:**

**Present:** Chairman Marvin Crist  
Vice Chair Dianne Knippel  
Director Angela Underwood-Jacobs  
Director Steve Hofbauer

**Absent:** Director Michelle Flanagan

**Public Hearing and Adoption of the Disadvantaged Business Enterprise (DBE) Program and Goal-Setting methodology for Federal Fiscal Years (FFY's) 2019 Through 2021 (October 1, 2018 Through September 30, 2021).**

Board approved the new DEB Program, overall goal-setting methodology, and goal of 4%; adopted Resolution No. 2018-017, a resolution approving the revised Federal Transit Administration required DEB Program and Overall Goal-Setting Methodology for FFY's 2019 through 2021.

Approved (4-0-0-1).

**Amendment #1 to AVTA Contract #2017-08 with Antelope Valley College (AVC) for the Campus Connect Student Pass Program.**

Authorized the Executive Director/CEO to execute Amendment #1 to Contract #2017-08 with AVC for the Campus Connect Student Pass Program that adds three additional academic school years 2018/19, 2019/20, and 2020/21, commencing on or about August 1 (Fall Semester) and ending on or about June 30 (Spring Semester).

Approved (4-0-0-1).

**Contract Award for AVTA Electric Bus Charging at Palmdale Transportation Center.**

Authorized the Executive Director/CEO to execute Contract #2018-11 for the AVTA electric bus charging at Palmdale Transportation Center to Amtek Construction, Whittier, CA, for the amount of \$353,547.78, plus applicable permit fees and sales tax.

Approved (4-0-0-1).

**2018 Summer/Fall Service Changes.**

(1) Approved proposed Summer/Fall 2018 local service schedule and service delivery plan; (2) Directed staff to work with Transdev's local management team to implement approved schedule and plan; and, (3) Directed staff to continue to monitor local service performance and provide periodic status reports to the Board.

Approved (4-0-0-1).

**Community Workforce Agreement between the Los Angeles/Orange Counties Building and Construction Trades Council and the Signatory Craft Councils and Unions and Antelope Valley Transit Authority.**

Authorized the Executive Director/CEO to execute a Community Workforce Agreement. The agreement establishes labor relations policies and procedures for the AVTA and craft employees represented by unions engaged in AVTA's inductive battery-electric improvement projects. The duration of the agreement will be for a two-year term, with three one-year optional renewals upon mutual written agreement of the noted parties. The agreement will not exceed a five-year period.

Approved (4-0-0-1).