CITY COUNCIL **AGENDA**

Tuesday, August 27, 2013
Regular Meeting 6:00 p.m.
Council Chamber
6615 Passons Blvd.
Next Resolution No. 6735
Next Ordinance No. 1080
Next Agreement No. 13-1406

ROLL CALL:

Gustavo V. Camacho, Mayor
Brent A. Tercero, Mayor Pro Tempore
Bob J. Archuleta, Councilmember
David W. Armenta, Councilmember
Gregory Salcido, Councilmember

COMMISSIONERS SCHEDULED TO BE PRESENT:

Robert Martinez, Planning Commission
Joseph Palombi, Parks & Recreation Commission

INVOCATION:

(In accordance with the Court's Decision in Rubin v. City of Burbank, only nonsectarian prayers/invocations are allowed during the invocation)

PLEDGE OF ALLEGIANCE:

SPECIAL PRESENTATIONS:

- Martin Galindo, El Rancho Unified School District Superintendent

PLEASE TURN OFF ALL PAGERS AND/OR PHONES WHILE MEETING IS IN SESSION AND PLEASE REFRAIN FROM TEXTING DURING THE MEETING

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In compliance with the Americans with Disabilities Act of 1990, the City of Pico Rivera is committed to providing reasonable accommodations for a person with a disability. Please call the City Clerk's office at (562) 801-4389, if special accommodations are necessary and/or if information is needed in an alternative format. Special requests must be made in a reasonable amount of time in order that accommodations can be arranged.

PUBLIC HEARING:

1. **Public Hearing – Adoption of a Resolution Ordering the Vacation of a Portion of the Frontage Road Located North of 9036 Beverly Boulevard in the Commercial Planned Development (CPD) Zoned District.** (1600)
   a. Open Public Hearing
   b. Memo from City Manager
   c. Written Communications
   d. Oral Communications
   e. Close Hearing
   f. **Recommendation:**
      1. Adopt resolution ordering the vacation of a portion of the frontage road at the intersection north of 9036 Beverly Boulevard.

      Resolution No. _____ A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, ORDERING THE VACATION OF A PORTION OF THE FRONTAGE ROAD LOCATED NORTH OF 9036 BEVERLY BOULEVARD, PICO RIVERA HEREIN REFERRED TO AS STREET VACATION NO. 13-1

2. **Public Hearing – 2013 Congestion Management Program.**
   a. Open Public Hearing
   b. Memo from City Manager
   c. Written Communications
   d. Oral Communications
   e. Close Hearing
   f. **Recommendation:**
      1. Open the Public Hearing and adopt the resolution affirming city conformance with the Congestion Management Plan.

      Resolution No. _____ A RESOLUTION OF THE CITY OF PICO RIVERA, CALIFORNIA, FINDING THE CITY TO BE IN CONFORMANCE WITH THE CONGESTION MANAGEMENT PROGRAM (CMP) AND ADOPTING THE CMP LOCAL DEVELOPMENT REPORT, IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 65089

1st PERIOD OF PUBLIC COMMENTS - IF YOU WOULD LIKE TO SPEAK ON ANY LISTED AGENDA ITEMS, PLEASE FILL OUT A GREEN PUBLIC COMMENT REQUEST FORM AND PROVIDE IT TO THE STAFF MEMBER AT THE BACK TABLE BEFORE THE MEETING STARTS.

When you are called to speak, please come forward and state your name and city of residency for the record. You have three (3) minutes to make your remarks. In accordance with Government Code Section 54954.2, members of the City Council may only: **1)** respond briefly to statements made or questions posed by the public; **2)** ask a question for clarification; **3)** provide a reference to staff or other resources for factual information; **4)** request staff to report to the City Council at a subsequent meeting concerning any matter raised by the public; and **5)** direct staff to place a matter of business on a future agenda. City Council members cannot comment on items that are not listed on a posted agenda.

CONSENT CALENDAR ITEMS:

All items listed on the Consent Calendar may be acted on by a single motion without separate discussion. Any motion relating to a Resolution or Ordinance shall also waive the reading of the titles in full and include its adoption as appropriate. If discussion or separate vote on any item is desired by a Councilmember or staff, that item may be pulled from the Consent Calendar for separate consideration.

3. **Minutes:**
   - City Council meeting of July 23, 2013

   Recommendation: Approve
   - Planning Commission meeting of June 17, 2013
   - Planning Commission meeting of July 15, 2013
   - Parks & Recreation Commission meeting of July 11, 2013

4. **3rd Warrant Register of the 2013-2014 Fiscal Year.** (700)
   Check Numbers: 257870-258262; 258265-258507
   Special Checks Numbers: 257870-258262
   Recommendation: Approve

5. **Designation of Voting Delegate.** (100)
   Recommendation:
   1. Appoint Brent A. Tercero as voting delegate and Bob J. Archuleta as alternate for the 2013 Annual League of California Cities Conference.

6. **Second Reading - An Ordinance of the City of Pico Rivera Amending Chapter 8.48, *Smoking* of the City of Pico Rivera Municipal Code Prohibiting Tobacco and Electronic Cigarettes in Public Places.** (1300)
   Recommendation:
   1. Adopt Ordinance No. 1079, an ordinance of the City Council amending Chapter 8.48, *Smoking* of the Pico Rivera Municipal Code updating where tobacco products and electronic cigarettes are prohibited.

Ordinance No. 1079 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, AMENDING CHAPTER 8.48, *SMOKING*, PROHIBITING TOBACCO AND E-CIGARETTE SMOKING IN PUBLIC PLACES **(SECOND READING AND ADOPTION)**

7. **Residential Resurfacing Program (PRP) Phase "E", Slurry Seal, CIP No. 21245 - Award Construction Contract.** (500)

Recommendation:

1. Award a construction contract in the amount of $316,498 to American Asphalt South Inc. for the Residential Resurfacing Program (RRP) Phase "E", Slurry Seal, CIP No. 21245, and authorize the Mayor to execute the contract in a form approved by the City Attorney.

   Agreement No. _____

8. **Amendment No. 11-1244-2 to Agreement No. 11-1244 with El Rancho Unified School District – School Resource Deputy.** (500)

Recommendation:

1. Approve Amendment No. 11-1244-2 to Agreement No. 11-1244 with El Rancho Unified School District (ERUSD) under which the City will be reimbursed for 50% of the cost of providing a School Resource Deputy from September 2013 through June 2014, and authorize the Mayor to execute the Amendment in a form approved by the City Attorney.

   Agreement No. 11-1244-2

9. **Slauson Avenue Street Improvements, CIP No. 21269 – Notice of Completion.** (500)

Recommendation:

1. Accept as complete, effective August 9, 2013, work performed by Excel Paving Company on the Slauson Avenue Street Improvements, CIP No. 21269, and instruct the City Clerk to file the Notice of Completion with the Los Angeles County Recorder.

CONSENT CALENDAR ITEMS PULLED FOR FURTHER DISCUSSION:

LEGISLATION:

10. Pico Rivera Campground/Park Rehabilitation Project. (500)

Recommendation:

1. That the City Council consider the Campground/Park Master conceptual design program elements.

11. Agreement Extension with Leba Inc. – Concessionaire for the Pico Rivera Sports Arena. (500)

Recommendation:

1. Approve the attached Agreement with LEBA Inc. for operations of the Pico Rivera Sports Arena.

   Agreement No. _____

NEW BUSINESS:

OLD BUSINESS:

2ND PERIOD OF PUBLIC COMMENTS - THIS TIME IS RESERVED FOR COMMENTS THAT HAVE NOT BEEN ADDRESSED ALREADY OR THAT ARE NOT LISTED ON THE AGENDA. PLEASE FILL OUT A BLUE PUBLIC COMMENT REQUEST FORM AND PROVIDE IT TO THE STAFF MEMBER AT THE BACK TABLE BEFORE THE MEETING STARTS.

When you are called to speak, please come forward and state your name and city of residency for the record. You have three (3) minutes to make your remarks.

ADJOURNMENT:

AFFIDAVIT OF POSTING

I, Anna M. Jerome, Deputy City Clerk, for the City of Pico Rivera, DO HEREBY CERTIFY, under penalty of perjury under the laws of the State of California, that the foregoing notice was posted at the Pico Rivera City Hall bulletin board, Pico Rivera Post Office and Parks: Smith, Pico and Rivera and full agenda packets distributed to the Pico Park and Serapis Libraries, which are available for the public to view. Additionally, agenda was distributed to members of the media on this the 23rd day of August 2013.

Dated this 23rd, day of August 2013

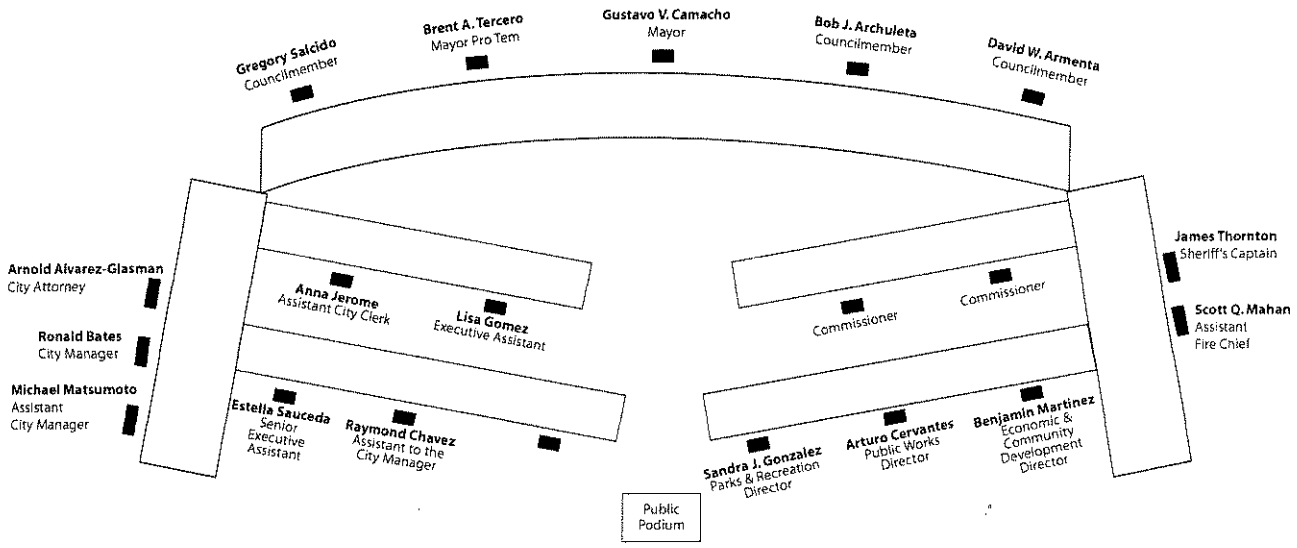
Anna M. Jerome

Anna M. Jerome, CMC
Deputy City Clerk

SB343 NOTICE

In compliance with and pursuant to the provisions of SB343 any public writing distributed by the City Clerk to at least a majority of the City Council Members regarding any item on this regular meeting agenda will be available on the back table at the entrance of the Council Chamber at the time of the City Council meeting and at the counter of City Hall at 6615 Passons Boulevard, Pico Rivera, California during normal business hours.

Council Meeting Seating Chart



STATEMENT REGARDING DECORUM AT CITY COUNCIL MEETINGS

If you wish to speak at the time set aside for public comments, the City Council has established the following standards and Rules of Decorum as allowed by State law.

- Public comment is limited to those portions of the meeting referred to as Public Comments. These portions are intended for members of the public to address the City Council, Redevelopment Agency, Housing Assistance Agency or Water Authority on matters related to agendas or any other items under the subject matter jurisdiction of the City Council or Agencies.

- A yellow Public Hearing Comment Request card must be completed to speak during a Public Hearing.

- A green Public Comment Request – Agenda Items Only card is for those wishing to address the Council/Agency on agenda items only during the 1st Period of Public Comments.

- A blue Public Comment Request – All other City-Related Business card is for those wishing to address the Council/Agency on any other items under the subject matter jurisdiction of the Council/Agency during the 2nd Period of Public Comments.

- Citizens may address the Council, Redevelopment Agency or Housing Assistance Agency once for a **maximum of three minutes**. After each speaker returns to his/her seat, the Mayor shall determine the time and manner of response, but typically if answers are available, they will be given after all speakers have had an opportunity to address the City Council.

- Members of the audience are asked to refrain from clapping or otherwise speaking from their seats. Those not meeting the standards for decorum may be escorted from the meeting.

RULES OF DECORUM CAN BE FOUND IN THE PICO RIVERA MUNICIPAL CODE SECTION 2.08.050 AS ESTABLISHED BY ORDINANCE 783 ADOPTED ON AUGUST 20, 1990 AND AMENDED BY ORDINANCES 822 (SEPTEMBER 21, 1992) AND 1020 (MARCH 21, 2006).

CITY COUNCIL **AGENDA REPORT**

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: PUBLIC HEARING - ADOPTION OF A RESOLUTION ORDERING THE VACATION OF A PORTION OF THE FRONTAGE ROAD LOCATED NORTH OF 9036 BEVERLY BOULEVARD IN THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONED DISTRICT

Recommendation:

Adopt Resolution ordering the vacation of a portion of the frontage road at the intersection north of 9036 Beverly Boulevard.

Fiscal Impact:

Once the subject street dedication is vacated, it becomes taxable square footage resulting in additional property tax revenues to the City. Ownership of the property is not vested in the City. The property will revert to the fee title owner.

Discussion:

On July 23, 2013, the City Council adopted a resolution declaring its intent to vacate a portion of the frontage road along Beverly Boulevard and setting a public hearing for August 27, 2013 to consider the proposed street vacation. A public hearing notification was sent to all residents within 300' of the subject intersection as well as posted at three locations at the subject right-of-way property. This partial street vacation involves an approximately 146' long by 40' wide segment of the frontage road on the south side of Beverly Boulevard, east of the intersection of Beverly Boulevard and Lindell Avenue. The proposed right-of-way vacation is located directly north of the parcel at 9036 Beverly Boulevard.

Title research found that the fee title of the proposed vacation area is not vested in the City. The City's interest in the subject street vacation area is an easement only for public street purposes. Once the street is vacated, it reverts back to the private entity to which

the property is vested. Preliminary title research shows the subject vacated area is vested in the owners of the adjacent parcel at 9036 Beverly Boulevard, currently Norms Restaurants. Norms Restaurants plans to utilize the vacated street property as part of development plans for the site. As a condition of this street vacation, Norms Restaurants will be required to enter into a development agreement with the City placing the financial responsibility for all necessary improvements and easements related to this vacation upon Norms. Norms will also be required to provide sufficient documentation establishing ownership of the vacated area. Upon compliance with these conditions, the vacation will be recorded and all rights to the vacated property will be conveyed to Norms Restaurants, except for any necessary public utility easements. If, for some reason, Norms fails to meet these conditions, the subject street vacation will not be recorded since it will result in the creation of a parcel which is undevelopable for commercial use due to restricted size and dimensions.

The vacation was reviewed by pertinent City Departments and utilities to assess the need for the reservation of utility easement(s) and improvements within the subject right-of-way. As of August 21, 2013, the only confirmed utilities within the vacated area are by the City of Pico Rivera for sewer line services and Southern California Edison (SCE) for electric lines and incidental services. As requested by SCE in Attachment 5 dated August 14, 2013, the SCE easement will be reserved; the City's existing sewer service may be abandoned upon determination that this line will not be necessary for future development.

This proposed street vacation was found to be in conformance with the City's General Plan by the Planning Commission via the attached Resolution adopted on July 15, 2013. This vacation is also justified via the City's 2010 Beverly Boulevard Median Traffic Analysis which found that this intersection at Beverly Boulevard and Lindell Avenue is underutilized having 23 a.m. inbound peak hour trips and 24 p.m. inbound peak hour trips; the study found that vehicles did not utilize this street for outbound trips during the a.m. or p.m. hours. This vacation will result in a negligible inconvenience to nearby residents who utilize the frontage road to access their residential neighborhoods. The negligible inconvenience is negated since route alternatives are available within close proximity. Going eastbound on Beverly Boulevard, the next right-hand turn opportunity is just three short blocks away at Deland Avenue.

Environmental Review:

Pursuant to the guidelines of the California Environmental Quality Act, the project is categorically exempt under a Class 5 Section 15305 (Minor Alterations in Land Use Limitations) because the project constitutes a minor adjustment of a lot line that will not result in the creation of a new parcel, nor a change in land use or density; therefore it will not have a significant effect on the environment.

Conclusion:

Staff recommends that the City Council adopt the attached Resolution declaring the vacation of a portion of the frontage road located north of 9036 Beverly Boulevard at Lindell Avenue conveying all rights to the underlying fee title owner, Norms Restaurants, upon compliance with the conditions regarding the establishment of ownership of the subject vacation area and execution of a development agreement with the City for all necessary improvements within the vacation area.

Ronald Bates

RB:BM:GA:ll

Attachments: 1.) Resolution of Vacation
2.) Resolution of Intent to Vacate No. 6733
3.) Minutes of the July 15, 2013 Planning Commission meeting
4.) Resolution of General Plan Conformance No. 1207
5.) Letter from Southern California Edison dated August 14, 2013

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, ORDERING THE VACATION OF A PORTION OF THE FRONTAGE ROAD LOCATED NORTH OF 9036 BEVERLY BOULEVARD, PICO RIVERA HEREIN REFERRED TO AS STREET VACATION NO. 13-1

WHEREAS, Resolution No. 6733 was adopted by the City Council of the City of Pico Rivera on July 23, 2013, declaring its intention to vacate the approximate 146' wide by 40' deep segment of the frontage road located south of the intersection of Beverly Boulevard and Lindell Avenue, north of the parcel at 9036 Beverly Boulevard, and which said portion of land shall be referred to as the Proposed Vacated Area; and,

WHEREAS, the Proposed Vacated Area is legally described and shown in Exhibits "A" and "B" and are on file in the office of the Director of Public Works Department; and,

WHEREAS, the City Council has approved the finding that there is substantial evidence that the vacation of the Proposed Vacated Area, as described herein, will have no significant effect on the environment based on the determination of the City Council that the Proposed Vacated Area is declared to be Categorically Exempt pursuant to Class 5 Section 15305 of the California Environmental Quality Act because the project constitutes a minor adjustment of a lot line that will not result in the creation of a new parcel, nor a change in land use or density; therefore it will not have a significant effect on the environment; and,

WHEREAS, the vacation proceeding for said Proposed Vacated Area is and will be conducted pursuant to the requirements of the Streets and Highways Code Sections 8320, *et seq.*; and,

WHEREAS, on July 15, 2013 the Pico Rivera Planning Commission determined that the vacation of the Proposed Vacated area is consistent with the City's adopted General Plan pursuant to Government Code Section 65402; and,

WHEREAS, the City Council finds that the vacation of the Proposed Vacated area, as described herein, is consistent with the General Plan and is unnecessary for present or future public use for traffic purposes; and,

WHEREAS, the City's 2010 Beverly Boulevard Median Traffic Analysis found that this intersection at Beverly Boulevard and Lindell Avenue is both unsafe and underutilized due to a high number of traffic collisions having nine (9) intersection-related accidents reported over a ten year period; and,

WHEREAS, the City Council finds that the City's interest in the subject portion of land proposed for vacation is in a street dedication only for public street purposes and that the land is not owned by the City as fee title; and,

WHEREAS, the City Council finds that relinquishing all rights of the Proposed Vacated Area is in the public interest and will relieve the City from future maintenance responsibilities and liability associated with the vacated area.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pico Rivera as follows:

SECTION 1. The City Council after consideration of the staff presentation, discussion, oral testimony and evidence presented, hereby finds that the above recitals are true and correct and incorporate them herein by this reference in support of its findings.

SECTION 2. The City Council further finds that from all the evidence submitted, that the Proposed Vacated Area is unnecessary for present or prospective public use.

SECTION 3. The Proposed Vacated Area, as legally described and shown in Exhibits "A" and "B" attached hereto and incorporated herein by reference, is hereby ordered to be vacated and abandoned by the City of Pico Rivera, subject to the reservation of existing utility easements, including but not limited to an easement granted to Southern California Edison for electric lines and incidental purposes on March 5, 1952 in Book 38409, Page 116 of Official Records.

SECTION 4. The City Clerk shall not cause a certified copy of this Resolution of Vacation to be recorded in the Office of the County Recorder of Los Angeles until compliance with the following conditions has been established:

1. Satisfactory evidence shall be submitted to the City that a title company is prepared to issue a title insurance policy describing and insuring that the vacated area shall vest in Norm's La Cienega, a California Corporation, and Norm's Restaurants, a California corporation, successor by merger to Joymar, Inc. as tenants in common or affiliated entity.
2. A binding contract and development plan shall be executed between the City and Norm's La Cienega, and Norm's Restaurants, to ensure that the Proposed Vacated Area is improved to the satisfaction of the Director of Public Works. All costs associated with these improvements shall be the responsibility of Norm's La Cienega and Norm's Restaurants. Such improvements include, but are not limited to, the installation of a modified cul-de-sac at the easterly terminus of the Proposed Vacated Area; removal of the existing roadway within the Proposed Vacated Area; installation

of a blockwall along the east property line of the Proposed Vacated Area; removal, relocation, and reconstruction of any public sidewalks, landscaping, utilities, etc. affected by this vacation.

APPROVED AND ADOPTED this ____ day of _____, 2013 by members of the City Council of the City of Pico Rivera, voting as follows:

_____
Gustavo V. Camacho, Mayor

ATTEST:

_____
Anna M. Jerome, Assistant City Clerk

APPROVED AS TO FORM:

_____
Arnold M. Alvarez-Glasman, City Attorney

AYES:
NOES:
ABSENT:
ABSTAIN:

EXHIBIT "A"

RIGHT-OF-WAY VACATION
LEGAL DESCRIPTION

BEING A PORTION OF TRACT NO. 16534 LOCATED IN THE CITY OF PICO RIVERA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 423, PAGES 48 THROUGH 50 OF MAPS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 111 OF SAID TRACT NO.16534;

THENCE NORTH 69° 20' 05" WEST ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF BEVERLY BOULEVARD HAVING A HALF WIDTH OF 92.00 FEET AS SHOWN ON SAID TRACT MAP, A DISTANCE OF 146.16 FEET;

THENCE NORTH 20° 39' 55" EAST 17.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 25.00 FEET;

THENCE NORTHERLY AND WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00" AN ARC LENGTH OF 39.27 FEET TO THE SOUTHEASTERLY PROLONGATION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF BEVERLY BOULEVARD HAVING A HALF WIDTH OF 50.00 FEET AND TO A NON-TANGENT LINE. A RADIAL LINE FROM THE END OF SAID CURVE BEARS NORTH 20° 39' 55" EAST.

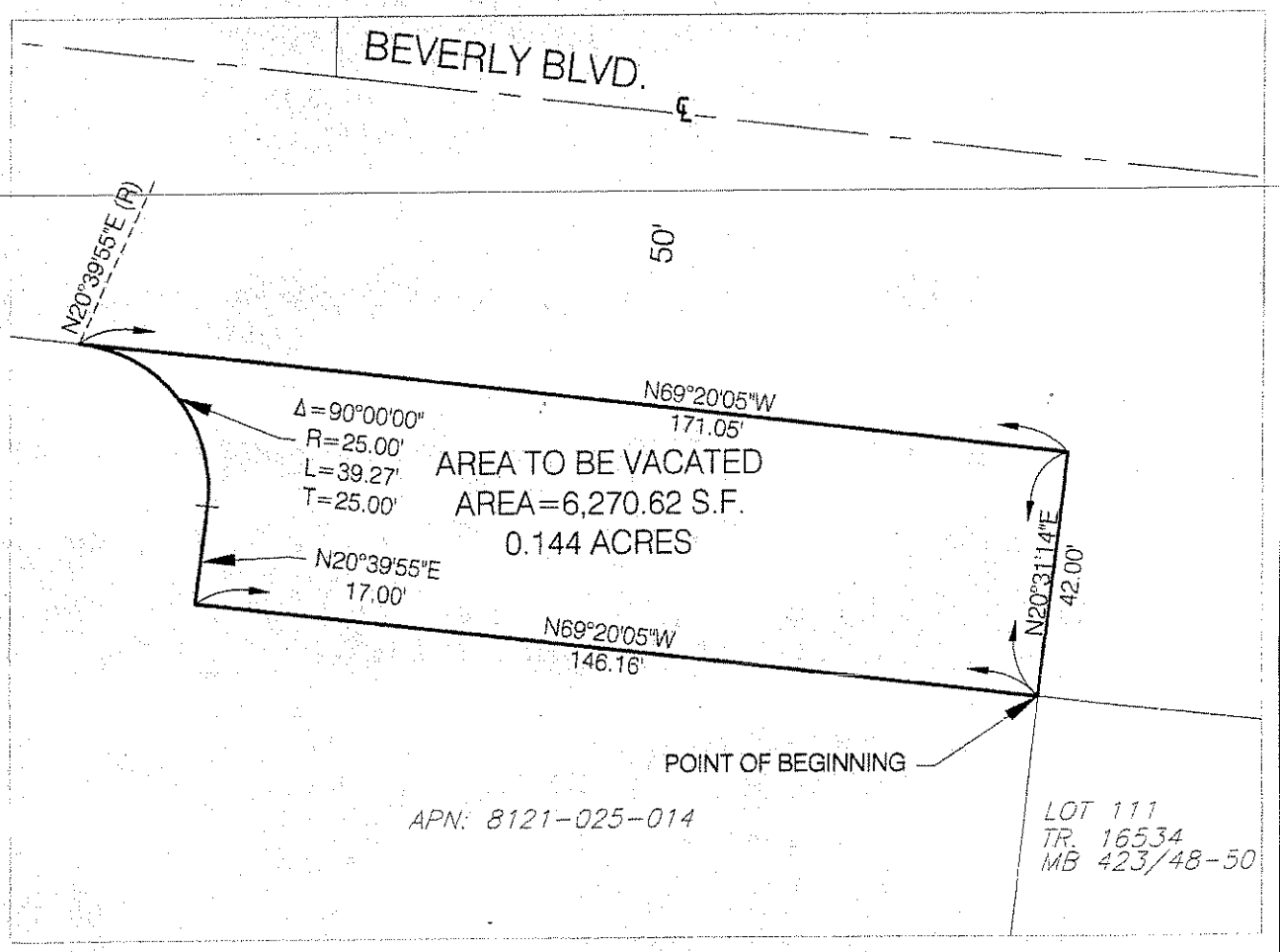
THENCE SOUTH 69° 20' 05" EAST ALONG A SAID SOUTHEASTERLY PROLONGATION, A DISTANCE OF 171.05 FEET TO THE NORTHEASTERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 111;

THENCE SOUTH 20° 31' 14" WEST, A DISTANCE OF 42.00 FEET TO THE **POINT OF BEGINNING.**

CONTAINS 6270.62 S.F. MORE OR LESS

LICENSED LAND SURVEYOR
LEONARD C. FOWLER
LS 7238
Expires 12/31/14
STATE OF CALIFORNIA

EXHIBIT 'B'-MAP
RIGHT-OF-WAY VACATION



LEGEND

BOUNDARY OF RIGHT-OF-WAY VACATION ———

LICENSED LAND SURVEYOR
LEONARD C. FOWLER
LS 7238
Expires 12/31/14
STATE OF CALIFORNIA

15 0 15 30
GRAPHIC SCALE
SCALE: 1" = 30'

PLAT PREPARED BY:

CDR
COMMERCIAL DEVELOPMENT RESOURCES
949-825-5202 T 949-825-5116 F

SHEET 2 OF 2

RESOLUTION NO. 6733

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, DECLARING ITS INTENTION TO ORDER THE VACATION OF A PORTION OF THE FRONTAGE ROAD LOCATED NORTH OF 9036 BEVERLY BOULEVARD, PICO RIVERA HEREIN REFERRED TO AS STREET VACATION NO. 13-1

THE CITY COUNCIL OF THE CITY OF PICO RIVERA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the City of Pico Rivera is considering to vacate an approximate 146' wide by 40' deep segment of the frontage road located south of the intersection of Beverly Boulevard and Lindell Avenue, north of the parcel at 9036 Beverly Boulevard, as shown in Exhibit "A" attached hereto; and,

WHEREAS, the vacation proceeding for said proposed vacation is and will be conducted pursuant to the requirements of the Streets and Highways Code Sections 8320, et seq.; and

NOW, THEREFORE, be it resolved by the City Council of the City of Pico Rivera that:

SECTION 1. The City Council of the City of Pico Rivera does hereby declare its intention to vacate an approximate 146' by 40' segment of the frontage road located north of 9036 Beverly Boulevard, as shown in Exhibit "A" attached hereto.

SECTION 2. A public hearing is hereby set for 6:00 p.m. on Tuesday, August 27, 2013 in the Council Chambers at the City of Pico Rivera located at 6615 Passons Boulevard, Pico Rivera to consider the proposed street vacation. All persons interested in the vacation are invited to attend and give testimony if desired.

SECTION 3. The City Clerk of the City of Pico Rivera is hereby directed to cause notices of said proposed vacation to be conspicuously posted along said strip of land for at least two (2) weeks before the date of said hearing. Said notices shall be posted not more than 300 feet apart, but in no event shall there be fewer than three (3) notices posted. Said notice of public hearing shall be published in a newspaper of general circulation at least two (2) weeks prior to the date of said hearing.

SECTION 4. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions and it shall become effective

immediately upon its approval:

APPROVED AND ADOPTED this 23rd day of July, 2013 by members of the City Council of the City of Pico Rivera, voting as follows:

Gustavo V. Camacho, Mayor

ATTEST:

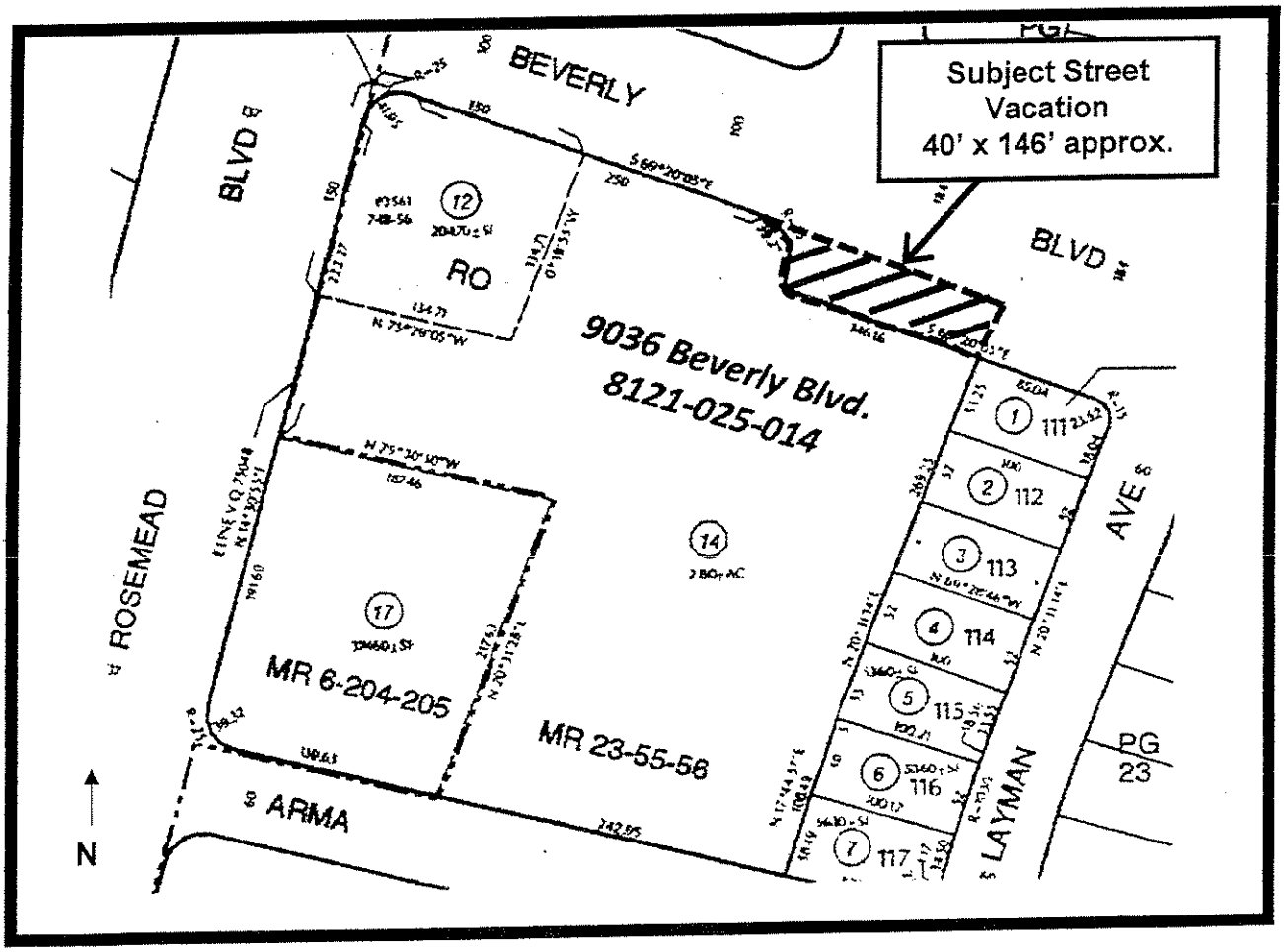
Anna M. Jerome, Assistant City Clerk

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney

AYES: Archuleta, Armenta, Salcido, Tercero, Camacho
NOES: None
ABSENT: None
ABSTAIN: None

EXHIBIT "A"



No Scale

Approved as submitted
August 5, 2013

ATTACHMENT 3

PLANNING COMMISSION | MINUTES

Monday, July 15, 2013

A regular meeting of the Planning Commission was called to order by Chairperson Elisaldez at 6:00 p.m., in the City Hall Council Chambers, 6615 Passons Boulevard, Pico Rivera, CA.

STAFF PRESENT:
Julia Gonzalez, Deputy Director
Guille Aguilar, Senior Planner

ROLL CALL:

PRESENT: Commissioners Elisaldez, Garcia, Martinez, Zermeno

ABSENT: Celiz

FLAG SALUTE: Led by Commissioner Martinez

APPROVAL OF MINUTES:

July 1, 2013

Chairperson Elizaldez called for a correction on the bottom of page 5 where the words "approve the hearing" is replaced with "approve the resolution".

Motion to approve with amendments was made by Commissioner Martinez and seconded by Commissioner Garcia:

AYES: Elisaldez, Garcia, Martinez, Zermeno
NOES: None
ABSTAIN: None
ABSENT: Celiz

PUBLIC HEARING:

GENERAL PLAN CONFORMANCE RESOLUTION FOR PROPOSED VACATION OF A PORTION OF THE FRONTAGE ROAD ON BEVERLY BOULEVARD ADJACENT TO 9036 BEVERLY BOULEVARD IN THE GENERAL COMMERCIAL (C-G) ZONED DISTRICT

Senior Planner Guille Aguilar presented the report. The City is considering a partial street vacation of an approximately 146′ long by 40′ wide segment of the frontage on the south side of Beverly Boulevard, east of the intersection of Beverly Boulevard and Lindell Avenue. The proposed right-of-way vacation is located directly north of the parcel at 9036 Beverly Boulevard, which has been vacant and undeveloped for several years.

Commissioner Celiz arrived to the meeting and was acknowledged by the commissioners.

Senior Planner Aguilar explained the street vacation process, which is mandated by the California Streets and Highways Code and the California Government Code, consists of multiple steps with today's meeting being the first step in the street vacation approval process. Senior Planner Aguilar explained utility companies and other departments have been informed of the proposal and staff is awaiting their input for potential utility easements within the property.

Staff will present a Resolution of Intent at the July 23, 2013 City Council meeting at which point the City Council will make the decision as to set a date and time for the public hearing. Upon approval of that resolution, notices will be mailed to the residents who live within 300′ feet of the subject property. The notice will invite the residents to the public hearing and solicit their input. Upon City Council approval of the subject street vacation, the subject land will be conveyed to the adjacent property owner of 9036 Beverly Boulevard, currently Norms Restaurants. Norms Restaurants will be responsible for all necessary improvements and easements related to this vacation.

Senior Planner explained that the proposed street vacation is consistent with Policies A.1.2 and A.1.4 of the Municipal Facilities element of the General Plan which call for improvements to a roadway where such improvements are sensitive to adjacent neighborhoods, reflect resident concerns for safety and protect local neighborhoods by discouraging non-local through traffic. Vacation of this frontage road will result in a more defined buffer between the commercial property and the residential neighborhood.

Senior Planner Aguilar indicated that this segment of the frontage street has also been found to be underutilized via a 2010 traffic analysis. The traffic analysis also identifies a high rate of traffic collision incidents at this intersection.

The proposed street vacation is also consistent with the Municipal Facilities and

Services Element of the Pico Rivera General Plan which designates Beverly Boulevard as a 'Major Highway' having a right-of-way width of 100'. The current right-of-way width is 184'. This proposed vacation will result in an ultimate right-of-way width of 144', which is 44' in excess of the required 100' width.

Chairperson Elisaldez motioned to open public hearing. There being no one in the audience, a motion was made by Commissioner Zermeno seconded by Commissioner Garcia to close the public hearing.

Chairperson Elisaldez asked if the street vacation would potentially delay the construction of Norms.

Senior Planner Aguilar responded that this could cause delay for Norms because the proposal currently under review with the City indicates construction within the frontage road area.

Chairperson Zermeno asked when Norms would begin construction.

Senior Planner Aguilar responded that Norms is pursuing an ambitious schedule and plans to begin construction as early as next month.

Commissioner Celiz asked if the frontage road is currently closed.

Senior Planner Aguilar responded that the frontage road is currently open and accessible. Once it is closed, residents will need to drive three blocks to the east to enter their neighborhoods, but the 2010 traffic study indicated that the minor inconvenience to the residents is outweighed because safer alternatives are available.

Commissioner Celiz inquired if Norms asked for the street vacation.

Senior Planner Aguilar responded that the idea for the street vacation evolved from conversation that staff had with Norms about increasing the potential attractiveness of the site in order to bring in a good tenant and how to create an appropriate buffer between the residential neighborhood and the new commercial development.

Commissioner Garcia asked if the remaining portion of the frontage street would become a cul-de-sac.

Senior Planner Aguilar indicated that this is yet to be determined because staff is still waiting on review from other departments. The final decision will be presented to the

City Council.

Commissioner Martinez asked who initiated the street vacation.

Senior Planner Aguilar indicated that the City initiated the street vacation.

Commissioner Martinez asked for clarification.

Deputy Director Julia Gonzalez indicated that City staff initiated the street vacation and explained that now that Redevelopment is no longer in existence, the City is limited as to how the City can attract good businesses such as Norms. Staff sees this as a mutual benefit because the traffic study from 2010 justified the closure due to underutilization and traffic safety concerns.

Commissioner Martinez indicated that although he is in support for the street vacation and for Norms, he believes that the real benefit of this street vacation goes to Norms. He suggests to have an appraisal for the property and to present this information to the City Council. He also suggested that our report should include a dollar value of the property.

Commissioner Martinez asked if Norms would be paying for the property and if not, why not.

Deputy Director Gonzalez indicated that Norms would not be paying for the property.

Commissioner Martinez indicated that Norms should be responsible for paying for the street vacation because it takes money for staff to prepare the report, to post public notices, to pay for the Planning Commissioners' attendance, etc. Commissioner Martinez asked who made the decision to waive the fees.

Deputy Director Gonzalez indicated that the decision to have the City initiate and process the street vacation was made by staff as an economic development strategy. Since Redevelopment no longer exists, we do not have any actual monies to attract desirable businesses to the City, such as Norms.

Chairperson Elizaldez asked that the Planning Commissioners receive copies of the appraisal or value analysis of the subject property when it is prepared for the City Council.

There being no further discussion, it was motioned to approve the resolution by

Commissioner Celiz, seconded by Commissioner Garcia.

Motioned carried by the following roll call vote:

AYES:	Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

PUBLIC COMMENTS: Javier Pacheco, resident, suggested that the City should consider posting more public notices or larger public notices so that they are more clearly visible.

NEW BUSINESS: None.

CONTINUED/OLD BUSINESS: None.

PLANNING COMMISSION REPORTS:

a) CITY COUNCIL MEETING OF July 9, 2013 – Chairperson Elizaldez attended the meeting and reported the graffiti removal contract was approved. The issue of pan handlers was also discussed at the meeting and Sherriff's staff indicated they have stepped in with 3 people from the Pico Gardens facility being vacated. The facility is also considering hiring additional security. It was also announced that the City was awarded the designation of Playful City USA.

Commissioner Garcia inquired on the former Weinerschnitzel building and its status.

Deputy Director Gonzalez replied that the building is being restored by Weinerschnitzel and that it is expected to open sometime in August.

b) PLANNING COMMISSION REPRESENTATIVE TO THE CITY COUNCIL MEETING OF Tuesday, July 23, 2013.

Chairperson Garcia to attend.

There being no further business the Planning Commission meeting was adjourned at 6:40 p.m.

Tommy Elisaldez, Chairperson

ATTEST:

Benjamin A. Martinez, Secretary
Planning Commission
Director of Community and Economic Development

ATTACHMENT 4

RESOLUTION NO. 1207

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PICO RIVERA, CALIFORNIA, FINDING THAT THE VACATION OF A PORTION OF THE FRONTAGE STREET ON BEVERLY BOULEVARD, NORTH OF THE PROPERTY AT 9036 BEVERLY BOULEVARD, IS IN CONFORMANCE WITH THE CITY OF PICO RIVERA GENERAL PLAN HEREIN REFERRED TO AS STREET VACATION NO. 13-1

WHEREAS, the City of Pico Rivera General Plan was adopted on August 16, 1993; and,

WHEREAS, the California Government Code 65402, requires the City of Pico Rivera shall not acquire, use or dispose of any real property or vacate any street until the disposition of the property has been found in conformance with the City's General Plan; and,

WHEREAS, the proposed vacation of a 146' long segment of the frontage street, based on existing land use and street configuration, it is no longer required for public street and highway purposes; and,

WHEREAS, the subject segment of the frontage street adjacent to 9036 Beverly Boulevard, having Assessor's Parcel Number 8121-025-014, is shown in Exhibit A; and,

WHEREAS, the Planning Commission of the City of Pico Rivera reviewed the proposed street vacation at its regularly scheduled meeting on July 15, 2013; and

NOW THEREFORE, the Planning Commission of the City of Pico Rivera does hereby resolve as follows:

SECTION 1. The Planning Commission of the City of Pico Rivera hereby finds the above recitals true and correct and incorporates them herein by this reference.

SECTION 2. The Planning Commission of the City of Pico Rivera hereby finds and determines that the proposed vacation of a portion of the frontage street is in conformance with the City of Pico Rivera General Plan pursuant to Government Code Section 65402.

SECTION 3. That, upon City Council approval, the proposed vacation of the subject segment of the frontage street along Beverly Boulevard shall be conveyed to the abutting property owner of 9036 Beverly Boulevard, Pico Rivera.

SECTION 4. That the Planning Commission finds that Street Vacation No. 13-1 is consistent with the General Plan based on the following reasons and findings:

a) The proposed street vacation is consistent with Policies A.1.2 and A.1.4 of the Municipal Facilities element of the General Plan which call for improvements to a roadway where such improvements are sensitive to adjacent neighborhoods, reflect

resident concerns for safety and protect local neighborhoods by discouraging non-local through traffic. Vacation of this segment of the Beverly Boulevard frontage road will eliminate access onto the property at 9036 Beverly Boulevard via the residential neighborhood along Lindell Avenue thus resulting in a more defined buffer between the commercial property and the residential neighborhood.

b) The Municipal Facilities and Services Element of the Pico Rivera General Plan designates Beverly Boulevard as a 'Major Highway' having a right-of-way width of 100'. This segment of Beverly Boulevard, where the frontage street exists, has a right-of-way width of 184'. This proposed vacation will result in an ultimate right-of-way width of 144', which is 44' in excess of the required 100' width.

c) The subject segment of the frontage street which is proposed to be vacated has been found to be underutilized. A 2010 traffic analysis for Beverly Boulevard identifies that this segment of the frontage road is extremely underutilized, having 23 peak hour inbound trips into the frontage road in the a.m. hours and 24 peak hour inbound trips into the frontage road in the p.m. hours. The study showed no outbound vehicle trips coming from the frontage road during a.m. or p.m. hours.

d) The subject segment of the frontage street which is proposed to be vacated has been found to have a high rate of traffic collisions. The 2010 traffic analysis for Beverly Boulevard identifies that this segment of the frontage road, located at the intersection of Lindell Avenue and Beverly Boulevard, as having a high rate of traffic collision incidents. Vacation of this segment of the frontage street is expected to result in a reduction of traffic collision incidents.

SECTION 5. The Planning Commission Secretary shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions and it shall become effective immediately upon its approval.

[Signatures on following page]

APPROVED AND ADOPTED this 15th day of July, 2013 by members of the Planning Commission of the City of Pico Rivera, voting as follows:

Tommy Elizaldez, Chairperson

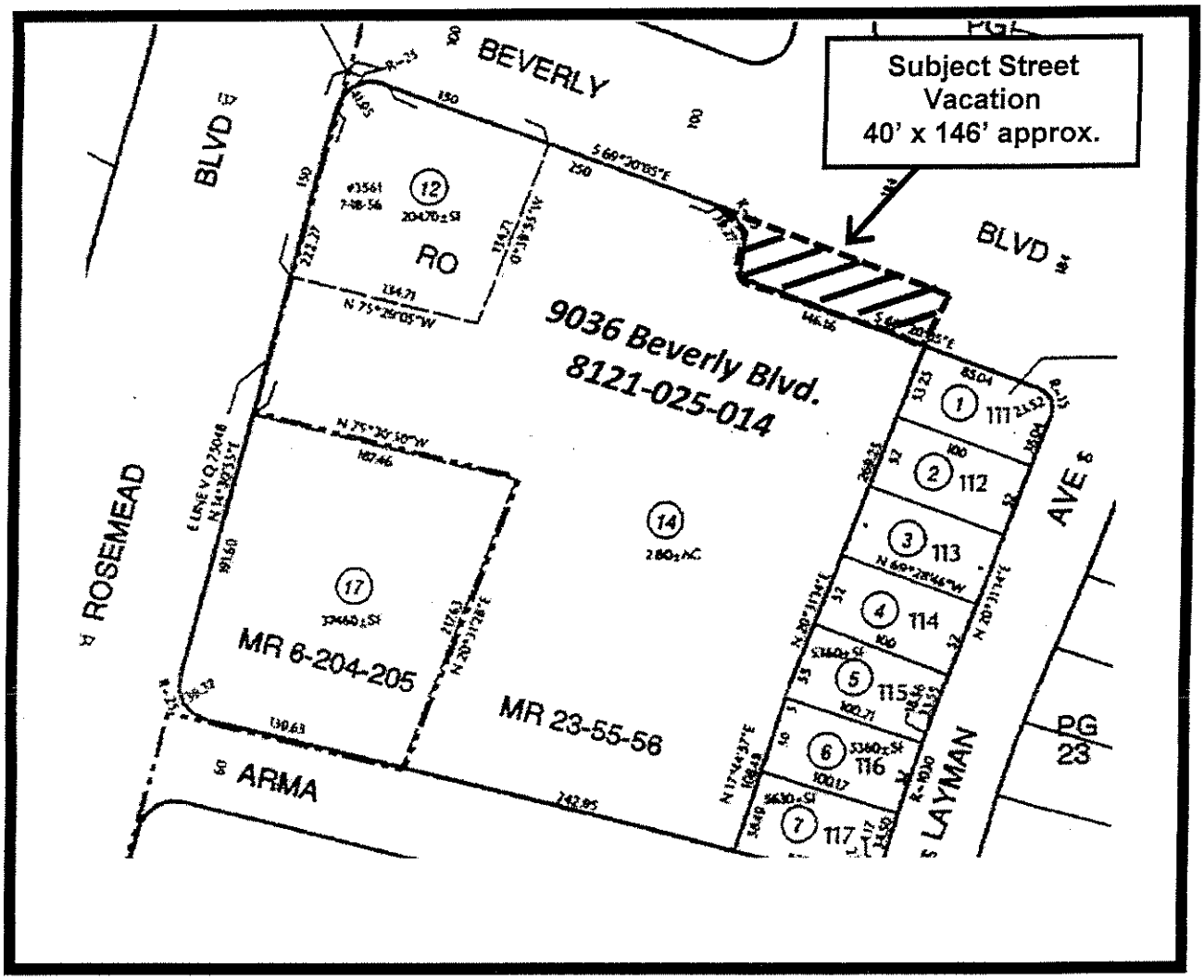
ATTEST:

Benjamin A. Martinez, Secretary
Planning Commission
Community and Economic Development Director

APPROVED AS TO FORM:

John W. Lam, Assistant City Attorney

AYES: Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:
ABSENT:
ABSTAIN:



ATTACHMENT "A"

No Scale N

STREET VACATION NO. 13-1
SEGMENT OF FRONTAGE STREET
NORTH OF 9036 BEVERLY BOULEVARD
PICO RIVERA, CA

PLANNING COMMISSION ACTION:

RESOLUTION NO. 1207

Signed _____
Benjamin A. Martinez, Secretary
Planning Commission
Community and Economic
Development Director

ADOPTED July 15, 2013
(Date)

SOUTHERN CALIFORNIA
EDISON®
An EDISON INTERNATIONAL® Company

ATTACHMENT 5

REAL PROPERTIES
TITLE AND REAL ESTATE SERVICES

RECEIVED
AUG 19 2013
HOUSING DEPT.

Date: August 14, 2013

Attn: Guille Aguilar
City of Pico Rivera - Planning Division
6615 Passons Boulevard
Pico Rivera, CA 90660

SUBJECT: **Vacation of Street:** Portion of Beverly Boulevard (Resolution No. 6733)
Our Notification No.: 202287085
Our Service Order No. 801003542

In response to your letter, Southern California Edison Company (SCE), a public utility, regulated by the California Utilities Commission, has the following facilities in-place and operating within the area referenced in your letter and map.

These facilities are dedicated to public use and are used and useful for the Transmission/Distribution of electric energy and for the transmitting intelligence by electric means to the public.

Therefore, pursuant to the California Street and Highway Code #8346, SCE hereby requests the reservation of easements and rights that are necessary to use, maintain, operate, repair, replace, remove, or renew said facilities in area to be described as follows: See attached Facility Inventory Map 116-4263-0 with our facilities highlighted in yellow.

Southern California Edison Company has an underground distribution line in your proposed area. Please reserve our rights to the line on the property for these facilities. See our attached Facility Inventory Map 116-4263-0 with our facilities highlighted in yellow.

After the Resolution of Vacation has been **recorded** by the County Recorder's office, please mail a copy for our file to my attention at the address below referencing Our Notification No.: 202287085

If you have any question, please call me at: (626) 302-4338

Sincerely,

Rebecca May

Real Properties

2131 Walnut Grove Avenue
Rosemead, CA 91770

PICO RIVERA

LOS ANGELES CO. 116-4263-0

CITY OF PICO RIVERA
NOTICE OF PUBLIC HEARING FOR
STREET VACATION NO. 13-1

NOTICE IS HEREBY GIVEN that a public hearing will be held before the City Council of the City of Pico Rivera to consider City initiated Street Vacation No. 13-1 for vacation of a portion of the Beverly Boulevard frontage road located directly north of 9036 Beverly Boulevard. The proposed vacation proceedings are being conducted under Streets and Highways Code Section 8320 et sequitur.

The subject street to be vacated is generally described as an approximately 146' long by 40' deep segment of the Beverly Boulevard frontage road located directly north of Assessor's Parcel Number 8121-025-014, as shown on the attached Site Map. Necessary easements for existing public utilities within the subject property will be reserved.

WHEN: Tuesday, August 27, 2013 - 6:00 p.m.
WHERE: City Hall Council Chambers
6615 Passons Boulevard
Pico Rivera, CA 90660
MAIL: PO Box 1016 **TELEPHONE:** (562) 801-4332

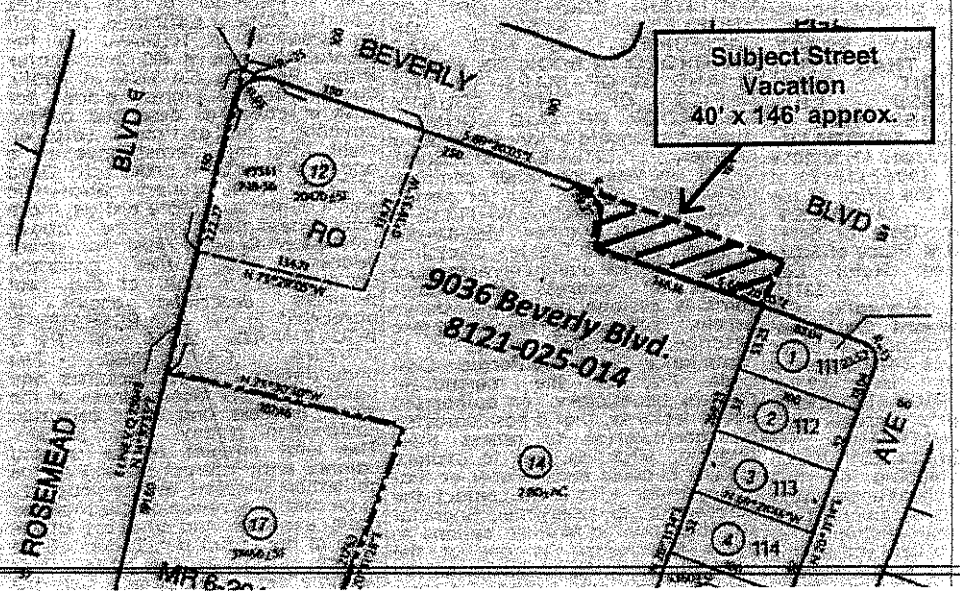
Pursuant to the State of California Public Resources Code and the State Guidelines for the California Environmental Quality Act, the Community and Economic Development Department has determined that there is no possibility that the project will have a significant effect on the environment and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15061 (b) (3) of the CEQA Guidelines that states: "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

PERSONS INTERESTED IN THIS MATTER are invited to attend this hearing to express their opinion on the above matter. The staff report and fee study data relevant to the proposed project may be reviewed at City Hall in the Community and Economic Development Department-Planning Division. If you challenge the aforementioned entitlements in court, you may be limited to raising only those issues you or someone else raise at the public hearing described in this notice, or in written correspondence delivered to the City of Pico Rivera City Clerk, or at the public hearing.

Anna M. Jerome
Assistant City Clerk
Hrg: August 27, 2013- 6:00p.m.
S.V. No. 13-1
****

In compliance with the Americans with Disabilities Act of 1990, the City of Pico Rivera is committed to providing reasonable accommodations for a person with a disability. Please contact Anna Jerome at (562) 801-4389 if special program accommodations are necessary and/or if program information is needed in an alternative format. Special requests must be made in a reasonable amount of time in order that accommodations can be arranged.

ATTACHMENT "A"



CITY COUNCIL | AGENDA REPORT

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: PUBLIC HEARING – 2013 CONGESTION MANAGEMENT PROGRAM

Recommendation:

Open the Public Hearing and adopt the Resolution affirming City conformance with the Congestion Management Program.

Fiscal Impact:

Failure to adopt a resolution for self-certification of conformance with the requirement of the Congestion Management Program may jeopardize the City's share of future state and federal transportation programming funds.

Discussion:

The Congestion Management Program (CMP) is a state-mandated program approved with the passage of Proposition 111 in 1990. The basis for the CMP is that land-use decisions impact the regional transportation system and cities approving developments should be held accountable for alleviating traffic congestion for the projects approved within their jurisdiction. The state statute required the development of a CMP report to be adopted and updated annually for every county and local government and submitted to Los Angeles County Metropolitan Transportation Authority (Metro).

Receipt of state gas tax money and eligibility for other state and federal transportation programming funds depend on the City maintaining annual compliance with CMP requirements. These requirements include biennial traffic counts for designated arterial

intersections and continued implementation of the previously adopted Transportation Demand Management Ordinance and the Land Use Analysis Program.

The City is required to submit the Local Development Report (LDR) which contains the City's net development activity for the year. This Local Development Report (LDR) was previously based on a positive point system showing net growth being off-set by certain transportation improvements and maintaining a credit balance. Metro froze local jurisdiction's credit balances pending a study to determine the feasibility of a countywide impact fee. However, cities must continue to report their new net development activity just as in prior years.

City staff will submit the adopted resolution and the 2013 CMP Local Development report to Metro for conformance on or before the September 1 deadline.

Ronald Bates

RB:BM:JG:ll

Attachments:

Local Development Report
Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PICO RIVERA, CALIFORNIA, FINDING THE CITY TO BE IN CONFORMANCE WITH THE CONGESTION MANAGEMENT PROGRAM (CMP) AND ADOPTING THE CMP LOCAL DEVELOPMENT REPORT, IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 65089

WHEREAS, the CMP statute requires the Los Angeles County Metropolitan Transportation Authority ("LACMTA"), acting as the Congestion Management Agency for Los Angeles County, to annually determine that the County and cities within the County are conforming to all CMP requirements; and

WHEREAS, LACMTA requires submittal of the CMP Local Development Report by September 1 of each year; and

WHEREAS, the City Council held a noticed public hearing on Tuesday, August 27, 2013

NOW, THEREFORE, THE CITY COUNCIL FOR THE CITY OF PICO RIVERA LOS ANGELES DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the City has taken all of the following actions, and that the City is in conformance with all applicable requirements of the 2010 CMP adopted by the LACMTA Board on October 28, 2010.

By June 15, of odd-numbered years, the City will conduct annual traffic counts and calculate levels of service for selected arterial intersections, consistent with the requirements identified in the CMP Highway and Roadway System chapter.

The City has adopted and continues to implement a local transportation demand management ordinance, consistent with the minimum requirements identified in the CMP Transportation Demand Management chapter.

The City has adopted and continues to implement a local land use analysis program, consistent with the minimum requirements identified in the CMP Land Use Analysis Program chapter.

The City has adopted a Local Development Report, attached hereto and made a part hereof, consistent with the requirements identified in the 2010 CMP. This report balances traffic congestion impacts due to growth within the City with transportation improvements, and demonstrates that the City is meeting its responsibilities under the Countywide Deficiency Plan consistent with the LACMTA Board adopted 2003 Short Range Transportation Plan.

SECTION 2. That the City Clerk shall certify to the adoption of this Resolution and shall forward a copy of this Resolution to the Los Angeles County Metropolitan Transportation Authority.

APPROVED AND ADOPTED this 27th day of August, 2013.

_____
Gustavo V. Camacho, Mayor

ATTEST:

_____
Anna M. Jerome, Assistant City Clerk

APPROVED AS TO FORM:

_____
Arnold M. Alvarez-Glassman, City Attorney

AYES:
NOES:
ABSENT:
ABSTAIN:

City of Pico Rivera

Date Prepared: August 12, 2013

2013 CMP Local Development Report

Reporting Period: JUNE 1, 2012 - MAY 31, 2013

Contact: Julia Gonzalez
Phone Number: (562) 801-4332

CONGESTION MANAGEMENT PROGRAM FOR LOS ANGELES COUNTY

2011 DEFICIENCY PLAN SUMMARY

*** IMPORTANT: All "#value!" cells on this page are automatically calculated. Please do not enter data in these cells.**

DEVELOPMENT TOTALS

RESIDENTIAL DEVELOPMENT ACTIVITY	Dwelling Units
Single Family Residential	6.00
Multi-Family Residential	0.00
Group Quarters	0.00

COMMERCIAL DEVELOPMENT ACTIVITY	1,000 Net Sq.Ft.[2]
Commercial (less than 300,000 sq.ft.)	(4.00)
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

NON-RETAIL DEVELOPMENT ACTIVITY	1,000 Net Sq.Ft.[2]
Lodging	0.00
Industrial	0.00
Office (less than 50,000 sq.ft.)	2.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

OTHER DEVELOPMENT ACTIVITY	Daily Trips
ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00

EXEMPTED DEVELOPMENT TOTALS	
Exempted Dwelling Units	0
Exempted Non-residential sq. ft. (in 1,000s)	0

2. Net square feet is the difference between new development and adjustments entered on pages 2 and 3.

City of Pico Rivera

Date Prepared: August 12, 2013

2013 CMP Local Development Report

Reporting Period: JUNE 1, 2012 - MAY 31, 2013

Enter data for all cells labeled "**Enter.**" If there are no data for that category, enter "0."

PART 1: NEW DEVELOPMENT ACTIVITY

RESIDENTIAL DEVELOPMENT ACTIVITY

Category	Dwelling Units
Single Family Residential	6.00
Multi-Family Residential	0.00
Group Quarters	0.00

COMMERCIAL DEVELOPMENT ACTIVITY

Category	1,000 Gross Square Feet
Commercial (less than 300,000 sq.ft.)	2.00
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

NON-RETAIL DEVELOPMENT ACTIVITY

Category	1,000 Gross Square Feet
Lodging	0.00
Industrial	0.00
Office (less than 50,000 sq.ft.)	2.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

OTHER DEVELOPMENT ACTIVITY

Description (Attach additional sheets if necessary)	Daily Trips (Enter "0" if none)
ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00

City of Pico Rivera

Date Prepared: August 12, 2013

2013 CMP Local Development Report

Reporting Period: JUNE 1, 2012 - MAY 31, 2013

Enter data for all cells labeled "**Enter.**" If there are no data for that category, enter "0."

PART 2: NEW DEVELOPMENT ADJUSTMENTS

IMPORTANT: Adjustments may be claimed only for 1) development permits that were both issued and revoked, expired or withdrawn during the reporting period, and 2) demolition of any structure with the reporting period.

RESIDENTIAL DEVELOPMENT ADJUSTMENTS

Category	Dwelling Units
Single Family Residential	0.00
Multi-Family Residential	0.00
Group Quarters	0.00

COMMERCIAL DEVELOPMENT ACTIVITY

Category	1,000 Gross Square Feet
Commercial (less than 300,000 sq.ft.)	6.00
Commercial (300,000 sq.ft. or more)	0.00
Freestanding Eating & Drinking	0.00

NON-RETAIL DEVELOPMENT ACTIVITY

Category	1,000 Gross Square Feet
Lodging	0.00
Industrial	0.00
Office (less than 50,000 sq.ft.)	0.00
Office (50,000-299,999 sq.ft.)	0.00
Office (300,000 sq.ft. or more)	0.00
Medical	0.00
Government	0.00
Institutional/Educational	0.00
University (# of students)	0.00

OTHER DEVELOPMENT ACTIVITY

Description (Attach additional sheets if necessary)	Daily Trips (Enter "0" if none)
ENTER IF APPLICABLE	0.00
ENTER IF APPLICABLE	0.00

City of Pico Rivera

Date Prepared: August 12, 2013

2013 CMP Local Development Report

Reporting Period: JUNE 1, 2012 - MAY 31, 2013

Enter data for all cells labeled "**Enter.**" If there are no data for that category, enter "0."

PART 3: EXEMPTED DEVELOPMENT ACTIVITY

(NOT INCLUDED IN NEW DEVELOPMENT ACTIVITY TOTALS)

Low/Very Low Income Housing	0	Dwelling Units
High Density Residential Near Rail Stations	0	Dwelling Units
Mixed Use Developments Near Rail Stations	0	1,000 Gross Square Feet
	0	Dwelling Units
Development Agreements Entered into Prior to July 10, 1989	0	1,000 Gross Square Feet
	0	Dwelling Units
Reconstruction of Buildings Damaged due to "calamity"	0	1,000 Gross Square Feet
	0	Dwelling Units
Reconstruction of Buildings Damaged in Jan. 1994 Earthquake	0	1,000 Gross Square Feet
	0	Dwelling Units
Total Dwelling Units	0	
Total Non-residential sq. ft. (in 1,000s)	0	

Exempted Development Definitions:

1. Low/Very Low Income Housing: As defined by the California Department of Housing and Community Development as follows:
   - Low-Income: equal to or less than 80% of the County median income, with adjustments for family size.
   - Very Low-Income: equal to or less than 50% of the County median income, with adjustments for family size.
2. High Density Residential Near Rail Stations: Development located within 1/4 mile of a fixed rail passenger station and that is equal to or greater than 120 percent of the maximum residential density allowed under the local general plan and zoning ordinance. A project providing a minimum of 75 dwelling units per acre is automatically considered high density.
3. Mixed Uses Near Rail Stations: Mixed-use development located within 1/4 mile of a fixed rail passenger station, if more than half of the land area, or floor area, of the mixed use development is used for high density residential housing.
4. Development Agreements: Projects that entered into a development agreement (as specified under Section 65864 of the California Government Code) with a local jurisdiction prior to July 10, 1989.
5. Reconstruction or replacement of any residential or non-residential structure which is damaged or destroyed, to the extent of > or = to 50% of its reasonable value, by fire, flood, earthquake or other similar calamity.
6. Any project of a federal, state or county agency that is exempt from local jurisdiction zoning regulations and where the local jurisdiction is precluded from exercising any approval/disapproval authority. These locally precluded projects do not have to be reported in the LDR.

CITY COUNCIL **MINUTES**

Tuesday, July 23, 2013

A Regular Meeting of the City Council was held in the Council Chamber, Pico Rivera City Hall, 6615 Passons Boulevard, Pico Rivera, California.

Mayor Camacho called the meeting to order at 6:00 p.m. on behalf of the City Council.

PRESENT: Archuleta, Armenta, Salcido, Tercero, Camacho
ABSENT: None

COMMISSIONERS PRESENT:
Ruben Garcia, Planning Commission
Paul Gomez, Parks & Recreation Commission

INVOCATION: Planning Commissioner Garcia

PLEDGE OF ALLEGIANCE: Parks & Recreation Commissioner Gomez

SPECIAL PRESENTATIONS:

- Introduction of new Gas Company District Representative Helen Romero Shaw by Julia Emerson
- Proclamation - 30th Anniversary of National Night Out

PUBLIC HEARING:

1. **Continued Public Hearing – An Urgency Ordinance Extending the Terms and Provisions of Ordinance No. 1077 Declaring a Moratorium on the Acceptance, Processing or Issuance of any Zoning Permit, Use Permit, Building Permit, Occupancy Permit, or Other Entitlement for Drug Paraphernalia Retailers and Head Shops within City Limits** (1600)

Mayor Camacho opened the public hearing and noted that there were no written or oral communications to provide public testimony.

City Manager Bates stated that at the direction of City Council this item was broken down into two separate sections on the agenda; Items No. 1 and 9. Item No. 1, he

stated, is to place into effect the moratorium with regard to drug paraphernalia that was discussed at the last City Council meeting.

Councilmember Salcido asked if the drug paraphernalia referenced in the ordinance is legal in the State of California. Community and Economic Development Deputy Director Gonzalez stated that drug paraphernalia is illegal. Councilmember Salcido asked why the need for the moratorium then. Deputy Director Gonzalez stated that the moratorium is to adopt a local code that strengthens the state law.

City Attorney Alvarez-Glasman added that this ordinance would put a moratorium on any new head shops from operating within the City while City staff reviews and analyzes the appropriate standards to impose upon operators. He stated that the ordinance provides the City the tool in the toolbox to enforce not only from a criminal enforcement standpoint but also from a code enforcement standpoint.

Mayor Camacho closed the public hearing.

Motion by Councilmember Salcido, seconded by Councilmember Armenta to adopt Ordinance No. 1078 extending Urgency Ordinance No. 1077 by an additional one year and eliminate electronic cigarettes from the moratorium. Motion carries by the following roll call vote:

> Ordinance No. 1078 AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, EXTENDING THE TERMS AND PROVISIONS OF ORDINANCE NO. 1077 DECLARING A MORATORIUM ON THE ACCEPTANCE, PROCESSING OR ISSUANCE OF ANY ZONING PERMIT, USE PERMIT, BUILDING PERMIT, OCCUPANCY PERMIT, OR OTHER ENTITLEMENT FOR DRUG PARAPHERNALIA RETAILERS AND HEAD SHOPS WITHIN CITY LIMITS FOR A PERIOD OF ONE YEAR

AYES: Archuleta, Armenta, Salcido, Tercero, Camacho
NOES: None

1st PERIOD OF PUBLIC COMMENTS – AGENDA ITEMS ONLY:

Rudy Guevara, SEIU 721 representative:

- Addressed the City Council to thank them for their support and for the opportunity to speak and present their fiscal analysis, and to address employee issues.

James Rodriguez:

- Addressed the City Council to speak of employee issues with Administration and lack of employee support.

Desiree Saavedra:

- Addressed the City Council regarding her disappointment in the current Administration and lack of medical benefits for part-timers.

Edith Herrera:

- Addressed the City Council regarding hourly employees reduced hours and contract workers.

George Rivera:

- Addressed the City Council regarding fairness to employees.

CONSENT CALENDAR:

2. **Minutes:**
   - Approved City Council meeting of July 9, 2013
   - Received and filed Parks & Recreation meeting of June 13, 2013
   - Received and filed Planning Commission meeting of July 1, 2013

3. **Approved 2nd Warrant Register of the 2013-2014 Fiscal Year.** (700)
   Check Numbers: 257649-257787; 257790-257869
   Special Checks Numbers: 257788-257789

4. **Authorization of Submittal of Application for Used Oil Recycling Funds Under CalRecycle Used Oil Payment Program.** (500)

   1. Approved Resolution No. 6732 authorizing the submittal of an application to the CalRecycle for funding under the Used Oil Recycling Payment Program 4th Cycle.

Resolution No. 6732 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, CITY STAFF TO SUBMIT APPLICATION FOR USED OIL RECYCLING FUNDS THROUGH THE CALIFORNIA OIL RECYCLING ENHANCEMENT ACT AND ITS NEWLY FORMED USED OIL PAYMENT PROGRAM

5. **Resolution of Intent for Proposed Vacation of a Portion of the Frontage Road Located North of 9036 Beverly Boulevard in the General Commercial (C-G) Zoned District.** (1200)

This item was removed from the Consent Calendar for further discussion and clarification.

6. **Approval of City Purchase Orders Above $30,000 for Fiscal Year 2013-2014.** (700)

1. Approved Purchase Orders above $30,000 for Fiscal Year 2013-2014.

7. **Federal Equitable Sharing Agreement for Asset Forfeiture.** (500)

1. Approved a Federal Equitable Sharing Agreement with the United States Department of Justice and the United States Department of Treasury for the disposition of funds forfeited in connection with a crime and authorized the Mayor to execute the Agreement; and
2. Adopted Resolution No. 6734 approving participation in the Federal Equitable Sharing Agreement Program and authorized the execution of related documents.

Resolution No. 6734 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, APPROVING PARTICIPATION IN THE FEDERAL EQUITABLE SHARING AGREEMENT PROGRAM AND AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS

8. **Edward Byrne Memorial Justice Assistance Grant Award – Fiscal Year 2013/2014.** (700)

1. Received and filed the Edward Byrne Memorial Justice Assistance Grant Application.

Motion by Councilmember Salcido, seconded by Councilmember Armenta to approve Consent Calendar Items No. 2, 3, 4, 6, 7 and 8. Motion carries by the following roll call vote:

AYES: Archuleta, Armenta, Salcido, Tercero, Camacho
NOES: None

CONSENT CALENDAR ITEMS PULLED FOR FURTHER DISCUSSION:

5. **Resolution of Intent for Proposed Vacation of a Portion of the Frontage Road Located North of 9036 Beverly Boulevard in the General Commercial (C-G) Zoned District.** (1200)

Councilmember Salcido asked for the legal interpretation of convey. City Attorney Alvarez-Glasman stated convey means to grant or release to authorize the transfer of property from one party to another. Councilmember Salcido asked if the City is selling the property to which City Manager Bates responded that the City is not getting compensation for the property. The property, he stated, is being conveyed for the benefit of economic development.

City Attorney Alvarez-Glasman stated that cities may make this type of transaction to enhance or to facilitate the project. He stated that the City takes a piece of property that is generating no revenue and builds upon a project that is going to build and generate property tax revenue and that this would not trigger a gift of public funds.

Councilmember Salcido inquired about how the safety report was generated in regard to the intersection of Beverly Boulevard and Lindell Avenue. Public Works Director Cervantes stated that the Public Works Department prepared a traffic study for that intersection pursuant to complaints about congestion. One of the discoveries of the report, he stated, is the high frequency of accidents.

Councilmember Archuleta asked if the proposal was brought to staff by Norm's or if staff was being proactive and business friendly. Deputy Director Gonzalez stated it was a mutual discussion between the developers and the City.

Motion by Councilmember Salcido, seconded by Councilmember Archuleta to adopt Resolution No. 6733 Resolution of Intent to Vacate a portion of the Beverly Boulevard Right-of-Way (ROW) setting a public hearing for August 27, 2013. Motion carries by the following roll call vote:

Resolution No. 6733 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, DECLARING ITS INTENTION TO ORDER THE VACATION OF A PORTION OF THE FRONTAGE ROAD LOCATED NORTH OF 9036 BEVERLY BOULEVARD, PICO RIVERA HEREIN REFERRED TO AS STREET VACATION NO. 13-1

AYES: Archuleta, Armenta, Salcido, Tercero, Camacho
NOES: None

LEGISLATION:

9. **An Ordinance of the City of Pico Rivera Amending Chapter 8.48, *Smoking* of the City of Pico Rivera Municipal Code Prohibiting Tobacco and Electronic Cigarettes in Public Places.** (1300)

City Manager Bates stated this is the item that was separated out from the moratorium ordinance which addresses the e-cigarettes. He stated that the tobacco industry is backing the e-cigarette proposals and staff's concern is how the flavored nicotine may affect the youth.

Deputy Director Gonzalez stated that staff has conducted additional research and found that there is inconclusive studies to support the electronic cigarettes are helpful with the deterrent of tobacco products. Staff conducted research with surrounding cities and found that many cities allowed electronic cigarettes by right and categorized them similar to tobacco products. However, she stated, this product is fairly new so many cities have not had a request for permits and have not had to deal with this issue. She further stated that the FDA has not approved e-cigarettes as a smoking cessation device, as such, if you see an e-cigarette it states that it is not meant for the purpose of cessation devices. The amendment to the ordinance, she stated, would not prohibit the sale of e-cigarettes. She stated that the amendment to the ordinance would categorize e-cigarettes as tobacco products and prohibit use wherever normal tobacco products are sold.

Council members discussed the legality of the e-cigarette, tobacco and nicotine, distance requirements, and lack of conclusive data.

City Attorney Alvarez-Glasman stated that if this ordinance is adopted it would not ban or prohibit the sale of e-cigarettes. He explained that what the ordinance would

accomplish is banning the use of an e-cigarette in the designated public places where smoking is prohibited.

Mayor Camacho spoke in favor of the ordinance prohibiting e-cigarettes in public places as a deterrent in attracting youth to the flavored nicotine.

Councilmember Salcido stated that he is not comfortable with labeling the e-cigarette as a tobacco product and could not approve the ordinance the way it is currently written.

Mayor Pro Tem Tercero stated that because the data is inconclusive he could not support the ordinance.

Motion by Councilmember Armenta, seconded by Councilmember Archuleta to introduce Ordinance No. 1079 amending Chapter 8.48, *Smoking* of the Pico Rivera Municipal Code updating where tobacco products and electronic cigarettes may be utilized. Motion carries by the following roll call vote:

> Ordinance No. 1079 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, AMENDING CHAPTER 8.48, *SMOKING*, PROHIBITING TOBACCO AND E-CIGARETTE SMOKING IN PUBLIC PLACES **(FIRST READING AND INTRODUCTION)**

AYES: Archuleta, Armenta, Camacho
NOES: Salcido, Tercero

10. Service Employees International Union (SEIU), Local 721 – Financial Analysis. (200)

Service Employees International Union (SEIU) presented their financial analysis of the City's budget to the City Council.

After the presentation, dialogue ensued amongst Union Representative Ryan Hudson, City staff and City Council. All parties welcomed the open dialogue and look forward to continuing the open dialogue in future negotiation meetings.

Recessed to Water Authority at 7:55 p.m.

ALL MEMBERS WERE PRESENT

Reconvened from Water Authority at 7:56 p.m.

ALL MEMBERS WERE PRESENT

NEW BUSINESS:

In compliance with AB 1234 requirements, Mayor Camacho and Councilmember Armenta gave a report on their attendance at the Independent Cities conference.

Mayor Camacho acknowledged the presence of Assistant Fire Chief Scott Mahan in attendance at the regular City Council meeting. He also mentioned that through the hard work of the Parks & Recreation Department the City received grants that will be used at Pico Park to develop a rubberized walking track, shade shelter and four exercise stations around the parameter of the park. In addition, he stated that the City has seven (7) new monuments at the entrances of the City and stated that no general funds were used for these projects. At the request of Mayor Camacho, Director of Public Works Cervantes elaborated on the upcoming Phase E Cape and Slurry Seal Project that will resurface 84 residential streets.

Mayor Camacho invited residents to the visioning meeting on the former Pico Rivera Campground on July 30, 2013 at the Golf Course to receive feedback on what the community would envision for the use of the former campground. Tuesday, August 6, 2013, he stated, is National Night Out and invited the community to attend the event.

Councilmember Archuleta mentioned the concerts in the park and the success of the events. He asked that staff at future concert events increase the size of the dance floor.

OLD BUSINESS:

Councilmember Archuleta asked Assistant Fire Chief Mahan to elaborate on the response of fire trucks to house fires and how the trucks are equipped when there is no fire hydrant available. Assistant Fire Chief Mahan stated that the four fire truck engines each have 500 gallons of water and one engine is adequate for most house fires. He also stated that the fire truck engines are equipped with a fire hose in case a fire hydrant is needed.

Assistant to the City Manager Chavez added that staff has done an analysis that identifies locations in the City for residential areas that on a grid from one to five would require immediate identification for address signs. The City, he stated, will be working

with the School District to implement the project by applying addresses to the curbs of residential homes. The alleys, he stated, is a little more difficult to apply address numbers to because the construction material is in different forms and not identical like a curb.

2ND PERIOD OF PUBLIC COMMENTS – ALL OTHER CITY-RELATED BUSINESS:

Virginia Aguirre:

- Addressed the City Council to speak in support of City employees.

Diego Rubalcava-Alvarez:

- Addressed the City Council regarding quality of on-line agendas and minutes on the City's website; suggested searchable data and hyperlinks. Inquired about a previous speakers concern at the last City Council meeting in regard to fire hydrants.

Rita Murray, President of National Alliance on Mental Illness (NAMI):

- Addressed the City Council to speak about mental illness and the services they provide to residents of the Pico Rivera Gardens and encouraged members of the community to volunteer time with the residents of Pico Rivera Gardens and to educate the community on panhandling.

Zita Rodriguez:

- Addressed the City Council regarding City employees and encouraged the support of the City Council for employees.

Santos Dominguez, Administrator of the Pico Rivera Gardens:

- Addressed the City Council regarding mental illness, entitlements of these citizens, education of residents and the rules and regulations of the facility.

Recessed to Closed Session at 8:30 p.m.

ALL MEMBERS WERE PRESENT

Reconvened from Closed Session at 9:05 p.m.

ALL MEMBERS WERE PRESENT

CLOSED SESSION:

a. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Pursuant to Government Code Section 54956.9 subdivision (d)(4)
One matter – Consideration of Initiating Litigation against the Los Angeles County

City Attorney stated that direction was given to proceed to file a law suit against the Los Angeles County.

ADJOURNMENT:

Mayor Camacho adjourned the City Council meeting at 9:06 p.m. in memory of Albert Martinez. There being no objection it was so ordered.

AYES: Archuleta, Armenta, Salcido, Tercero, Camacho
NOES: None

Gustavo V. Camacho, Mayor

ATTEST:

Anna M. Jerome, Deputy City Clerk

I hereby certify that the foregoing is a true and correct report of the proceedings of the City Council regular meeting dated July 23, 2013 and approved by the City Council on August 27, 2013.

Anna M. Jerome, Deputy City Clerk

Approved as submitted
July 1, 2013

PLANNING COMMISSION **MINUTES**

Monday, June 17, 2013

A regular meeting of the Planning Commission was called to order by Chairperson Elisaldez at 6:00 p.m., in the City Hall Council Chambers, 6615 Passons Boulevard, Pico Rivera, CA.

STAFF PRESENT:
Ben Martinez, Director
Julia Gonzalez, Deputy Director
Christina Gallagher, Assistant Planner

ROLL CALL:

PRESENT: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno

ABSENT: None.

FLAG SALUTE: Led by Commissioner Celiz

APPROVAL OF MINUTES:

June 3, 2013

Commissioner Elisaldez corrected the minutes to reflect that there was one correction to the minutes. It was the name of the establishment on page 6, from Dino's to Jim's Burgers. Jim's Burgers, not Dino's Burgers is pending approval by the Health Department.

It was moved to approve the minutes of June 3, 2013, seconded by Chairperson Celiz. Motion carried by the following roll call vote:

AYES:	Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

PUBLIC HEARING:

CONDITIONAL USE PERMIT NO. 713 – AN APPLICATION BY THOMAS UTMAN, REPRESENTING FAST5XPRESS CAR WASH, TO CONSTRUCT AND OPERATE A FULLY AUTOMATED CONVEYOR-TYPE EXPRESS SERVICE CAR WASH TO BE LOCATED AT 8629 & 8639 WHITTIER BOULEVARD IN THE GENERAL COMMERCIAL (C-G) ZONED DISTRICT

Assistant Planner Christina Gallagher presented the public hearing. Staff requested to open the public hearing and continue the item to allow staff more time to discuss the project with the applicant.

There being no further discussion, it was motioned by Commissioner Garcia to continue the public hearing, seconded by Commissioner Zermeno.

AYES:	Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

PUBLIC COMMENTS: None.

NEW BUSINESS: None.

CONTINUED/OLD BUSINESS

a) Median on Telegraph Road at the eastern end of the City.

Deputy Director Gonzalez stated that the Public Works Department was contacted and informed staff that the money for the medians was from a grant and the median would not extend to the eastern borders of Telegraph Road.

b) Traffic light on Serapis Avenue and Telegraph Road.

Deputy Director Gonzalez advised that staff went out to investigate this and found there is a traffic light and that staff may have misunderstood the question that was brought up.

Commissioner Garcia stated that the question was in regards to the timing of the light when there are no other vehicles near the intersection.

Deputy Director Gonzalez stated that staff will look into this issue and return with a response.

c) Dry brush at the southwest corner of Rose Hills Road and San Gabriel River Parkway.

Deputy Director Gonzalez stated that Public Works sent this request to the county which is in charge of cleaning up this area. Staff will report back to Commissioners once this property has been cleaned up.

d) Medical building on Catherine Street and San Gabriel Place.

Deputy Director Gonzalez stated that staff went out and took photos of the site. Staff will contact Comstock Homes, the developer of the site. Staff recalls there was no development on this site due to cost at the time, but staff will contact the developer in hopes of possibly beginning some type of development.

AYES:	Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

PLANNING COMMISSION REPORTS:

a) CITY COUNCIL MEETING OF June 11, 2013 – Assistant Planner Gallagher reported that the Council approved the film ordinance, along with various code updates and language clarifications, as well as adopting the fee schedule for the next fiscal year. The ordinance was modeled after a template of the California Film Commission as a method for the City to be more business friendly. Filming hours have been extended to 7 a.m. to 10 p.m., the radius was lowered from 300 to 200 feet to notify surrounding properties. Reduction of fees to $350 for a regular filming permit and $700 for a complex filming permit.

Commissioner Zermeno asked if the lowering of fees was a strategy to become more business friendly for filming in the City.

Director Martinez responded that this was the idea in bringing in more filming and being business friendly.

Commissioner Martinez asked what are the film permit fees for.

Assistant Planner Gallagher responded that the fees were for the cost of staff from various departments reviewing the permit application.

Commissioner Martinez asked about the end of Lexington Road and Whittier Boulevard, that the cul-de-sac ends at the railroad and this area is collecting trash. He mentioned that this area may have once been open and gone straight through, and if we know if this will be opening up.

Deputy Director Gonzalez replied that staff would look into this and report back to Planning Commission.

Commissioner Celiz asked if staff had looked into her complaints off of Serapis Avenue.

Deputy Director Gonzalez responded that staff went out to the areas and place a request to Public Works to have the area cleaned up.

Commissioner Zermeno asked in regards to the public comments, if Caltrans can create planters or some sort of beautification to the entryways.

Director Martinez stated that staff will talk to the Public Works Department, but due to limitation of funds, this may be done at a later time.

b) PLANNING COMMISSION REPRESENTATIVE TO THE CITY COUNCIL MEETING OF Tuesday, June 25, 2013.

Commissioner Martinez confirmed his attendance.

There being no further business the Planning Commission meeting was adjourned at 6:15 p.m.

Tommy Elisaldez, Chairperson

ATTEST:

Benjamin A. Martinez, Secretary
Planning Commission
Director of Community and Economic Development

Approved as submitted
August 5, 2013

PLANNING COMMISSION **MINUTES**

Monday, July 15, 2013

A regular meeting of the Planning Commission was called to order by Chairperson Elisaldez at 6:00 p.m., in the City Hall Council Chambers, 6615 Passons Boulevard, Pico Rivera, CA.

STAFF PRESENT:
Julia Gonzalez, Deputy Director
Guille Aguilar, Senior Planner

ROLL CALL:

PRESENT: Commissioners Elisaldez, Garcia, Martinez, Zermeno

ABSENT: Celiz

FLAG SALUTE: Led by Commissioner Martinez

APPROVAL OF MINUTES:

July 1, 2013

Chairperson Elizaldez called for a correction on the bottom of page 5 where the words "approve the hearing" is replaced with "approve the resolution".

Motion to approve with amendments was made by Commissioner Martinez and seconded by Commissioner Garcia:

AYES: Elisaldez, Garcia, Martinez, Zermeno
NOES: None
ABSTAIN: None
ABSENT: Celiz

PUBLIC HEARING:

GENERAL PLAN CONFORMANCE RESOLUTION FOR PROPOSED VACATION OF A PORTION OF THE FRONTAGE ROAD ON BEVERLY BOULEVARD ADJACENT TO 9036 BEVERLY BOULEVARD IN THE GENERAL COMMERCIAL (C-G) ZONED DISTRICT

Senior Planner Guille Aguilar presented the report. The City is considering a partial street vacation of an approximately 146′ long by 40′ wide segment of the frontage on the south side of Beverly Boulevard, east of the intersection of Beverly Boulevard and Lindell Avenue. The proposed right-of-way vacation is located directly north of the parcel at 9036 Beverly Boulevard, which has been vacant and undeveloped for several years.

Commissioner Celiz arrived to the meeting and was acknowledged by the commissioners.

Senior Planner Aguilar explained the street vacation process, which is mandated by the California Streets and Highways Code and the California Government Code, consists of multiple steps with today's meeting being the first step in the street vacation approval process. Senior Planner Aguilar explained utility companies and other departments have been informed of the proposal and staff is awaiting their input for potential utility easements within the property.

Staff will present a Resolution of Intent at the July 23, 2013 City Council meeting at which point the City Council will make the decision as to set a date and time for the public hearing. Upon approval of that resolution, notices will be mailed to the residents who live within 300′ feet of the subject property. The notice will invite the residents to the public hearing and solicit their input. Upon City Council approval of the subject street vacation, the subject land will be conveyed to the adjacent property owner of 9036 Beverly Boulevard, currently Norms Restaurants. Norms Restaurants will be responsible for all necessary improvements and easements related to this vacation.

Senior Planner explained that the proposed street vacation is consistent with Policies A.1.2 and A.1.4 of the Municipal Facilities element of the General Plan which call for improvements to a roadway where such improvements are sensitive to adjacent neighborhoods, reflect resident concerns for safety and protect local neighborhoods by discouraging non-local through traffic. Vacation of this frontage road will result in a more defined buffer between the commercial property and the residential neighborhood.

Senior Planner Aguilar indicated that this segment of the frontage street has also been found to be underutilized via a 2010 traffic analysis. The traffic analysis also identifies a high rate of traffic collision incidents at this intersection.

The proposed street vacation is also consistent with the Municipal Facilities and

Services Element of the Pico Rivera General Plan which designates Beverly Boulevard as a 'Major Highway' having a right-of-way width of 100'. The current right-of-way width is 184'. This proposed vacation will result in an ultimate right-of-way width of 144', which is 44' in excess of the required 100' width.

Chairperson Elisaldez motioned to open public hearing. There being no one in the audience, a motion was made by Commissioner Zermeno seconded by Commissioner Garcia to close the public hearing.

Chairperson Elisaldez asked if the street vacation would potentially delay the construction of Norms.

Senior Planner Aguilar responded that this could cause delay for Norms because the proposal currently under review with the City indicates construction within the frontage road area.

Chairperson Zermeno asked when Norms would begin construction.

Senior Planner Aguilar responded that Norms is pursuing an ambitious schedule and plans to begin construction as early as next month.

Commissioner Celiz asked if the frontage road is currently closed.

Senior Planner Aguilar responded that the frontage road is currently open and accessible. Once it is closed, residents will need to drive three blocks to the east to enter their neighborhoods, but the 2010 traffic study indicated that the minor inconvenience to the residents is outweighed because safer alternatives are available.

Commissioner Celiz inquired if Norms asked for the street vacation.

Senior Planner Aguilar responded that the idea for the street vacation evolved from conversation that staff had with Norms about increasing the potential attractiveness of the site in order to bring in a good tenant and how to create an appropriate buffer between the residential neighborhood and the new commercial development.

Commissioner Garcia asked if the remaining portion of the frontage street would become a cul-de-sac.

Senior Planner Aguilar indicated that this is yet to be determined because staff is still waiting on review from other departments. The final decision will be presented to the

City Council.

Commissioner Martinez asked who initiated the street vacation.

Senior Planner Aguilar indicated that the City initiated the street vacation.

Commissioner Martinez asked for clarification.

Deputy Director Julia Gonzalez indicated that City staff initiated the street vacation and explained that now that Redevelopment is no longer in existence, the City is limited as to how the City can attract good businesses such as Norms. Staff sees this as a mutual benefit because the traffic study from 2010 justified the closure due to underutilization and traffic safety concerns.

Commissioner Martinez indicated that although he is in support for the street vacation and for Norms, he believes that the real benefit of this street vacation goes to Norms. He suggests to have an appraisal for the property and to present this information to the City Council. He also suggested that our report should include a dollar value of the property.

Commissioner Martinez asked if Norms would be paying for the property and if not, why not.

Deputy Director Gonzalez indicated that Norms would not be paying for the property.

Commissioner Martinez indicated that Norms should be responsible for paying for the street vacation because it takes money for staff to prepare the report, to post public notices, to pay for the Planning Commissioners' attendance, etc. Commissioner Martinez asked who made the decision to waive the fees.

Deputy Director Gonzalez indicated that the decision to have the City initiate and process the street vacation was made by staff as an economic development strategy. Since Redevelopment no longer exists, we do not have any actual monies to attract desirable businesses to the City, such as Norms.

Chairperson Elizaldez asked that the Planning Commissioners receive copies of the appraisal or value analysis of the subject property when it is prepared for the City Council.

There being no further discussion, it was motioned to approve the resolution by

Commissioner Celiz, seconded by Commissioner Garcia.

Motioned carried by the following roll call vote:

AYES:	Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

PUBLIC COMMENTS: Javier Pacheco, resident, suggested that the City should consider posting more public notices or larger public notices so that they are more clearly visible.

NEW BUSINESS: None.

CONTINUED/OLD BUSINESS: None.

PLANNING COMMISSION REPORTS:

a) CITY COUNCIL MEETING OF July 9, 2013 – Chairperson Elizaldez attended the meeting and reported the graffiti removal contract was approved. The issue of pan handlers was also discussed at the meeting and Sherriff's staff indicated they have stepped in with 3 people from the Pico Gardens facility being vacated. The facility is also considering hiring additional security. It was also announced that the City was awarded the designation of Playful City USA.

Commissioner Garcia inquired on the former Weinerschnitzel building and its status.

Deputy Director Gonzalez replied that the building is being restored by Weinerschnitzel and that it is expected to open sometime in August.

b) PLANNING COMMISSION REPRESENTATIVE TO THE CITY COUNCIL MEETING OF Tuesday, July 23, 2013.

Chairperson Garcia to attend.

There being no further business the Planning Commission meeting was adjourned at 6:40 p.m.

Tommy Elisaldez, Chairperson

ATTEST:

Benjamin A. Martinez, Secretary
Planning Commission
Director of Community and Economic Development

PARKS & RECREATION COMMISSION — MINUTES

Thursday, July 11, 2013

A Regular Meeting was held in the Parks & Recreation Community Room, 6767 Passons Blvd., Pico Rivera, California. Chair Carlos Cruz called the meeting to order at 6:00 p.m.

PRESENT: John Garcia, Paul Gomez, Joseph Palombi, Rod Torres

ABSENT: Carlos Cruz

APPROVAL OF MINUTES: A motion was made by Commissioner Palombi and seconded by Commissioner Torres and carried on roll call vote to approve the Minutes of June 13, 2013.

PUBLIC COMMENTS: No public comments

AGENDA ITEMS:

1. **NEW BUSINESS:**
   a) Commissioners Biographies – Director Gonzalez provided the commission with an information sheet, including sample questions, which the commission can utilize to provide their short synopsis of their biography. The biographies will be posted on the City's web page and on the bulletin boards outside the Parks and Recreation office. Biographies are due by July 29, 2013. Commissioner Garcia complemented staff for coming up with the biographies.

   b) CYSO Presidents Quarterly Meeting post report – Director González informed the commission that she met with the CYSO presidents yesterday. During the meeting the upcoming Athletic Facilities Resolution study session was announced and the new "Dealing with Disruptive Patrons Policy" was reviewed. Deputy Reynoso informed the presidents about the sheriff's department new "Hide It, Lock it, Lose it" campaign. Director González continued to state that the field maintenance policy was reviewed, and the upcoming special events were announced. Director Gonzalez stated she will provide the commission with the minutes of the meeting by next week.

   c) 4th Of July Spectacular event post report – Special Events Senior Coordinator, Efrain Lee, provided the commission with a post event report. He announced that over 6,000 people were in attendance. There were many fun activities for the event attendees. The feature band Soulicious, a Motown tribute band, was a great hit and received great compliments from the crowd. The school fundraising groups included the El Rancho Color Band/Colorguard and the El Rancho Track and Field team. The firework show was choreographed with music which made the show a huge success. $1,800 was made in revenue.

d) Grant Award – Director Gonzalez announced to the commission that the department was awarded a grant for a total of $400,000 project, $200,000 of which will be provided by the federal government. The project is for Pico Park which includes a rubberized walking track, four fitness stations, and a new shade shelter.

2. **OLD BUSINESS:**

a) Parking at Streamland Park – A question was made by Commissioner Torres at the June 13 meeting to possibly utilize the vacant parking lot, which is located at 9415 Durfee Ave., as temporary additional parking. Deputy Director Rico answered that the building is currently in escrow. He continued to state that once the escrow is finalized, he will contact and try to partner up with them to utilize the parking lot for additional parking.

b) Athletic Facilities Resolution –Director González stated that the Athletic Facilities Resolution draft has been provided to the commission via email and also provided to the CYSO presidents yesterday's meeting. Study session is set for Wednesday, July 17, 2013 at 6:00 p.m.

Director González will set a meeting up with Commissioner Garcia to review his comments and concerns prior to the study session, since he will not be able to attend.

Vice Chair Gomez stated that in speaking with the CYSO presidents, they seemed worried and fearful of the possible outcome of the resolution. He continued to state that he reiterated to the league presidents that their concerns and feedback will be heard and taken into consideration at the upcoming study session.

3. **ORGANIZATION RECOGNITION REVIEW**–Deputy Director Rico brought forth to the commission the following organizations for recognition:

- Pico Rivera Football for Youth Dons and Donnas – Anna Gonzalez, league president, introduced herself and the organization. She commented that the league has been in existence for 43 years. Currently, they have 315 football participants and 110 cheer participants. This organization is currently on a probationary recognized status due to their participant rosters. Commissioner Garcia acknowledged Anna for her volunteerism, hard work, and dedication to this organization. Commissioner Palombi expressed his admiration to the organization's requirement of a school GPA of 2.0 or higher from the participants; therefore, teaching the youth that education is important and valuable. Commissioner Torres expressed his gratitude towards Anna and the organization for the leadership and hard work that they have provided to the youth in the community and the great memories that this organization help create. A motion to approve this organization's probationary recognition was made by Commissioner Palombi and was seconded by Commissioner Garcia.

- Spartans F.C. – Rosalina Aguilar, league president, introduced herself and the organization. The league has been in existence in Pico Rivera for 3 years. This soccer club is a very competitive team, which prepares the participants for high school sports. This organization utilizes Rio Hondo Park as their home field. They service youth from 7 to 18 years of age. Currently, their membership is at 30 participants, which is a significant drop from last year due to the renovations of Smith and Rio Vista Park. Commissioner Garcia asked how long the Spartans have been an organization and of the current roster how many participants are from Pico Rivera. Vice president, William Aguilar, responded 6 years as an organization and 80 percent of the participants are from Pico Rivera. Commissioner Palombi asked if this league is more of a travel team and how far to do they travel. Mr. Aguilar answered that they utilize Rio Hondo Park as their home field but they also travel to cities as far as San Diego and Bakersfield. Vice Chair Gomez asked if they were under So Cal Soccer as their governing body. Mr. Aguilar stated that yes; they utilize So Cal Soccer's by-laws, fingerprinting program, and coach's instructions. Commissioner Torres asked how they would keep their residency rate above 65 percent. Mr. Aguilar stated that they market within the community and at the local schools. Season is from September through November. There is a registration fee of $40 and then pay as you go. Commissioner motion to approve this organization's recognition was made by Commissioner Garcia and was seconded by Commissioner Palombi.

4. DIRECTOR'S REPORT

a) Upcoming Events – Recreation Manager introduced the following upcoming events:

1. Summer Concert – Stone Soul	July 14, 2013 @ Pico Park
2. H.E.A.L. Food Distribution	July17, 2013 @ Senior Center
3. Movies in the Park – Madagascar 3	July19, 2013 @ Pico Park
4. Summer Concert - Soto	July 21, 2013 @ Pico Park
5. Movies in the Park – Wreck It Ralph	July 26, 2013 @ Pico Park
6. Movies in the Park – Thunderstruck	August 2, 2013 @ Pico Park
7. Fall CYSO Opening Ceremonies:	
• Twin Cities Wolverines	August 24, 2013 @ Pico Park
• A.Y.SO. Region 603	September 7, 2013 @ TBD
• Pico Rivera Football For Youth	September 14, 2013 @ Rivera Park

b) Project Updates–Construction is moving along at Smith and Rio Vista Parks. For Smith Park:

- Main irrigation line is still being worked on.

- Stadium is not complete due to the water issue delay.
- Park will not be ready to open in September as previously scheduled.

For Rio Vista Park:

- Hydroseeding is scheduled to begin next Monday or Tuesday. Park will need to be closed for about three months once the hydroseeding is complete before we can open to the public.

Deputy Director Rico provided the commission with a copy of the *look ahead schedule.*

c) Department Information – Recreation management explained the following:

1. Parks and Recreation Month – July– Director González thanked the four commissioners present for attending the July 9th City Council meeting where the Department received their proclamation. She stated that in honor of Parks and Recreation month, she will be hosting a community walk on Saturday, July 27, along with free giveaways to those in attendance.
2. Rivera Park Update – Deputy Director Rico updated the commission on a few pending items that were on hold until Rivera Baseball Association's season was complete.
    i. Three pitching mounds – Fields are being closed down this week and a temporary infield fence will be installed to inform patrons of the field closures. The home run fence will be removed. Deputy Director Rico's goal is to have the mounds repaired by September, in time for RBA's winter ball season.

    Commissioner Garcia asked for status on the issues he has brought up in past meetings. Director González stated that a memo was provided to the commission updating them on the current pending issues at Rivera Park. Included in that memo was the issues brought up by Commissioner Garcia and several from Councilmember Armenta. The issue regarding the net between the tiny field and the minor field is not listed but Deputy Director Rico will be adding it to this list. Commissioner Garcia stated that the issue with the net between the tiny field and the concession stand is also outstanding. He continued to say that he wants to see all the issues pending at Rivera Park consolidated into one list.
3. AFO Certification – Director González announced that she had two staff members get certified as Aquatic Facility Operators. The AFO certification is required by the state of California for public pool operators.

8. COMMISSIONER'S REPORTS

Gomez - Nothing to report

Garcia: - After reviewing the Athletic Facilities Resolution, he had the following questions or concerns:

- Needs clarification on the term "secondary user". Deputy Director Rico clarified that the secondary user is meant for the league that is not currently in playing season.
- Pointed out that the resolution does not indicate that a travel team will need to submit an authorization document request to the primary or secondary user; which is inconsistent with what is explained by Deputy Director Rico. Director González commented that she will make that change.

- Commended Director González and all that took part in making the video that was presented at the City Council meeting.

Palombi: - Expressed that his concern in regards to travel teams utilizing the City facilities and where they stand in the Athletic Facilities Resolution.

Torres: - He attended the Relay for Life Cancer breakfast at Pico Park and commented that it was a great event. He commended the staff and all involved in putting the event together.

Cruz: - Absent

ANNOUNCEMENTS – Summer Registration updates – Recreation Manager updated the commission on the current summer programming. She stated that the Summer Food Program has served over 11,000 meals thus far. To date, there are over 700 youth attending the Summer Camp program. And over 600 youth have participated in the Aquatics programs, which are down from last year's numbers. The Department will be offering free Rec Swim next week in honor of Parks and Recreation month.

ADJOURNMENT:

The Parks & Recreation Commission meeting was adjourned at 7:30 p.m. There being no objection it was so ordered.

Carlos Cruz, Chair
Parks & Recreation Commission

Sandra J. González, Secretary
Director of Parks & Recreation

3rd WARRANT REGISTER OF THE 2013-2014 FISCAL YEAR

MEETING DATE:	08/27/13
TOTAL REGISTER AMOUNT:	$3,824,614.10
CHECK NUMBERS:	257870-258262 258265-258507
SPECIAL CHECK NUMBERS:	257870-258262

REGULAR CHECK TOTAL:	$3,824,494.10
SPECIAL CHECK TOTAL:	$120.00
TOTAL REGISTER AMOUNT:	$3,824,614.10

4

CITY COUNCIL **AGENDA REPORT**

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: DESIGNATION OF VOTING DELEGATE

Recommendation:

Appoint Brent A. Tercero as voting delegate and Bob J. Archuleta as alternate for the 2013 Annual League of California Cities Conference.

Fiscal Impact:

None.

Discussion:

The League of California Cities (LOCC) Annual Conference is scheduled for September 18-20, 2013 in Sacramento. At this conference the LOCC membership considers and takes action on resolutions that establish LOCC policy.

To vote at the Annual Business Meeting, the City Council must designate a voting delegate and alternate.

Ronald Bates

RB:sp

CITY COUNCIL **AGENDA REPORT**

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: SECOND READING – AN ORDINANCE OF THE CITY OF PICO RIVERA AMENDING CHAPTER 8.48, *SMOKING* OF THE CITY OF PICO RIVERA MUNICIPAL CODE PROHIBITING TOBACCO AND ELECTRONIC CIGARETTES IN PUBLIC PLACES

Recommendation:

Adopt Ordinance No. 1079, an ordinance of the City Council amending Chapters 8.48, *Smoking*, of the Pico Rivera Municipal Code updating where tobacco products and electronic cigarettes are prohibited.

Fiscal Impact: None.

Discussion:

At the meeting of July 23, 2013, the City Council introduced a draft ordinance to amend Chapter 8.48, *Smoking*, of the City of Pico Rivera Municipal Code to update the code and include electronic cigarettes where general smoking is prohibited.

Ordinance No. 1079 will become effective 30 days from its adoption.

Ronald Bates

RB:BM:JG:ll

Attachments:
Ordinance No. 1079

ORDINANCE NO. 1079

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, AMENDING CHAPTER 8.48, *SMOKING*, PROHIBITNG TOBACCO AND E-CIGARETTE SMOKING IN PUBLIC PLACES

THE CITY COUNCIL OF THE CITY OF PICO RIVERA DOES ORDAIN AS FOLLOWS:

SECTION 1. Pursuant to the State of California Public Resource Code and State Guidelines for the California Environmental Quality Act (CEQA), the City Council finds that there is no possibility that the project will have a significant effect on the environment and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15061 (b) (3) of the CEQA Guidelines that states, a project are exempt from CEQA here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 2. The City Council finds that the proposed amendment is consistent with the spirit and integrity of Chapter 8.48, *Smoking*, of Title 8 of the Pico Rivera Municipal Code as the purpose of the code is to protect the public health, safety and welfare.

SECTION 3. Electronic smoking devices, commonly known as e-cigarettes, e-cigars, e-cigarillos, e-pipes, e-hookahs etc, are battery operated devices designed to look like and to be used in the same manner as conventional tobacco products and some cartridges used by electronic smoking devices can be re-filled with liquid nicotine, creating the potential for exposure to dangerous concentrations of nicotine.

SECTION 4. Chapter 8.48, *Smoking*, was last updated in 1995 and the purpose of the amendment aims to update the section to prohibit smoking in public places and include electronic cigarettes to protect the public health, safety and welfare of the public.

SECTION 5. Title 8, Chapter 8.48, *Smoking*, Section 8.48.010, N*o Smoking in Designated Areas* of the Pico Rivera Municipal Code is hereby amended as follows:

8.48.010 Definitions.

The following definitions shall apply to this Chapter.

A. "Tobacco product" means any substance containing tobacco leaf, and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

B. "Smoke" means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition or vaporization, when the apparent or usual purpose of the combustion, electrical ignition or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term "Smoke" includes, but is not limited to, tobacco smoke, electronic cigarette vapors, marijuana smoke, and crack cocaine smoke.

C. "Smoking" means engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating electronic cigarette or a lighted cigarette of any kind; or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind.

D. "Electronic Smoking Device" means an electronic and/or battery –operated device, the use of which may resemble smoking, that can be used to deliver an inhale dose of nicotine or other substances. "Electronic Smoking Device" includes any such devices whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, and electronic hookah, or any other product name or descriptor.

SECTION 6. Title 8, Chapter 8.48, *Smoking*, of the Pico Rivera Municipal Code is amended to include Section 8.48.015, *Other Applicable Laws*, to read as follows:

8.48.015. Other Applicable Laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 7. Title 8, Chapter 8.48, *Smoking* Section 8.48.020, *Smoking in polling places prohibited*, of the Pico Rivera Municipal code shall be amended to read as follows:

8.48.020. Smoking Prohibited in Specified Locations

Smoking shall be prohibited in the following public places:

A. School Campuses by pupils of the school while the pupils are on school campus, or while attending school-sponsored activities or while under the supervision and control of school district employees

B. Public buildings owned by a public agency

C. Child day care facilities as defined in the California Health and Safety Code

D. Public parks operated by a public agency

E. Polling places during an election or during the counting of votes

F. Retail establishments selling electronic cigarettes

SECTION 8. No person shall violate any provision, or fail to comply with any of the requirements of this ordinance, and any person violating any provision, or failing to comply with any provision of this ordinance shall be subject to any and all penalties as set forth under the Pico Rivera Municipal Code shall apply to violations of the provisions of this ordinance.

SECTION 9. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published or posted as prescribed by law. The City Council herby finds that there are no newspapers of general circulation published and circulated within the City. The City Clerk shall therefore cause this Ordinance to be posted in five public places within the City as specified in the Pico Rivera Municipal Code within 15 days of its final passage and this Ordinance shall take effect 30 days following its final passage.

APPROVED AND ADOPTED this 27th day of August, 2013.

Gustavo V. Camacho, Mayor

ATTEST:

APPROVED AS TO FORM:

Anna M. Jerome, Assistant City Clerk

Arnold M. Alvarez-Glasman, City Attorney

AYES:
NOES:
ABSENT:
ABSTAIN:

CITY COUNCIL | AGENDA REPORT

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: RESIDENTIAL RESURFACING PROGRAM (RRP) PHASE "E", SLURRY SEAL, CIP NO. 21245 – AWARD CONSTRUCTION CONTRACT

Recommendation:

Award a construction contract in the amount of $316,498 to American Asphalt South Inc. for the Residential Resurfacing Program (RRP) Phase "E", Slurry Seal, CIP No. 21245, and authorize the Mayor to execute the contract in a form approved by the City Attorney.

Fiscal Impact: $ 316,498 (Measure R)

Discussion:

The Residential Resurfacing Program, Phase "E", Slurry Seal Project (Slurry Seal Project) is part of the City's Residential Resurfacing Program (RRP). This project was initiated to preserve roadway pavements with a cost-effective resurfacing method knows as a slurry seal; a pavement preservation treatment that can extend the life of pavements for more than seven (7) years.

The Slurry Seal Project consists of slurry sealing 61 residential street segments in the north (18), mid (12), and south (32) areas of the City (See Enclosures 1 and 2 for a list and a map of the streets). Work includes weed abatement, crack sealing, skin patching and slurry sealing roadway pavements.

On June 11, 2013, the City Council approved plans, specifications and estimate and authorized staff to advertise for bids.

On July 31, 2013 and on August 7, 2013, the Notice Inviting Bids was advertised. On August 20, 2013, six (6) bids were received and opened by the City Clerk in a public forum. Below is a summary with the three lowest bids. For the entire list of bidders, see Attachment "A".

	Contractor	Bid Amount
1.	American Asphalt South Inc.	$316,497.50
2.	Pavement Coating Co.	$353,755.25
3.	Doug Martin Contracting Inc.	$376,880.40

After completion of the bid analysis, American Asphalt South Inc., was confirmed to be a responsive bidder and their bid was confirmed to be the lowest responsible bid. Their $316,498 bid is $19,503 or 5.80% lower than the Engineer's Estimate of $336,000.

American Asphalt South Inc. exhibits the capability, capacity, and experience to perform the work required under the bid solicitation. They've constructed similar projects for the Cities of Downey, Pasadena and El Segundo.

The project is budgeted in the CIP program. This $316,498 project will be funded with Measure R (restricted funds). Funds will be used for construction ($316,498) and job costing ($19,502).

The anticipated project schedule is as follows:

- Award Construction — August 27, 2013
- Start Construction — September 2013
- Complete Construction — October 2013

Construction management and inspection services will be provided by the Public Works, Engineering Division.

This project is a continuation of the City's Residential Resurfacing Program, an aggressive program for resurfacing residential streets Citywide. To date, a total of 190 residential street segments have been resurfaced with this program.

Ronald Bates

RRB:AC:EC:lg

Enc.

1) Public Works Agreement
2) Attachment "A" – Complete List of Bidders
3) Attachment "B" – Location Map

PUBLIC WORKS CONTRACT SERVICES AGREEMENT

CAPITAL IMPROVEMENT PROJECT NO. 21245
RESIDENTIAL RESURFACING PROGRAM (RRP), PHASE "E" - SLURRY SEAL

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement"), is made and entered into this _____ day of _____, 2013 by and between the CITY OF PICO RIVERA, a municipal corporation, (herein "City") and American Asphalt South, Inc. (herein "Contractor"). The parties hereto agree as follows:

RECITALS

A. City requires services for the construction of **CIP No. 21245 RESIDENTIAL RESURFACING PROGRAM (RRP), PHASE "E" - SLURRY SEAL**. Contractor has represented to City that Contractor is qualified to perform said services and has submitted a proposal to City for same.

B. City desires to have Contractor perform said services on the terms and conditions set forth herein.

NOW, THEREFORE, based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Contractor hereby agree as follows:

1. SERVICES OF CONTRACTOR

1.1 **Scope of Services** - In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "**Bid Document/Schedule**" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended.

1.2 **Documents Included in Contract** - This contract consists of the following Contract Documents: Notice of Inviting Bids, Special Provisions - General, Special Provisions – Part 1, General Provisions, Proposal, Instruction to Bidders, Bidders Proposal, Bidders Bond (Bidder's Guarantee), Bond for Faithful Performance, Bond for Labor and Material, Escrow Agreement, Schedule of Non-Working Fridays, Waste Management Plan, Tax Identification Number Form, Guarantee, this Contract, and any and all schedules and attachments to it which are incorporated as if fully set forth herein.

1.3 **Order of Preference of Documents** - In the event of an inconsistency among the Contract Documents, the Contract Documents shall have the following order of preference:

1. This Agreement
2. Project Specifications
3. Special Provisions
4. Plans and Details
5. Latest APWA Standard Plans - Green Book Edition
6. Caltrans Specifications

1.4 **Additional Services** - City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said extra work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of twenty-five percent (25%) or less of the Contract Sum, or in the time to perform of one hundred eighty (180) days or less may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefore.

2. GENERAL CONDITIONS

2.1 **Compliance with Law** - The Contractor shall keep itself informed of City, State, and Federal laws, ordinances and regulations, which may in any manner affect the performance of its services pursuant to this Agreement. All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered. Neither the City, nor their officers, agents, nor employees shall be liable at law or in equity as a result of the Contractor's failure to comply with this section.

2.2 **Licenses, Permits, Fees, and Assessments** - Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder. Contractor shall be responsible for all subcontractors' compliance with this Section 2.2.

2.3 **Familiarity with Work** - By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the Scope of Services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that

Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact in writing and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

2.4 **Care of Work** - The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's sole negligence.

2.5 **Further Responsibilities of Parties** - Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other. Contractor shall require all subcontractors to comply with the provisions of this Agreement.

2.6 **Prevailing Wage Laws** - In accordance with Labor Code Section 1770 et seq., the director of the Department of Industrial Relations of the State of California has ascertained a general prevailing rate of wages which is the minimum amount which shall be paid to all workers employed to perform the work pursuant to this Agreement. A copy of the general prevailing wage rate determination is on file in the Office of the Director of Public Works and is hereby incorporated in this Agreement. In accordance with the provisions of Labor Code Section 1810 et seq., eight (8) hours is the legal working day. Contractor must forfeit to the City Twenty Five Dollars ($25.00) a day for each worker who works in excess of the minimum working hours when Contractor does not pay overtime. Contractor is required to post a copy of such wage rates at all times at the contract site. The statutory penalties for failure to pay prevailing wage or to comply with State wage and hour laws will be enforced. Contractor also shall comply with State law requirements to maintain payroll records and shall provide for certified records and inspection of records as required by California Labor Code Section 1770 et seq., including Section 1776. Contractor shall comply with all statutory requirements relating to the employment of apprentices.

2.7 **Type of Contractor's License**. The Contractor shall possess the following types of contractor's license(s) to perform the work pursuant to this Agreement:
General Contractor Class A

2.8 **Ineligible Contractor Prohibited.** Any contractor or subcontractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code is prohibited from performing work under this Agreement.

3. COMPENSATION

3.1 **Contract Sum** - For the services rendered pursuant to this Agreement, the Contractor shall be compensated as specified herein, but not exceeding the maximum contract amount of Three Hundred Sixteen Thousand, Four Hundred and Ninety-Eight Dollars ($416,498) (herein "Contract Sum"), except as provided in Section 1.4. The

Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City; Contractor shall not be entitled to any additional compensation for attending said meetings.

3.2 **Progress Payments** - Prior to the first day of the month, during the progress of the work, commencing on the day and month specified in the Agreement, Contractor shall submit to the Contract Officer a complete itemized payment request for all labor and materials incorporated into the work during the preceding month and the portion of the contract sum applicable thereto. Upon receipt of a properly presented payment request, the Contract Officer shall process the payment request in accordance with Public Contracts Code Section 20104.50. The Contract Officer shall review the payment request as soon as possible. If the Contract Officer rejects the payment request, it shall be returned to the Contractor within seven days of its receipt by the City with an explanation for the reasons of its rejection. If the payment request is approved in writing by the Contract Officer, payment shall be made in thirty (30) days of receipt of an undisputed and properly presented payment request. Late payments shall bear interest at the legal rate of interest in accordance with Code of Civil Procedure 685.010. City shall pay Contractor a sum based upon ninety-five percent (95%) of the contract price apportionment of the labor and materials incorporated into the work under the contract during the month covered by said statement. The remaining five percent (5%) thereof shall be retained as performance security. Refer to Section 3.3 of this Agreement for retention of funds.

3.3 **Retention of Funds** - Progress payments shall be made in accordance with the provisions of Section 2.2 of this Agreement. In accordance with said section, City shall pay Contractor a sum based upon ninety-five percent (95%) of the contract price apportionment of the labor and materials incorporated into the work under this Agreement during the month covered by said statement. The remaining five percent (5%) thereof shall be retained as performance security to be paid to the Contractor within sixty (60) days after final acceptance of the work by the City Council, after Contractor shall have furnished City with a release of all undisputed contract amounts, if required by City. In the event there are any claims specifically excluded by Contractor from the operation of the release, the City may retain proceeds (per Public Contract Code 7107) of up to 150% of the amount in dispute. City's failure to deduct or withhold shall not affect Contractor's obligations hereunder.

4. PERFORMANCE SCHEDULE

4.1 **Time of Essence** - Time is of the essence in the performance of this Agreement.

4.2 **Schedule of Performance** - Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Project Schedule" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer.

4.3 **Force Majeure** - The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes for the delay. The Contract Officer shall ascertain the facts and

the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 **Term** - Unless earlier terminated in accordance with Section 8.8 or 8.9 of this Agreement, this Agreement shall continue in full force and effect until final approval and acceptance of the work by the Contract Officer.

5. COORDINATION OF WORK

5.1 **Representative of Contractor** - The following principals of Contractor are hereby designated as being the principals and representatives of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

Jeff Petty - Vice President
Lyle Stone - Secretary

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. For purposes of this Agreement, the foregoing principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City.

5.2 **Contract Officer** - The Contract Officer shall be such person as may be designated by the City Manager or City Engineer of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

5.3 **Prohibition Against Assignment** - The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

5.4 **Independent Contractor** - Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its subcontractors, agents or employees, performs the services required herein, except as otherwise set forth herein. City

shall have no voice in the selection, discharge, supervision or control of Contractor's employees, subcontractors, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City, nor shall City officers, employees or agents be deemed the officers, employees, or agents of Contractor as a result of this Agreement. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor.

5.5 **PERS Eligibility Indemnity** - In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for payment of any penalties and interest on such contributions, which would otherwise be the responsibility of the City.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation benefit, or any incident of employment by the City and entitlement to any contribution to be paid by the City for employee contribution and or employee contribution for PERS benefits.

5.6 **Identity of Persons Performing Work** - Contractor represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Contractor represents that the tasks and services required herein will be performed by Contractor or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

5.7 **Utility Relocation** - City is responsible for removal, relocation, or protection of existing main or trunkline utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse Contractor for any costs incurred in locating, repairing damage not caused by Contractor and removing or relocating such unidentified utility facilities, including equipment idled during such work. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

5.8 **Trenches, Excavations and Unknown Conditions** - Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply.

a) Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site different from

those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

b) City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.4 of this Agreement.

c) That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Agreement, but shall proceed with all work to be performed under this Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

5.9 **Trench and Pipeline Safety** - If this Agreement is for more than $25,000 and involves excavation of any trench five feet or more in depth, the Contractor shall submit a detailed plan of shoring, bracing, sloping or other provisions to be made for worker protection in accordance with Labor Code Section 6705. Such plan shall be approved by a qualified representative of the City.

[Intentionally left blank.]

6. INSURANCE, INDEMNIFICATION AND BONDS

6.1 **Insurance** - The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

	Coverage (Check if applicable)	Minimum Limits
( )	Comprehensive General Liability Insurance (including premises and operations)	$1,000,000 per occurrence combined single limit
( )	Contractual Liability Insurance Products Liability Insurance	$1,000,000 limit
( )	Comprehensive Automobile Liability Insurance (includes owned, non-owned, and hired automobile hazard	$1,000,000 per occurrence combined single limit
( )	Professional Liability Insurance (providing for a one year discovery period)	$1,000,000 limit
( )	Workers' Compensation/Employers' Liability Insurance	Statutory $1,000,000 per occurrence
	Risk of Loss Insurance	
	Acts of God Insurance	

CONDITIONS:

The insurance of surety companies who provide or issue the policy shall have been admitted to do business in the State of California with a credit rating of "A"-minus or better.

This insurance shall not be canceled, limited in scope or coverage or non-renewed until after thirty (30) days prior written notice has been given to the City Engineer, City of Pico Rivera, California.

Any insurance maintained by the City of Pico Rivera shall apply in excess of, and not combined with, insurance provided by this policy.

The City of Pico Rivera, its officers, employees, representatives, attorneys, and volunteers shall be named as additional named insured.

Prior to commencement of any work under this Agreement, Contractor shall deliver to the City insurance endorsements confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above.

Such endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by the City, it shall be Contractor's responsibility to see that the City receives

documentation, acceptable to the City, which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company.

If the Contractor fails to maintain the aforementioned insurance, or secure and maintain the aforementioned endorsement, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement. However, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure said endorsement. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which became due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this Agreement.

Each contract between the Contractor and any subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section 6.1.

6.2 **Indemnification -** Contractor shall indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising or alleged to arise out of or in connection with the negligent performance of the work, operations or activities of Contractor, its agents, employees, subcontractors, or invitees, provided for herein, or arising or alleged to arise from the negligent acts or omissions of Contractor hereunder, or arising or alleged to arise from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities or portion of such claims or liabilities arising or alleged to arise from the negligence or willful misconduct of the City, its officers, agents or employees, and in connection therewith:

a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising or alleged to arise out of or in connection with Contractor's (or its agents', employees', subcontractors', or invitees') negligent performance of or failure to perform such work, operations or activities hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising or alleged to arise out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor shall pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the

City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees for counsel acceptable to City.

d) Contractor's duty to defend and indemnify as set out in this Section 6.2 shall include any claims, liabilities, obligations, losses, demands, actions, penalties, suits, costs, expenses or damages or injury to persons or property arising or alleged to arise from, in connection with, as a consequence of or pursuant to any state or federal law or regulation regarding hazardous substances, including but not limited to the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous and Solid Waste Amendments of 1984, the Hazardous Material Transportation Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the California Hazardous Substance Account Act, the California Hazardous Waste Control Law or the Porter-Cologne Water Quality Control Act, as any of those statutes may be amended from time to time.

e) City shall provide timely written notice to Contractor of any third party claims (California Public Contracts Code 9201).

f) The Contractor's indemnification obligations pursuant to this Section 6.2 shall survive the termination of this Agreement. Contractor shall require the same indemnification from all subcontractors.

6.3 **Labor and Materials Bond, Performance Security and Warranty Security** - Concurrently with execution of this Agreement, Contractor shall deliver to City a labor and materials bond and a performance security each in the sum of the amount of this Agreement, in the forms provided by the City Clerk, which secures the payment of subcontractors, laborers and materialmen, and the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond or security shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement. Prior to the acceptance of the work by the City, Contractor shall deposit with the City a Warranty Bond or Security in the amount of 50% of the amount of this Contract and in a form provided by the City warranting the work and materials for a period of one year from the date of acceptance by the City.

6.4 **Sufficiency of Insurer or Surety** - Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. In the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by this Section 6 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within ten (10) days of receipt of notice from the Risk Manager.

6.5 **Substitution of Securities** - Pursuant to California Public Contract Code Section 22300, substitution of eligible equivalent securities for any moneys withheld to ensure

performance under this Agreement for the work to be performed will be permitted at the request and expense of the successful bidder.

7. RECORDS AND REPORTS

7.1 **Reports** - Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

7.2 **Records** - Contractor shall keep, and require subcontractors to keep, such books and records (including but not limited to payroll records as required herein) as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

7.3 **Ownership of Documents** - All drawings, specifications, reports, records, documents and other materials prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

8. ENFORCEMENT OF AGREEMENT

8.1 **California Law** - This Agreement shall be construed and interpreted both as to validity and as to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 **Disputes** - In the event either party fails to perform its obligations hereunder, the non-defaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting party shall

have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting party commences to cure such default within ten (10) days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the non-defaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the non-defaulting party shall have the right, in addition to any other rights the non-defaulting party may have at law or in equity, to terminate this Agreement. Compliance with the provisions of this Section 8.2 shall be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

8.3 **Dispute Resolution** – If the amount of this Agreement is $375,000 or less, disputes regarding time extensions or payment amounts must be submitted to a resolution process in accordance with Public Contracts Code 20104-20104.4 as follows:

(1) Informal negotiation between the City and general contractor.

(2) Mediation with the general contractor.

(3) Arbitration.

(4) Court trial. If the party requesting the court trial does not prevail, then that party must pay all court costs and attorney's fees.

8.4 **Waiver** - No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.5 **Rights and Remedies are Cumulative** - Except with respect to rights and remedies expressly declared to be exclusive 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.

8.6 **Legal Action** - In addition to any other rights or remedies, either party may take legal action, law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

8.7 **Liquidated Damages** - Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of one thousand dollars ($1000.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit B). In addition, liquidated damages may be assessed for failure to comply with the emergency call out requirements described in the Scope of Services

(Exhibit A). The City may withhold from any moneys payable on account of services performed by the Contractor any accrued liquidated damages.

8.8 **Termination for Default of Contractor** - If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, Contractor shall vacate any City owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 8.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed the City as previously stated.

8.9 **Termination for Convenience** – The City may terminate this Agreement without cause for the convenience of the City upon giving Contractor 30 days' prior written notice of termination of the Agreement. Upon receipt of the notice of termination, the Contractor shall cease all further work pursuant to the Agreement. Upon such termination by the City, the Contractor shall not be entitled to any other remedies, claims, actions, profits, or damages except as provided in this paragraph. Upon the receipt of such notice of termination, Contractor shall be entitled to the following compensation:

1. The contract value of the work completed to and including the date of receipt of the notice of termination, less the amount of progress payments received by Contractor.

2. Actual move-off costs including labor, rental fees, equipment transportation costs, the costs of maintaining on-site construction office for supervising the move-off.

3. The cost of materials custom made for this Agreement which cannot be used by the Contractor in the normal course of his business, and which have not been paid for by City in progress payments.

4. All costs shall not include any markups as might otherwise be allowed by any plans or specifications which were a part of the Agreement.

The provisions of this paragraph shall supersede any other provision of the Agreement or any provision of any plans, specification, addendums or other documents which are or may become a part of this Agreement. City and Contractor agree that the provisions of this paragraph are a substantive part of the consideration for this Agreement.

8.10 **Attorney's Fees** - If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

9. CITY OFFICERS AND EMPLOYEES, NONDISCRIMINATION

9.1 **Non-liability of City Officers and Employees** - No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

9.2 **Conflict of Interest** - The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

9.3 **Covenant Against Discrimination** - Contractor covenants that, by and for itself, its heirs, executors, 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 race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. To the extent required by law, Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

10. MISCELLANEOUS PROVISIONS

10.1 **Notice** - Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and shall be deemed to be given when served personally or deposited in the U.S. Mail, prepaid, first-class mail, return receipt requested, addressed as follows:

To City: City of Pico Rivera
6615 Passons Boulevard
Pico Rivera, California 90660
Attention: Director of Public Works/City Engineer

To Contractor: American Asphalt South, Inc.
14436 Santa Ana Avenue
Fontana, CA 92337

10.2 **Interpretation** - The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

10.3 **Integration; Amendment** - It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 **Severability** - In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity

or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

10.5 **Hiring of Undocumented Workers Prohibited** - Contractor shall not hire or employ any person to perform work within the City of Pico Rivera or allow any person to perform work required under this Agreement unless such person is properly documented and legally entitled to be employed within the United States.

10.6 **Unfair Business Practices Claims** - In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body renders final payment to the Contractor without further acknowledgment by the parties. (Section 7103.5, California Public Contract Code.)

10.7 **Corporate Authority** - The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[*Intentionally left blank. Signatures follow.*]

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

ATTEST:

By: _____
Anna M. Jerome, Assistant City Clerk

CITY OF PICO RIVERA,
a municipal corporation

By: _____
Gustavo V. Camacho, Mayor

APPROVED AS TO FORM:

_____
Arnold M. Alvarez-Glasman, City Attorney

CONTRACTOR:

By: Jeff Petty
(Print)

Signature: [signature]

Title: Vice President

Address: 14436 Santa Ana Avenue
Fontana, CA 92337

By: Lyle Stone
(Print)

Signature: [signature]

Title: Secretary

Address: 14436 Santa Ana Avenue
Fontana, CA 92337

Enclosure 2

ATTACHMENT A

RESIDENTIAL RESURFACING PROGRAM (RRP) PHASE E – SLURRY SEAL
CIP NO. 21245

COMPLETE BID RESULTS

CONTRACTOR	TOTAL
Engineer's Estimate	$336,000.00
1. American Asphalt South Inc	**$316,497.50**
2. Pavement Coating Co.	$353,755.25
3. Doug Martin Contracting	$376,880.40
4. All American Asphalt	$385,000.00
5. VVS International	$388,708.00
6. Roy Allan Slurry Seal	$398,606.30

ENCLOSURE 3

NOT TO SCALE

CITY OF PICO RIVERA
CALIFORNIA

LOCATION PLAN AND STRIPING PLAN

LEGEND

— PROPOSED SLURRY SEAL STREETS

SLURRY SEAL

1. Armistad Ave - Brierfield St to Woodford St
2. Arma St - Rosemead Bl to Layman Ave
3. Bartolo Ave - Durfee Ave to Canal Way
4. Bartolo Ave - Canal Way to Tobias Ave
5. Bequette Ave - Burma Rd to Rex Rd
6. Bequette Ave - Danbridge St to Burma Rd
7. Buhman Ave - Maxine St to Sunglow St
8. Burke St - Serapis Ave to Passons Blvd
9. Canal Way - End to Bartolo Ave
10. Canal Way - Bartolo Ave to Beverly Rd
11. Canal Way - Beverly Rd to Olympic Blvd
12. Canal Way - Olympic Blvd to Walnut Ave
13. Carron Dr - Passons Blvd to Millux Ave
14. Carron Dr - Millux Ave to Pico Vista Rd
15. Cord Ave - Dicky St to Balfour St
16. Cord Ave - Balfour St to Marjorie St
17. Cord Ave - Terradell St to Sunglow St
18. Cord Ave - Sunglow St to Claymore St
19. Cord Ave - Claymore St to Telegraph Rd
20. Cord Ave - Maxine St to Sunglow St
21. Dicky St - Cord Ave to Rimbank Ave
22. Fairway Dr - Bradgate Dr to Cypress Pt Dr
23. Goodhee St - Millux Ave to Pico Vista Rd
24. Goodhee St - Passons Blvd to Millux Ave
25. Kells Pl - Greenglade Ave to Sanfoval Ave
26. Klindale - Florpark St to Telegraph Rd
27. La Docena Ln - Passons Blvd to Buhman Ave
29. Loch Alene Ave - Bascom St to Rivera Rd
29. Marjorie St - Millux Ave to Pico Vista Rd
30. Olympic Blvd - Durfee Ave to Canal Way
31. Olympic Blvd - Canal Way to Tobias Ave
32. Orange Ave - Shade Ln to Homestead St
33. Orange Ave - Homestead St to La Docena Ln
34. Orange Ave - La Docena Ln to Sunglow St
35. Orange Ave - Sunglow St to Florpark St
36. Poincianna St - Cord Ave to Pico Vista Rd
37. Rex Rd - Lindsey Ave to Citronell Ave
38. Rex Rd - Citronell Ave to Passons Blvd
39. Rex Rd - Lindell Ave to Bequette Ave
40. Rex Rd - Bequette Ave to Cravell Ave
41. Rex Rd - Cravell Ave to Lindsey Ave
42. Sandoval Ave - Kells Pl to Woodford St
43. Serapis Ave - Rex Rd to Call St
44. Serapis Ave - Claymore St to Telegraph Rd
45. Serapis Ave - Call St to RR Xing
46. Serapis Ave - La Docena Ln to Terradell St
47. Shade Ln - Passons Blvd to Sideview Dr
48. Shade Ln - Sideview Dr to Orange Ave
49. Sunglow St - Orange Ave to Clarinda Ave
50. Sunglow St - Clarinda Ave to Pico Vista Rd
51. Tobias Ave - Beverly Blvd to Beverly Rd
52. Tobias Ave - Beverly Rd to Walnut Ave
53. Vernier St - Rosemead Bl to Jackson St
54. Wampler St - Passons Blvd to Millux Ave
55. Wampler St - Millux Ave to Pico Vista Rd
56. Wheelock St - Cord Ave to Pico Vista Rd
57. Woodhue St - Cord Ave to Pico Vista Rd
58. Gallatin Rd - Rosemead Blvd to Acacia Ave
59. Glencannon Dr - Passons Blvd to Pico Vista Rd
61. Saratoga St - 135' E/o Berkshire Rd to 250' E/o Berkshire Rd
    110' N/o Del Mar Dr to 200' N/o Del Mar Dr
62. Berkshire Rd - 40' N/o Gallatin Rd to 70' N/o Gallatin Rd

REGISTERED PROFESSIONAL ENGINEER ART CERVANTES No. 60535 Exp. CIVIL STATE OF CALIFORNIA

PICO RIVERA

CITY OF PICO RIVERA
DEPARTMENT OF PUBLIC WORKS - ENGINEERING DIVISION
CAPITAL IMPROVEMENT PROJECT NO. 21245 - RRP - PHASE "E"
SLURRY SEAL LOCATION AND STRIPING PLAN

Date: 6-14-2010

NOTICE OF INVITING BIDS

RESIDENTIAL RESURFACING PROGRAM (RRP), PHASE E SLURRY SEAL PROJECT CAPITAL IMPROVEMENT PROJECT NO. 21245

NOTICE IS HEREBY GIVEN that the City Council of the City of Pico Rivera will receive sealed bids for the **RESIDENTIAL RESURFACING PROGRAM (RRP), PHASE E SLURRY SEAL PROJECT Capital Improvement Project No. 21245** in accordance with the terms and provisions of the plans and specifications therefore, which are on file in the Office of the City Clerk, Pico Rivera City Hall, 6615 Passons Boulevard, Pico Rivera, California 90660.

Sealed bids will be received by the City of Pico Rivera in the Office of the City Clerk, Pico Rivera City Hall, 6615 Passons Boulevard, Pico Rivera, California 90660, on or before **2:00 p.m. on the 24th day of July, 2013**, and will be publicly opened and announced by said City Clerk at the same time and place, and thereafter will be submitted by the City Clerk to the City Council for action, within 30 days, in the Council Chambers, 6615 Passons Boulevard, Pico Rivera, California 90660.

Each sealed bid must be submitted on the form prepared and furnished for that purpose, which may be obtained at the Pico Rivera City Hall, 6615 Passons Boulevard, Pico Rivera, California 90660, and at said office, bidders may also obtain copies of the plans and specifications for the contemplated work.

A set of Bid Documents may be obtained at the Office of the City Engineer, 6615 Passons Boulevard, Pico Rivera, California, upon **nonrefundable payment of twenty-five dollars ($25.00)**. An additional charge of ten dollars ($10.00) must be included if mailed by mail. Bid Documents and other contract documents may also be examined at the Office of the City Clerk of the City of Pico Rivera. Bid Documents will not be mailed unless the additional $10.00 charge is included with payment.

Each bid shall be accompanied by a certified or cashier's check, or a bid bond for not less than ten percent (10%) of the amount of the bid, made payable to the City Clerk of the City of Pico Rivera, or by a bond for the amount, and so payable signed by the bidder and two sureties, who shall justify in double that amount, or by a corporate bond to the satisfaction and approval of the City Attorney, and will be forfeited to the City if the bidder does not, within ten (10) days after written notice that the contract has been awarded to him, enter into contract with the City for the work in addition, the successful bidder will also required to post a Faithful Performance Bond and a Labor and Material Bond in an amount equal to one hundred percent (100%) of the contract price, both with sureties satisfactory to the City Council. If said contract is not executed and said bonds are not filed by the successful bidder, said surety shall be forfeited.

NOTICE IS FURTHER GIVEN that, pursuant to the provisions of Sections 1770-1781, inclusive, of the Labor Code of the State of California, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages for each craft or type of workman needed to execute the proposed contract, and it will be required that no less than said rates be paid to all such workmen employed or engaged on the work. The rates so ascertained pertaining to the craft, classifications and type of workmen needed to execute this contract are available at the office of the City Clerk.

NOTICE IS FURTHER GIVEN that pursuant to the California Waste Management Act of 1989 (AB 939), Contractor's undertaking certain construction, demolition and renovation projects shall submit and adhere to a Waste Management Plan, as described in Ordinance No. 972 of the City of Pico Rivera.

NOTICE IS FURTHER GIVEN that pursuant to Section 4590 of the Government Code of the State of California, the substitution of securities for any monies withheld to ensure performance under this contract will be permitted.

Each bidder shall possess, at the time this contract is awarded, a Class "A" License (General Engineering), pursuant to Public Contract Code Section 3300.

The City Council of the City of Pico Rivera reserves the right to reject any and all bids or to waive technical errors and discrepancies, if to do so serves the interest of the City, and to take all bids received under advisement for a period not to exceed thirty (30) days, after the declaration thereof.

DATED: This 27th day of June, 2013.

Anna M. Jerome, City Clerk
City of Pico Rivera

Publish: July 3, 10, 2013
Whittier Daily News Ad#384058

CITY COUNCIL | AGENDA REPORT

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: AMENDMENT NO. 11-1244-2 TO AGREEMENT NO. 11-1244 WITH EL RANCHO UNIFIED SCHOOL DISTRICT - SCHOOL RESOURCE DEPUTY

Recommendation:

Approve Amendment No. 11-1244-2 to Agreement No. 11-1244 with El Rancho Unified School District (ERUSD) under which the City will be reimbursed for 50% of the cost of providing a School Resource Deputy from September 2013 through June 2014, and authorize the Mayor to execute the Amendment in a form approved by the City Attorney.

Fiscal Impact: $66,660 (General Fund Savings)

Discussion:

For several years, the City has shared the cost of a School Resource Deputy (Deputy) with ERUSD. The position is filled by a Deputy Sheriff, hired for a 12-month term, under the City's contract with the Sheriff's Department at a total cost of $159,988. Since the School District does not have a need for the Deputy for two months during the summer, the Sheriff's Department assigns the Deputy to special City projects, such as the Vandalism Enforcement Team. The School District has historically agreed to pay 50% of the cost for a 10-month period.

During the school year, the Deputy issues truancy and various misdemeanor citations, including vandalism, and has the authority to make arrests. The Deputy works closely with the Sheriff's Vandalism Enforcement Team (VET) to identify students involved in tagging and other acts of vandalism. The School District has long been a willing partner in this endeavor.

This position was included in the City's Law Enforcement budget for Fiscal Year 2013-2014. The total cost for the deputy for the ten-month period is $133,320. The Amendment calls for the School District to reimburse the City $66,660 as its prorated share of this cost.

The Amendment before the City Council has been reviewed and approved by the El Rancho School District Board of Education at its August 8, 2013 regular School Board meeting.

Ronald Bates

RRB:AC:SG:lg

Enc. 1) ERUSD Reimbursement Contract

8

SUPPLEMENTAL AGREEMENT NO. 11-1244-2

AMENDMENT TO AGREEMENT NO. 11-1244

THIS SUPPLEMENTAL AGREEMENT is entered into this 8th day of August, 2013, by and between the CITY OF PICO RIVERA, a municipal corporation (hereinafter referred to as the "City") and EL RANCHO UNIFIED SCHOOL DISTRICT, (hereinafter referred to as "District"), and is expressly agreed to be an amendment to Agreement No. 11-1244, entered between the CITY and DISTRICT on August 23, 2011. Agreement No. 11-1244 is included by reference herein and in consideration of the mutual benefits, promises and agreements set forth herein, is modified, altered and changed in the following respects only:

1. **Section F of Agreement 11-1244 is hereby amended as follows:**

   1. City agrees that the total cost incurred by City for special event law enforcement services provided by the County of Los Angeles Sheriff's Department for a Truancy Program pursuant to this agreement, for the period of September 1, 2013 to June 30, 2014 shall not exceed $133,323.

   2. District shall reimburse City for one-half of the total cost incurred by City, not to exceed $66,662, for special event law enforcement services provided by the County of Los Angeles Sheriff's Department for a Truancy Program pursuant to this agreement for the period of September 1, 2013 to June 30, 2014.

   3. City shall submit to District copies of all bills or statements from the County of Los Angeles for special event law enforcement services provided pursuant to this agreement. District shall pay City said one-half of the total costs stated in said bills or statements for said services within thirty (30) days after the bills or statements are mailed by City to District. Total costs not to exceed $66,662. The term of this agreement shall commence on September 1, 2013 and shall terminate on June 30, 2014.

2. **Except as herein amended, all of the terms and conditions of Agreement No. 11-1244 shall remain unchanged.**

3. **This Supplemental Agreement shall take effect on September 1, 2013.**

IN WITNESS WHEREOF, the Parties have executed this Supplemental Agreement on the date and year first above written.

City of Pico Rivera	**El Rancho Unified School District**
Gustavo V. Camacho, Mayor	**Superintendent**
Date: _____	**Date:** August 14, 2013
ATTEST:	**APPROVED AS TO FORM:**
Anna M. Jerome, Assistant City Clerk	**Arnold M. Alvarez-Glasman, City Attorney**

CITY COUNCIL | AGENDA REPORT

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: SLAUSON AVENUE STREET IMPROVEMENTS, CIP NO. 21269 - NOTICE OF COMPLETION

Recommendation:

Accept as complete, effective August 9, 2013, work performed by Excel Paving Company on the Slauson Avenue Street Improvements, CIP No. 21269, and instruct the City Clerk to file the Notice of Completion with the Los Angeles County Recorder.

Fiscal Impact: $63,645 (Measure R Funds)

Discussion:

At its meeting of July 9, 2013, the City Council awarded a construction contract in the amount of $49,645 to Excel Paving Company for pavement rehabilitation associated with the Slauson Avenue Street Improvements Project, CIP No. 21269. The purpose of this project was to rehabilitate a portion of roadway pavement that was failing, and in need of immediate repairs.

Construction is complete effective August 9, 2013. Work completed included saw cutting and removing existing asphalt concrete, constructing new asphalt concrete, adjusting utility covers to match the new roadway elevations, and traffic striping.

Excel Paving Company completed the work per the approved plans and specifications. The final cost of construction was $49,831.

The project budget was $63,645. The total cost of the project was $53,380, inclusive of all project services such as construction, contingency, geotechnical services and job costing.

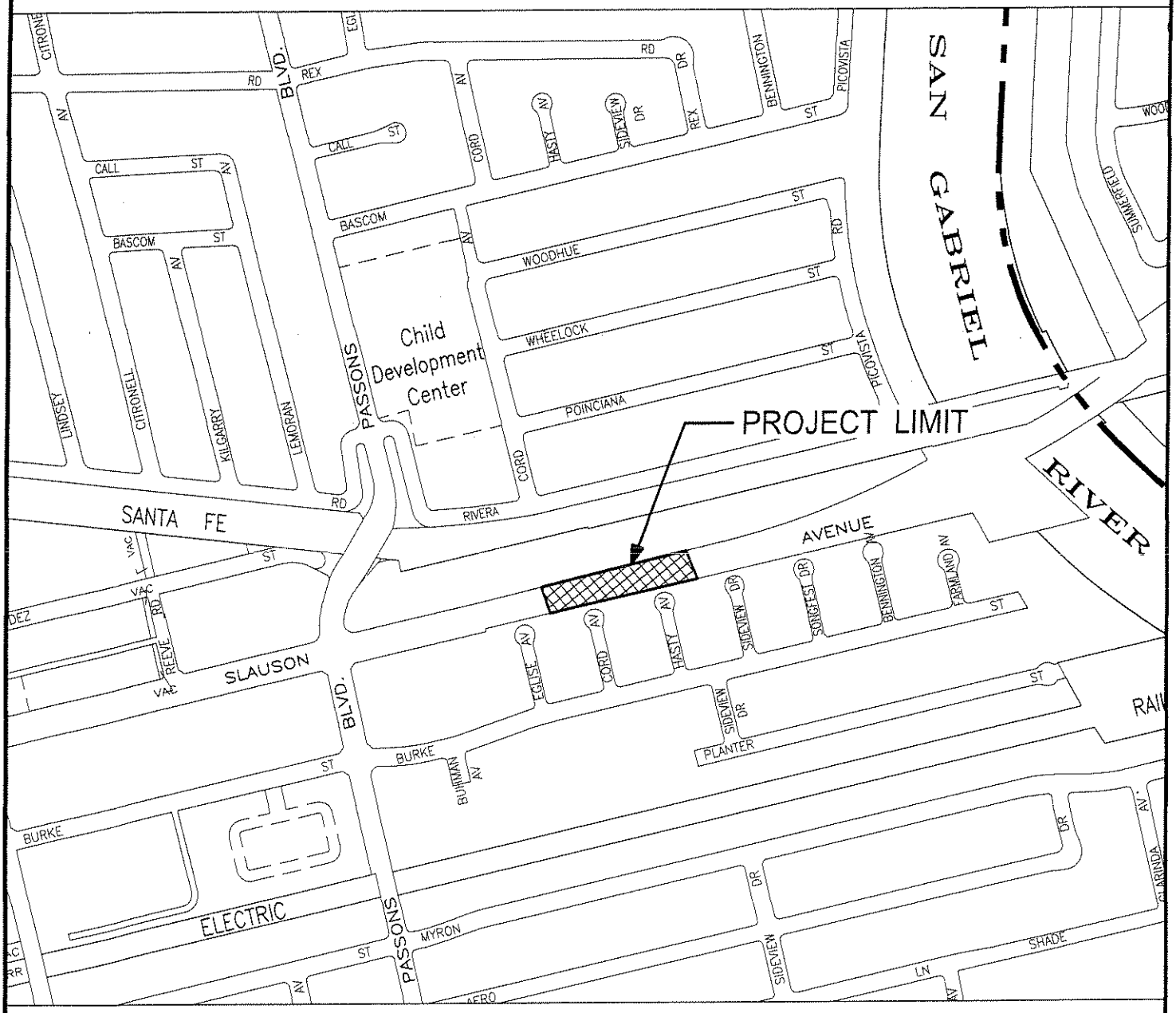
This project was delivered on time and under budget.

Ronald Bates

RRB:AC:JL:lg

Enc. 1 - Location Map

ENCLOSURE 1



LOCATION MAP

NTS

LEGEND:

— - - — CITY BOUNDARY

NOT TO SCALE

CITY OF PICO RIVERA

DEPARTMENT OF PUBLIC WORKS - ENGINEERING DIVISION

CIP 21269 - SLAUSON AVENUE PAVEMENT REPAIRS

PREPARED BY: M. NGUYEN	SCALE: NOT TO SCALE	DATE: 08-20-13

CITY COUNCIL | AGENDA REPORT

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: PICO RIVERA CAMPGROUND/PARK REHABILITATION PROJECT

Recommendation:

That the City Council consider the Campground/Park Master conceptual design program elements.

Fiscal Impact: No general fund impact.

Discussion:

The Pico Rivera Campground/Park is located within the Whittier Narrows Flood Control Basin with its primary purpose being flood control protection, water supply and groundwater recharge. The 50 acre site is under the jurisdiction of the City of Pico Rivera (CITY) and the United States Army Corps of Engineers (USACE).

The Campground/Park opened on July 1, 1978 and featured a 50 acre campground that once offered overnight tent and recreational vehicle camping and featured restrooms and shower facilities, horse and walking trails, and an open area for passive recreational uses. The campground closed in 1994.

After an extensive process of soliciting and reviewing proposals from qualified consultants to prepare a Master Plan for the Campground/Park, the City entered into a professional service agreement on April 9, 2013 with MIG Landscape Architects to

develop a conceptual master plan design of landscape development improvements within Pico Rivera Campground/Park.

Attached for your review is a preliminary design concept for the Campground/Park project which outlines MIG's design team's work on the project to date, taking into consideration two distinct perspectives. First, the consultant evaluated the potential and financial self sustainability for developing the campground based on a preliminary market analysis and over all rentability in the Southern California market. Second, the consultant created a design master plan based on data collection, visual and site analysis, that focused on utilizing much of the current infrastructure to minimize capital costs. Key sub-consultants working with MIG brought a wealth of local and national knowledge to the project, and included Hancock Resources, a national recognized expert in the design of equestrian facilities, and CLM Services, a professional concessionaire management services firm.

The most important component of the Master Plan development was the public input process. Two community visioning meetings were held at the Pico Rivera Golf Course seeking community input on the park development. The overall findings from workshop participants showed the community wanted to maintain the natural setting of the site, create connections to the existing regional trials, provide opportunities for family and group camping and provide equestrian amenities. Another popular program priority was to provide nature based activities for children.

Although the Campground/Park may not drive economic development, it has the potential to be a catalyst that can help bring people to the area. If done right, surrounding development could enable the Campground/Park to become a destination that supports other local facilities and services.

The proposed Master Plan design Concept describes the overall vision, programming components, and design considerations for the project. It forms the basis for development of a final schematic design for the property. The purpose of this presentation is to obtain direction from the City Council on the continued development of the Campground/Park Master Plan.

Although, a cost of approximately $10 million would be necessary to develop the Campground/Park as presented in this design concept, staff is working with MIG on

the development of an implementation plan that addresses the development in a phased approach.

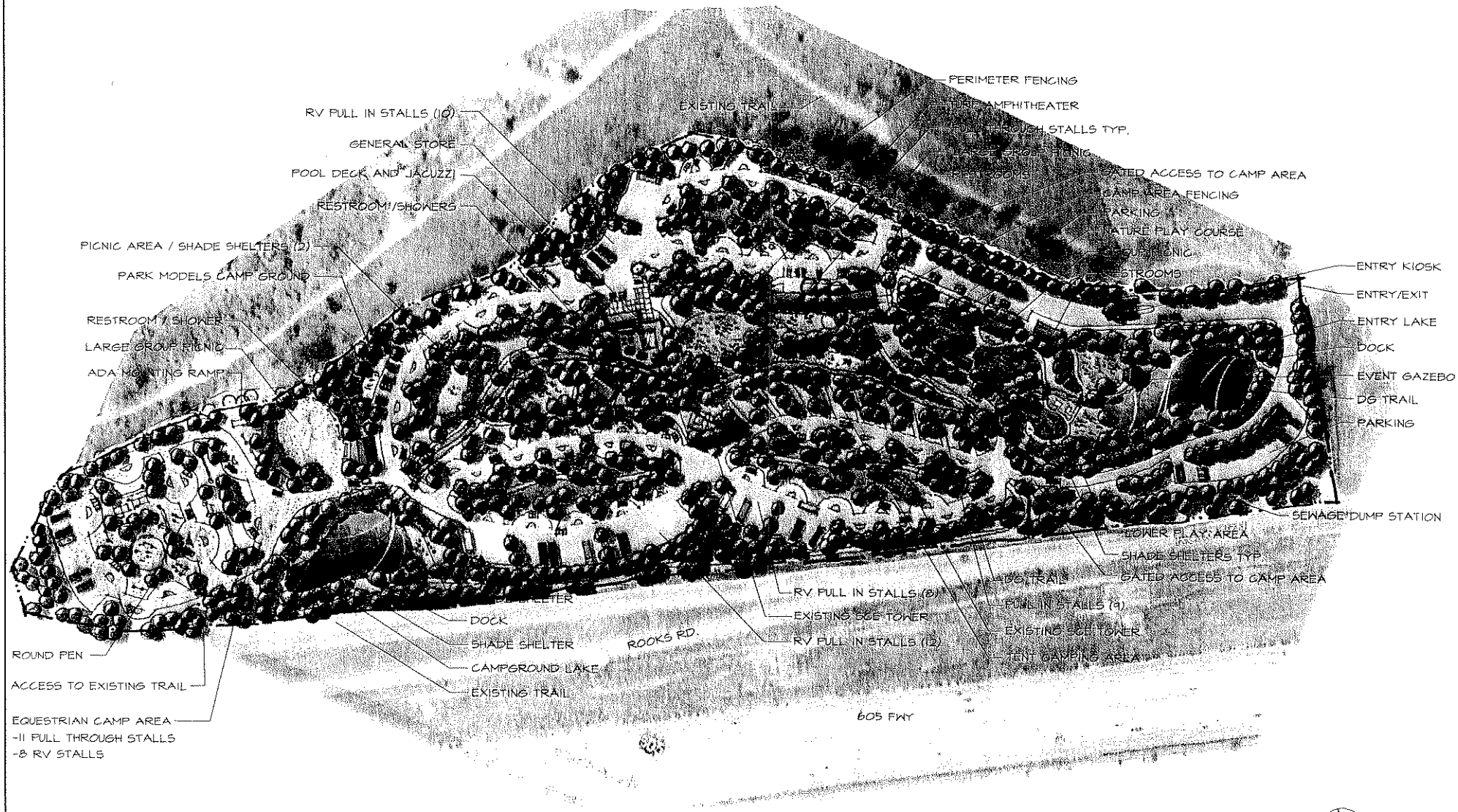
Recognizing that there is a lack of current funding to develop the design concept presented, MIG has performed a preliminary market analysis of the park development and has determined that with the proper investment the facility has the potential to be a profitable venture. Staff will work with MIG in search of potential operators who may be interested in investing the needed capital in exchange for long-term lease agreement that would allow the development to commence and be financially self sustaining.

In addition, staff will work with local, state and federal agencies to seek grant funding to fully implement, in phased segments, the conceptual design.

Ronald Bates

RB:RC:sp

Attachment (Concept Design)



JULY 22, 2013

MIG

MOORE IACOFANO GOLTSMAN, INC.

CONCEPTUAL SKETCH
FULL BUILD OUT

PICO RIVERA
SPORTS ARENA CAMPGROUND

CITY OF PICO RIVERA

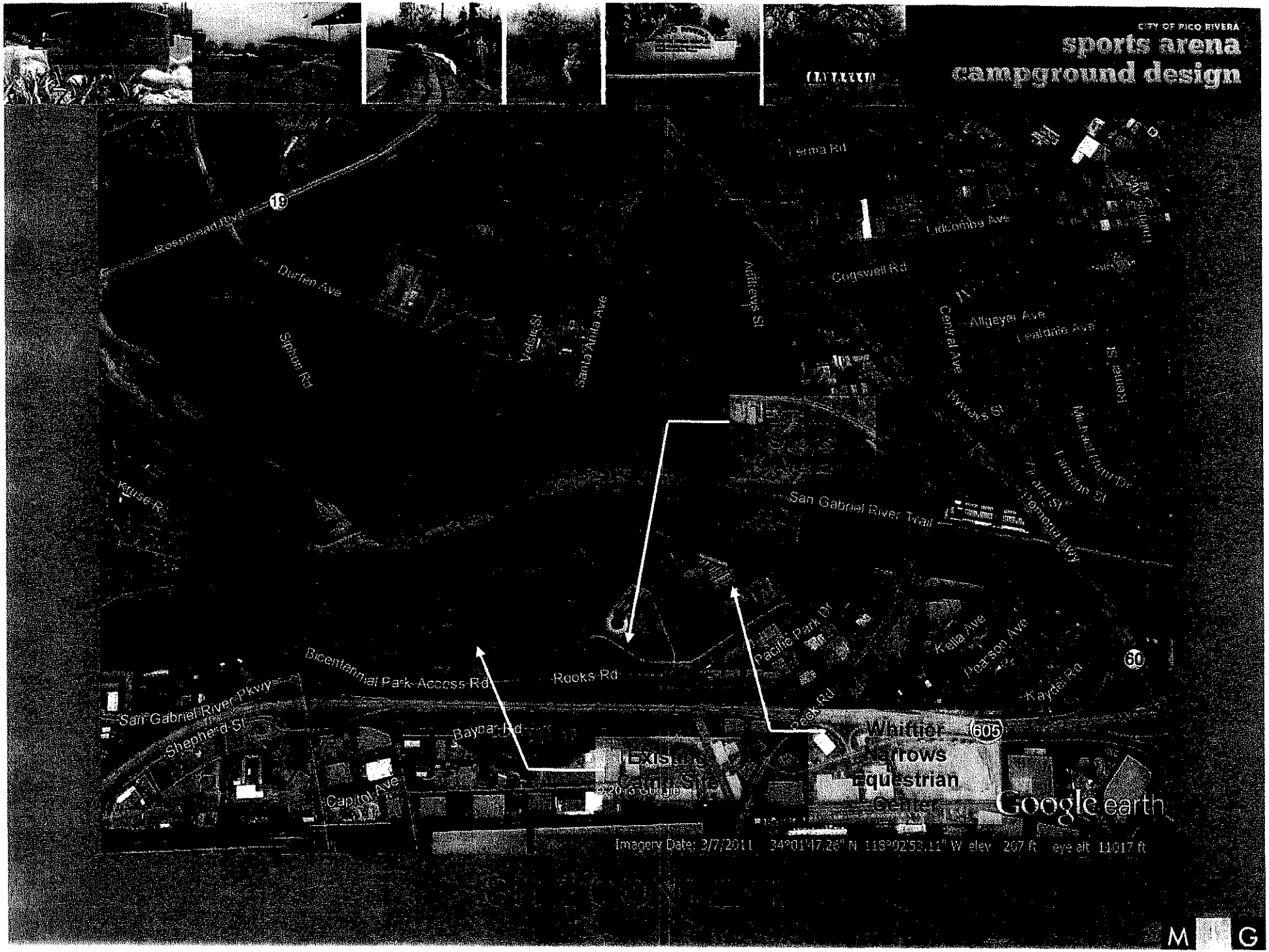
sports arena campground design

July 30, 2013

M G

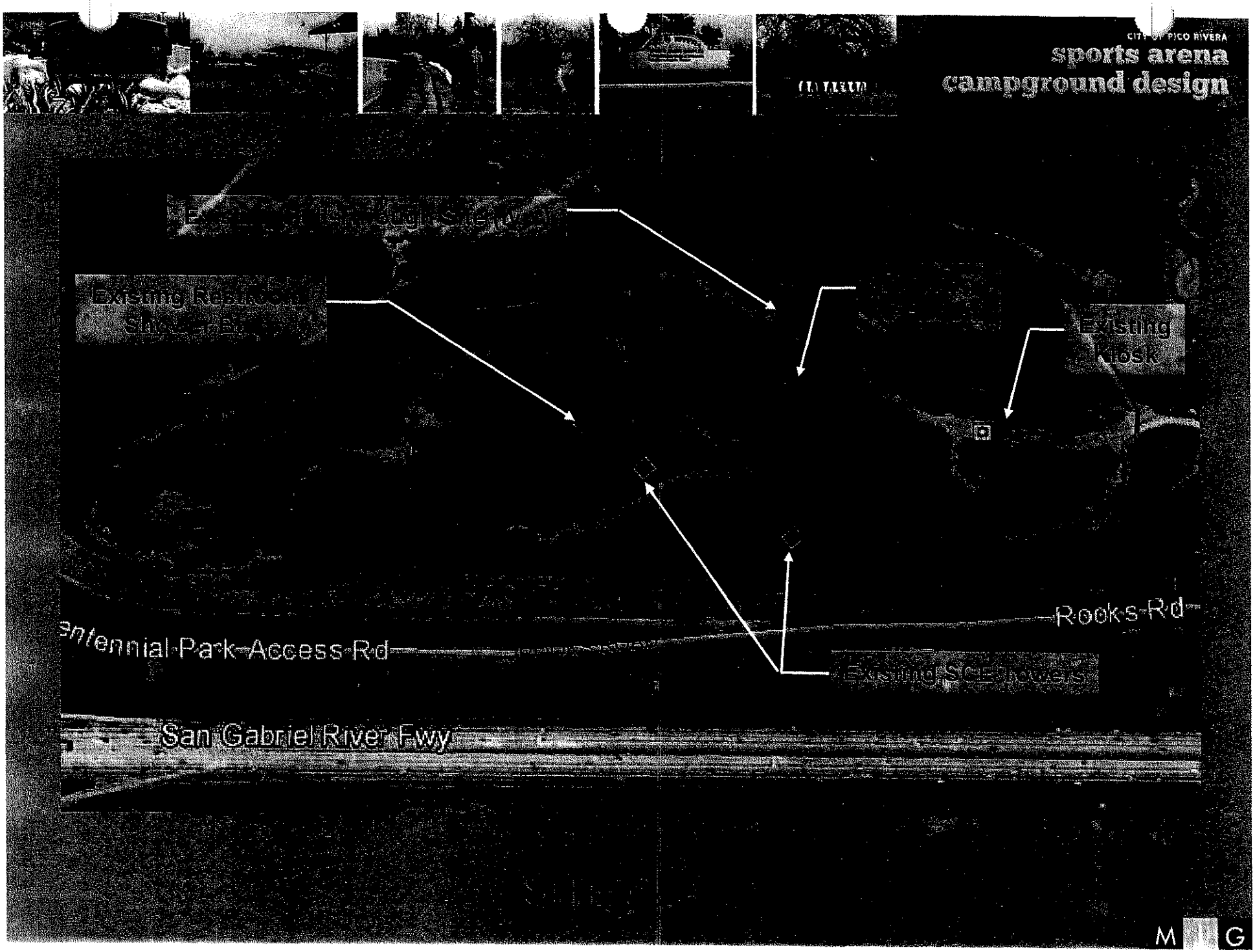
CITY OF PICO RIVERA

sports arena campground design



CITY OF PICO RIVERA

sports arena campground design



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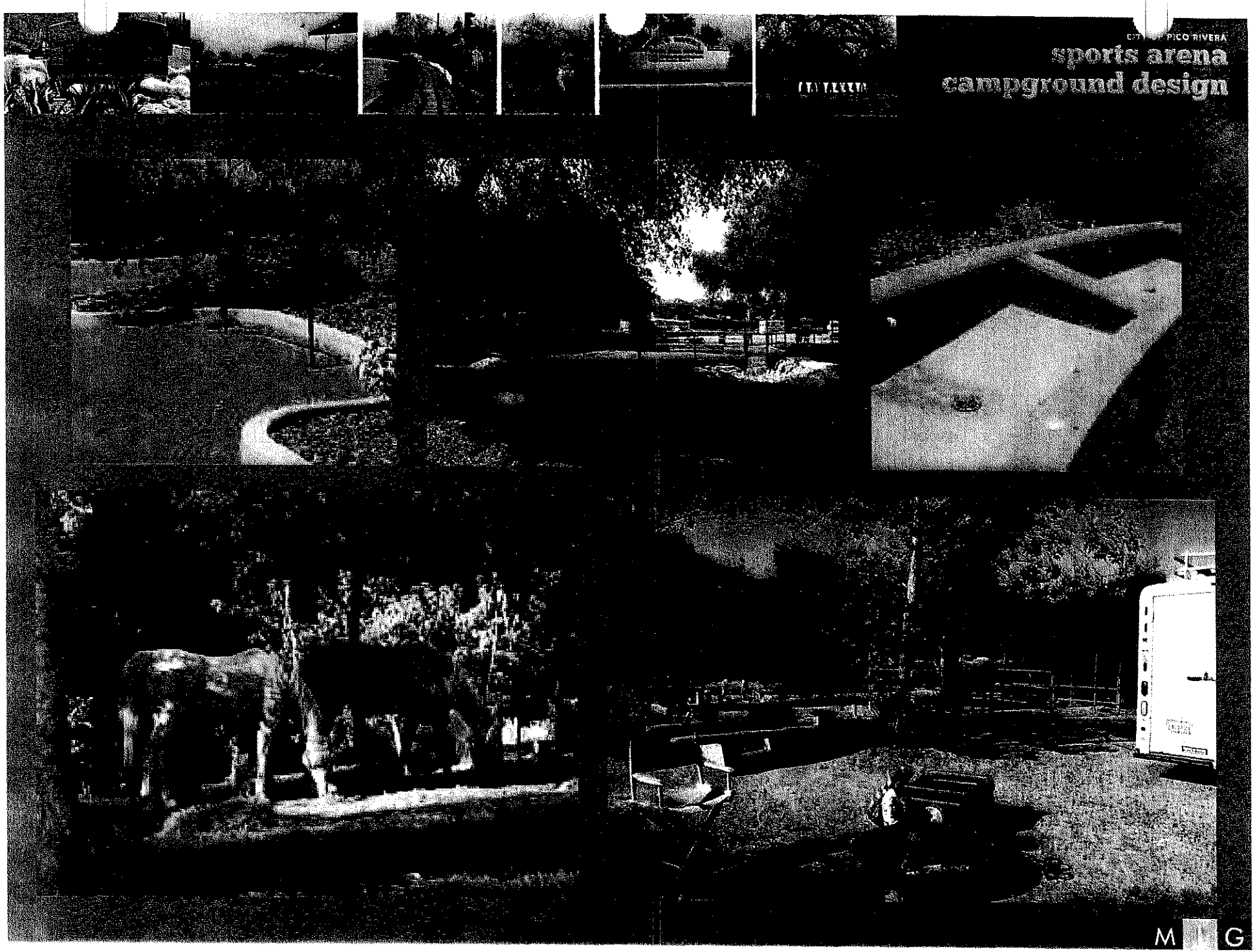
CITY OF PICO RIVERA

sports arena campground design

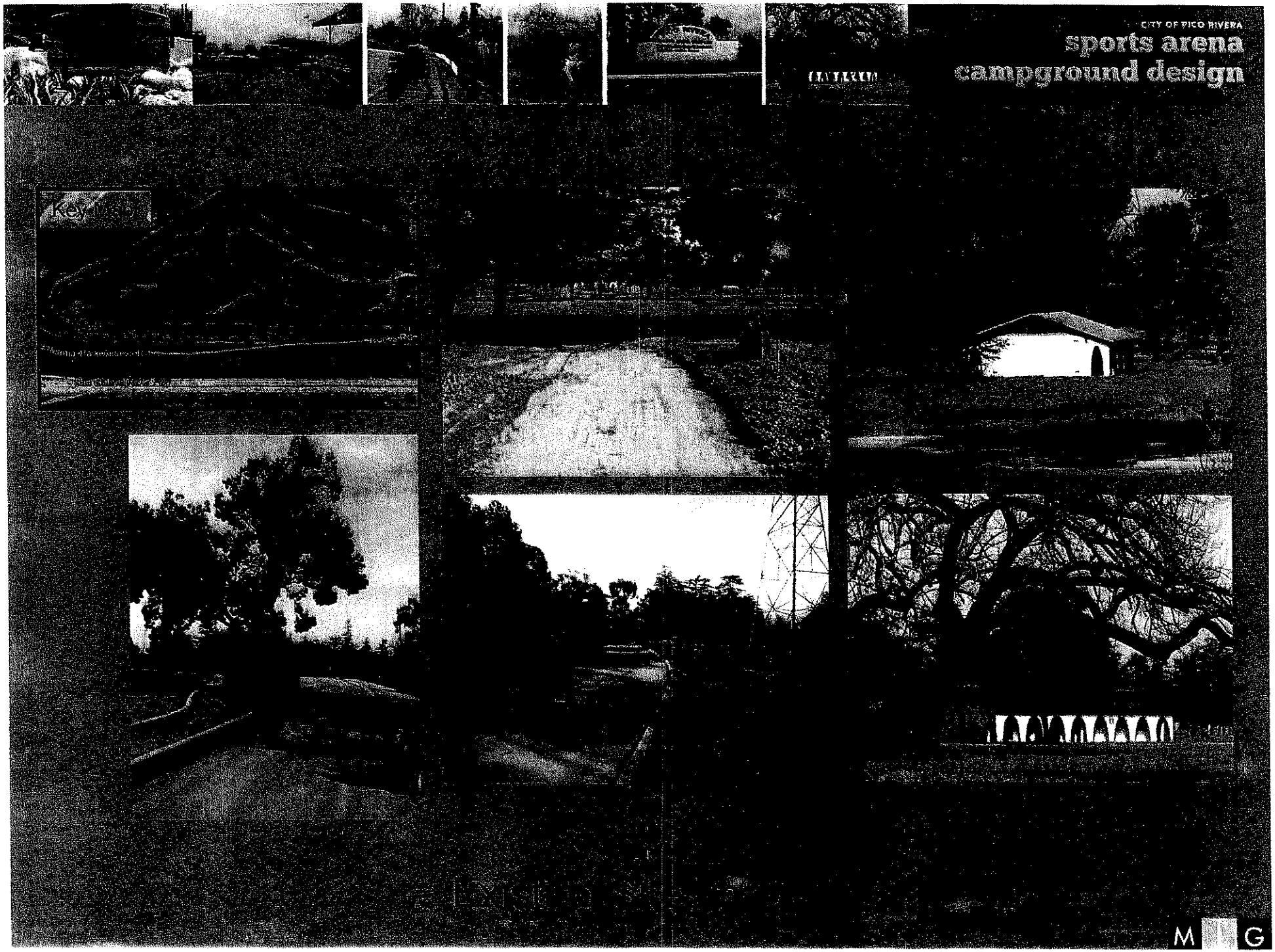
M G


CITY OF PICO RIVERA
sports arena
campground design
M G

CITY OF PICO RIVERA

sports arena campground design

Key Map



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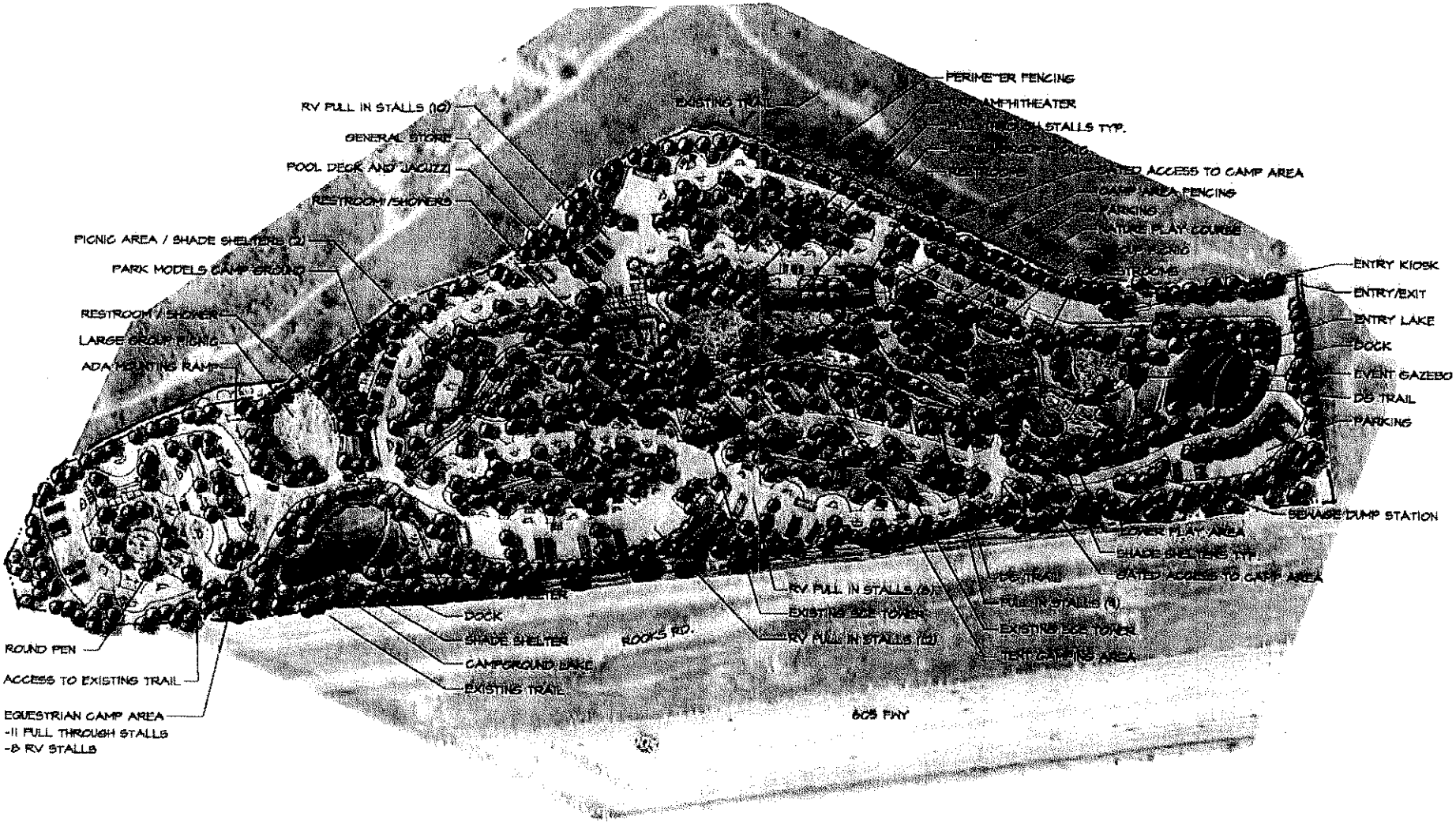
CITY OF PICO RIVERA

sports arena campground design



Conceptual Site Plan

M G

CITY COUNCIL **AGENDA REPORT**

To: Mayor and City Council

From: City Manager

Meeting Date: August 27, 2013

Subject: AGREEMENT EXTENSION WITH LEBA INC., - CONCESSIONAIRE FOR THE PICO RIVERA SPORTS ARENA

Recommendation:

Approve the attached Agreement with LEBA Inc. for operations of the Pico Rivera Sports Arena.

Fiscal Impact:

Increase of $40,000 per year in lease revenue plus CPI to the Sports Arena Enterprise Fund for the 20 year term of the agreement.

Discussion:

On April 2010, the City entered into an agreement with LEBA Inc. for the operation and maintenance of the Pico Rivera Sports Arena. During this lease period, the Concessionaire has performed at or above expectations. Pursuant to Section 5.3 of the current agreement, the Concessionaire has submitted written notice expressing interest in negotiations regarding the terms and conditions of the current agreement.

On May 13, 2013, staff met with the Sports Arena Ad Hoc Committee (Camacho & Armenta) to discuss parameters for negotiating points noted by the Concessionaire. Subsequent to the Ad Hoc Committee meeting, staff negotiated with the Concessionaires on deal points that provide long term financing opportunities for LEBA Inc. and support significant upgrades to the existing facilities and improve health and safety features, as well as enhancements to the cosmetic and esthetic components of the Pico Rivera Sports Arena and adjacent areas. The Concessionaire with an extended

term, is proposing enhancements and upgrades that will result in their ability to expand their scope of entertainment programming and feature a much broader array of program choices to reach out to the greatest number of participants.

The principal points that were negotiated with this extension and agreed to by the Concessionaire are as follows:

1. Concessionaire to implement a three phased improvement program totaling a minimum of $7 million:

   Phase 1 – LED standing billboard display (minimum $400,000) – 12 months. Council can extend to 24 months.
   Phase 2 – Infrastructure improvements (minimum $200,000) – 24 months
   Phase 3 – Sports Arena capital improvements with extra seating and a free standing cover (minimum $6.4 million) – 36 months. Council can extend to 48 months.

2. City agrees to minimize fees to the extent possible, but not waive fees for permits, inspections etc. For capital improvement projects Phase 1 – 3, the City will expedite processing of all permits, inspections etc.

3. City will contribute 20% of the total cost of Phase 1 development "LED billboard" up to a cost of $60,000.

4. Term: 20 years is consistent with the City's lease with the United States Army Corps of Engineers (USACE).

5. Concessionaire to pay $240,000 annually, including CPI maximum of 5% per year increase thru the term of the lease.

6. City to reinvest 10% of the annual Concessionaire's lease payments to infrastructure improvements agreed to by the City and Concessionaire.

7. City to add property to the lease generally described as the horse stables property to off-set property used by Edison for power transmissions standards, which was previously available for sports arena parking.

In conclusion, staff recommends that the City Council formally authorize the execution of Agreement No. 07-987-1 as the Operative Concessionaire Agreement, superseding all prior agreements.

Ronald Bates

RB:RC:sp

Attachment "A" (Concessionaire Agreement)
Attachment "B" (Notice of Agreement Approval by Army Corps)

Attachment "A"

CONCESSION AGREEMENT NO. _____ FOR THE OPERATION AND MAINTENANCE OF THE PICO RIVERA SPORTS ARENA

THIS AGREEMENT, made and entered into this _____ day of August 2013,

BY AND BETWEEN

CITY OF PICO RIVERA, a Municipal Corporation, hereinafter referred to as the "City",

AND

LEBA, INC., a California Corporation hereinafter referred to as "Concessionaire",

RECITALS

WHEREAS, the City of Pico Rivera operates the Pico Rivera Sports Arena (hereinafter referred to as the "Arena"); and

WHEREAS, the City is authorized to contract for such services within the Whittier Narrows Flood Control Basin, pursuant to the provisions of the Department of the Army Lease No. DACW09-1-85-4 granted to the City by the Secretary of the Army, under authority of Section 4 of the Act of Congress approved on December 22, 1944, as amended ("Master Lease"); and

WHEREAS, the City and Concessionaire desire to enter into a concession agreement ("Agreement"), whereby Concessionaire will be granted the right to operate the Arena subject to the terms and conditions contained herein and in with the Master Lease; and

WHEREAS, the City, desires to contract with Concessionaire for the purpose of promoting various events in accordance with the specific terms and conditions contained in this Agreement and as consistent with the Master Lease; and

WHEREAS, Concessionaire is willing to exercise the grant of such a concession in accordance with the terms and conditions prescribed therefore; and

WHEREAS, it is in the best interest to both parties to execute this Agreement, a lease effective upon approval of the City Council and the approval of the United States Army Corps of Engineers ("USACE") so that Concessionaire is duly authorized to begin to book events for the summer 2014 event season and beyond; and

WHEREAS, the City and Concessionaire previously entered into a similar concession agreement, dated April 27, 2010 , Agreement No. 07-987 ("Prior Agreement") which superseded the Agreement between the Parties dated May 8, 2007 ; and

WHEREAS, the City and Concessionaire by entering into this Agreement do hereby and expressly terminate the Prior Agreement and all terms, conditions and covenants set forth in the Prior Agreement are superseded by this Agreement, and the terms set forth herein shall be controlling notwithstanding any terms set forth in the Prior Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

1.0 OPERATING AGREEMENT WITH CORPS

1.1 This Agreement is granted subject to all rights and privileges retained by the United States of America, Department of the Army, hereinafter referred to as "United States," pursuant to the provisions and conditions of the Master Lease. United States Department of Army Recreational Lease, Number DACW09-1-85-4, between the Secretary of the Army and Pico Rivera, attached hereto as "Exhibit A", incorporated herein by reference. Accordingly, Concessionaire accepts and agrees to be bound by the following conditions thereof:

a. That the primary purpose of the Whittier Narrows Flood Control Basin is the control of flood, and nothing herein expressed or implied shall be construed so as to conflict with that purpose.

b. That the concession premises shall be subordinate to the use thereof by the Department of the Army in the operation and maintenance of the Whittier Narrows Flood Control and Basin.

c. That the exercise of the privileges granted herein shall conform to such rules and regulations as may be prescribed by the Secretary of the Army or his or her authorized designee to govern the public use of the Whittier Narrows Recreational Area, and shall be subject to the general supervision of the District Engineer for the Los Angeles District of the Army Corps of Engineers (hereinafter District Engineer").

d. That the United States shall be held harmless from all claims which may arise from or be incident to the exercise of the privileges granted herein.

e. That the United States and the City of Pico Rivera shall not be liable for damages to property or injuries to persons which may arise from or be incidental to the exercise of the privileges granted herein or for damages to the property of Concessionaire, or for damages to the property or injuries to the person of Concessionaire and/or the officers, agents, servants or employees or others who may be on the concession premises at their invitation or the invitation of any one of them, arising from or incident to the flooding of said premises by the United States or flooding from any other cause, or arising from or incident to any other governmental activities on the concession premises, and Concessionaire shall hold the United States, and the City of Pico Rivera harmless from any and all such claims.

f. That this Agreement shall be subject to the prior written approval of the District Engineer.

g. That charges for services rendered and for the use of the concession premises shall be reasonable and shall have the prior written approval of the District Engineer or his/her authorized designee.

h. That Concessionaire shall hold the United States and the City of Pico Rivera harmless from any and all claims or rights of action for damages which may or might arise or accrue to Concessionaire and/or the officers, agents, servants, employees or others who may be on the concession premises at their

invitation or the invitation of any one of them, by reason of injuries to the property, or the person of any of them resulting from the entry upon or the use of the concession premises, by the United States, the City of Pico Rivera or any one of them at anytime, for any purpose necessary or convenient in connection with river and flood control work, or for the removal of timber required or necessary for such work, or by reason of the flooding of the concession premises, or any part thereof, when in the judgment of any of them such flooding is necessary in connection with flood control work.

i. That no human habitation shall be permitted on the premises. This shall not be construed to prohibit the concessionaire from providing properly designed and approved guard stations for night watchmen or patrolmen. Any such night watchmen or patrolmen, and any structures or trailers located on the premises for the use of such persons shall be subject to the prior written approval thereof by the District Engineer.

j. That the United States, its officers, agents and employees may enter upon the concession premises at any time for any purpose necessary or convenient in connection with river and flood control work, and to remove therefrom timber or other material required or necessary for such work, to flood said premises when necessary, and/or to make any other use thereof as may be necessary in connection with flood control work, and Concessionaire shall have no claim for damages of any character on account thereof against the United States or any agent, officer, or employee thereof.

k. That the United States may construct, or permit the construction of, facilities for military requirements and for communications, electrical distribution or transmission, water supply, flood channels, sewage disposal and similar purposes on the concession premises, and Concessionaire shall have no claim for compensation for damage of any character on account thereof.

1. That this Agreement may be revoked by the District Engineer, Secretary of the Army in the event the City and/or Concessionaire violates any of the terms and conditions of this Agreement and persists therein for a period of thirty 30) days after notice thereof in writing by the District Engineer. Upon any such

revocation, Concessionaire shall vacate the concession premises, remove all property therefrom and restore said premises to a condition satisfactory to the District Engineer within such time as the District Engineer, may designate. In the event of failure or neglect to remove property and/or restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefore, or the District Engineer, may cause it to be removed and the premises to be so restored at the expense of Concessionaire, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

2.0 DEFINITIONS

2.1 The headings herein contained are for convenience and reference only and are not intended to define or limit the scope of any provision thereof.

2.2 The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

2.2.1 Beverage: Any liquid prepared by flavoring, heating and/or mixing in advance of consumption thereof, including beer and wine only; as defined in the State Alcoholic Beverage Control Act.

2.2.2 Concession: The privilege of engaging in the commercial activities authorized herein on the public property designated therefore.

2.2.3 City Manager: The City Manager of the City of Pico Rivera or an authorized designee or representative thereof.

2.2.4 District Engineer: The District Engineer of the United States Army Corps of Engineers, Los Angeles District, his/her authorized representative, or his/her successor in interest.

2.2.5 [This section intentionally left blank.]

2.2.6 Pico Rivera Sports Arena: The arena grounds and improvements thereon, the rodeo facilities and equipment, including but not limited to restaurant equipment if any, tractors, trucks, maintenance vehicles, the adjacent unpaved parking area, paved parking area, all improvements contained

thereon as identified in Exhibit B, attached hereto and incorporated herein by reference.

2.2.7 Approved Event: An event where the expected attendance exceeds four thousand (4,000) persons. Any such event shall require approval of the City before proceeding.

2.2.7 State: The State of California.

2.2.8 Sublease: Any lease, license, permit, concession or other interest in the premises that is granted by Concessionaire to a third party.

2.2.9 Use Granted: The privilege of engaging in the commercial activities authorized herein on the public property designated therefore

3. CONCESSION GRANTED

3.1 Concessionaire is hereby authorized to organize and conduct events and Approved Events at the Arena and including the authority to sublease the premises to third parties to conduct such events; to sell food, beverages, confectionaries, event-related souvenirs or merchandise and similar merchandise at events organized by Concessionaire or its subleases, provided that sale of such items are authorized under applicable state and local law; to charge admission for such events; and to charge for parking on such premises. The Concessionaire shall provide concession services as set forth in Exhibit C, attached hereto and incorporated herein by reference.

3.2 The concession is granted subject to the rights reserved by the United States, its officers, agents and employees in the master lease, to enter the concession premises at any time and for any purpose necessary or convenient in connection with river, harbor and flood control work, and to remove timber or other material required for such work; to flood the concession premises when necessary, and/or to make any other use of the land as may be necessary in connection with flood control, and Concessionaire shall have no claim for damages of any character on account thereof against the United States or any agent, officer or employee thereof; to make inspections concerning the operation and maintenance of the concession granted; to prohibit any permanent type of recreation building or

accessory facilities on the concession premises below twenty-five year (25) flood frequency elevations, as determined by the Government, and limit any such improvement to open type structures between twenty-five (25) and fifty (50) year flood frequency elevations, as determined by the Government.

3.3 The events and sales provided by Concessionaire shall be exclusive within the confines of the concession premises as shown in Exhibit B.

3.4 Concessionaire understands and agrees that this Agreement is by license and not lease; confers only permission to occupy and use the concession premises described for prescribed purposes in accordance with the terms and conditions hereinafter specified in this Agreement without granting or reserving to Concessionaire any interest or estate therein, except as otherwise expressly stated in this Agreement; the expenditure of capital and/or labor in the course of use and occupancy thereunder shall not confer any interest or estate in the premises by virtue of said use, occupancy and/or expenditure of money thereon; and it is the intention of the parties to limit the right of use granted herein to a personal, revocable and unassignable privilege of use in the premises for the concession granted herein.

4.0 CONCESSION PREMISES

4.1 The concession shall be conducted within the Pico Rivera Sports Arena, as shown in Exhibit B.

4.2 The concession premises shall be used only and exclusively for purposes authorized in Exhibit C, and such other purposes as are related thereto provided express written approval therefore is granted by the City Manager, and for no other purposes whatsoever.

4.3 Concessionaire acknowledges personal inspection of the concession premises and the surrounding area and evaluation of the extent to which the physical condition thereof will affect its operations. Concessionaire accepts the concession premises in their present physical condition, and agrees to make no demands upon City for any improvements or alterations thereof.

4.4 Any improvements, additions, alterations, or changes to the concession premises shall be subject to: prior approval by the District Engineer and the City Manager; securing of applicable permits by Concessionaire; and compliance with such terms and conditions as may be imposed by the District Engineer and the City Manager. All construction shall be at Concessionaire's expense.

4.5 Concessionaire hereby acknowledges the title of the United States of America, City, and/or any other public agencies having jurisdiction thereover, in and to the premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title.

4.6 Ownership of all structures, buildings or improvements constructed by Concessionaire upon the concession premises and all alterations, additions or betterment's thereto, shall become the property of the City without compensation being paid therefore, subject to the rights granted to the Concessionaire hereinabove. Upon termination thereof, whether by expiration of the term, cancellation, forfeiture or otherwise, the City Manager or the District Engineer may require the Concessionaire to remove said structures, buildings and/or improvements constructed by Concessionaire after the effective date of this Agreement, upon written notice thirty (30) days prior to the date of termination of this Agreement. Should Concessionaire fail to remove said structures, buildings and improvements constructed by Concessionaire, the same may be sold, removed or demolished, and Concessionaire shall reimburse City for any cost or expense in connection therewith in excess of any consideration received by City as a result of said sale, removal or demolition.

5.0 TERM OF AGREEMENT

5.1 The term of the Concession shall be for a period of of twenty (20) years commencing on July 1, 2014, and terminating on June 30, 2034.

6.0 CONSIDERATION

6.1 Concessionaire shall pay City for the concession and the use granted herein the sum of Two Hundred Forty Thousand and 00/100 Dollars ($240,000.00) paid annually ("Annual Concession Payment"), paid in four (4) installments of Sixty Thousand and00/100 ($60,000.00) Dollars on January 1, April 1, July 1 and October 1 of each year throughout the term of the Agreement, subject to the annual adjustments described in the paragraph 6.3, below. The first installment shall be paid no later than ten (10) days after the date this Agreement is approved. In the event any installment is not paid within ten (10) days from the date the installment is due, in addition to the amount due, the Concessionaire shall pay a penalty assessment of ten percent (10%) of the amount then due. In the event that any penalty assessment due from Concessionaire is not paid within thirty (30) days from the ten (10) days when the penalty assessment installment is due, Concessionaire shall, in addition to the penalty assessment then due, shall be assessed interest on all amounts then owing at a rate of one percent (1%) per month for each month the penalty assessment remains unpaid. Said interest payment shall be in addition to any Annual Concession Payment or penalty assessment then due and owing.

6.2 Each installment payment shall be due as set forth in Section 6.1 and shall be by check or draft and made payable to the City of Pico Rivera.

Payment shall be mailed or otherwise delivered to:

City Manager
City of Pico Rivera
6615 Passons Boulevard
Pico Rivera, CA 90660

6.3 Consumer Price Index (CPI) annual Increase. On January 1 of each year of the term of the Agreement, the Annual Concession Payment shall be adjusted based upon the change in the Consumer Price Index (CPI) for the previous 12-month period for All Urban Consumers in the Los Angeles-Anaheim-Riverside area, non-housing, or an equivalent index approved by the City in the event that the CPI as described here no longer is published. In no event shall an adjustment to

the Annual Concession Payment exceed five percent (5%) of the amount paid the previous year.

7.0 ACCOUNTING RECORDS

All sales shall be recorded by means of cash registers which publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded on a sales slip. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset. In addition, such cash registers must have a tape located within the register upon which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be made a matter of daily record. In the event of a technical or electrical failure of the cash registers, Concessionaire shall record by hand all collections, and issue a sequentially pre-numbered customer's receipt in like manner. The City reserves the right to annually review and audit, if necessary, Concessionaire's accounting records.

8.0 REQUIRED CONSTRUCTION AND CAPITAL IMPROVEMENTS

8.1 Concessionaire shall complete the capital improvements, as further described in Exhibit D, attached hereto and incorporated herein by reference, on or before the dates as set forth in Exhibit D, subject to unavoidable delays and the review and approval of the City and the District Engineer.

8.2 Any construction or refurbishment undertaken by the Concessionaire pursuant to Section 8, Required Construction, shall be subject to the requirements and procedures of Section 9, Improvements.

9.0 IMPROVEMENTS

9.1 Approvals: Any proposed improvement undertaken by the Concessionaire, shall have the prior written approval of the District Engineer and the City Manager. Notice of a proposed improvement project shall be provided to the City Manager in writing and shall include sufficient detail regarding proposed scope of the

project. The City Manager will then forward a copy of said notice to the District Engineer. Written approval, or the estimated time required to provide such approval, shall be provided to the Concessionaire within thirty (30) days of receipt of all necessary documents.

9.2 Additional Provisions: If this Agreement is extended City may impose additional obligations on the Concessionaire with respect to particular capital improvement projects performed hereunder and such additional requirements may be set forth in a separate writing signed by the Concessionaire and the City Manager on behalf of the City.

10.0 SECURITY DEPOSIT AND PRORATIONS

10.1 Pursuant to the terms of the Prior Agreement, Concessionaire paid to the City the sum of twenty-thousand dollars ($20,000.00). This deposit shall be applied to the terms of this Agreement for performance of the terms of this Agreement as set forth herein. Concessionaire shall not receive any interest from the deposited funds and the City shall be entitled to deposit such funds for the purposes set forth herein.

10.2 Said deposit shall serve as security for faithful performance of all covenants, promises and conditions assumed herein by Concessionaire, and may be applied in satisfaction and/or mitigation of damages arising from a breach thereof, including, but not limited to, delinquent payments or damage caused to the premises during an authorized event. Application of amounts on deposit in satisfaction and/or mitigation of damages shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

10.3 In the event any or all of said amount is applied in satisfaction and/or mitigation of damages, or failure to perform, Concessionaire shall within five (5) days deposit such sums as are necessary to restore the Security Deposit to the full amount required hereunder.

10.4 Said Deposit shall be returned to Concessionaire upon termination of this Agreement less any amounts that may be withheld therefrom by City as heretofore provided.

11.0 DESTRUCTION OF THE CONCESSION PREMISES AND/OR PICO RIVERA SPORTS ARENA

11.1 In the event the concession premises shall be totally or partially destroyed by a risk covered by the insurance coverage required herein, Concessionaire shall either restore the premises or terminate this Agreement. If the destruction is from a risk for which coverage is not required or provided under said policy of insurance, City shall either restore the premises or terminate this Agreement. City shall make the loss adjustment with the insurance company insuring the loss and receive payment of the proceeds of insurance. Said insurance proceeds, if any, shall be held for the benefit of Concessionaire only in the event of an election by Concessionaire to restore the premises and shall be disbursed in installments as construction progresses for payment of the costs of restoration upon satisfactory performance of the work required, as evidenced by certification of completion by the City Manager and release of mechanic's liens by all persons furnishing labor and materials thereon. If the proceeds of insurance are insufficient to pay the actual costs of restoration, Concessionaire shall deposit the amount of the deficiency with the City upon demand therefore by the City Manager, and said sums shall be held for payment of said costs and disbursed in the manner heretofore provided. Any undistributed funds shall be retained by City and credited to the rental reserved over the remaining term of this Agreement. In the event Concessionaire elects to restore the concession premises, plans, specifications, and construction cost estimates for the restoration thereof shall be prepared by Concessionaire and forwarded to City Manager for approval prior to the performance of any work thereon. Said documents shall be prepared and submitted in a timely manner following adjustments of the loss and receipt of the proceeds of insurance by City. The required construction shall be performed by licensed and bondable Contractor(s), as selected by the Concessionaire, subject to

the reasonable approval by the City, thereof who shall be required to carry comprehensive liability and property damage insurance, workers' compensation insurance, and standard fire, and extended coverage insurance, with vandalism and malicious mischief endorsements, during the period of construction, in amounts equal to the insurance limits required herein, or as otherwise determined by the City. Said construction shall be commenced promptly following the approval thereof by the City Manager, issuance of permits therefore by governmental agencies having jurisdiction thereover, and posting of the construction site by City with notice of non-responsibility, and shall be diligently prosecuted to completion. All work shall be performed in accordance with the approved plans and specifications, unless changes therein are approved in advance thereof by City Manager. Concessionaire agrees that City may have on the site at any time during the construction period an inspector who shall have the right of access to the concession premises and the work occurring thereon. Concessionaire, at the commencement of the construction work, shall notify City Manager in writing of the identity, place of business, and telephone number of responsible person(s) in charge of the construction to be occurring thereon. All construction shall be performed in a good and workmanlike manner. Upon completion of the restoration, Concessionaire shall immediately record a notice of completion with the Registrar-Recorder.

11.2 If the premises are restored, this Agreement shall continue in full force and effect, except that the payment to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the City Manager may determine the damage and/or restoration interferes with the concession operation provided a claim therefore is filed with the City Manager within one hundred (100) days of notice of election to restore the premises. Any such claim shall be denied if the destruction of the concession premises is found by the City Manager to have been caused by the fault or neglect of Concessionaire. Concessionaire agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the concession operation, and

permitting examination and audit of all accounting records kept in connection with the conduct thereof.

11.3 Concessionaire shall cooperate in the restoration of the concession premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required for the restoration thereof.

11.4 The aforesaid provisions for abatement and/or other relief shall also be applicable to a total or partial destruction of Pico Rivera Sports Arena by the aforementioned causes.

11.5 Concessionaire agrees to accept the remedy heretofore provided in the event of a destruction of the concession premises and/or Pico Rivera Sports Arena and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may hereafter be made available under the laws and statutes of this State.

12.0 CONSTRUCTION BY CITY AFFECTING CONCESSION PREMISES AND/OR PICO RIVERA SPORTS ARENA

12.1 Nothing in this Agreement shall restrict or prohibit the City from constructing improvements to Sports Arena facilities or to the area more commonly known as the "Camp Grounds." However, in the event City shall construct or cause to be constructed a new facility for the concession, or remodel, redesign or substantially improve the current facility or the Camp Grounds which prohibits the Concessionaire from conducting the operations contemplated by this Agreement, this Agreement shall continue in full force and effect, except that the payments to be made by Concessionaire shall be abated and/or other relief afforded to the extent that the City Manager may determine the construction interferes with the authorized operations, provided a claim therefore is filed with the City Manager within one hundred (100) days of commencement of construction. Any period of time for which the Concessionaire does not have use of the Concession Premises for the purpose of conducting the operations contemplated by this Agreement shall result in an adjustment of the term of this Agreement in corresponding

extension of time equal to the period of time the Concessionaire has lost the use of the Concession Premises.

12.2 Concessionaire agrees to cooperate with City in the event the construction affects the concession premises by vacating and removing therefrom all items of inventory, trade fixtures, equipment and furnishings for such periods as are required by the construction of the new facilities. Concessionaire further agrees to cooperate in the determination of the abatement and/or other relief to be provided by furnishing all information requested relative to the operation and permitting examination and audit of all accounting records kept in connection with the conduct thereof.

12.3 Following completion of the new facility, Concessionaire shall resume its operations therefrom within thirty (30) days of written notice from the City Manager that the concession premises are tenantable.

12.4 The aforementioned provisions of this section shall also be applicable in the event of performance of work at the Pico Rivera Sports Arena that requires a partial or total closure thereof.

12.5 Concessionaire agrees to accept the remedy heretofore provided in the event of construction upon the concession premises and/or the Pico Rivera Sports Arena, and hereby waives any and all additional rights and remedies for relief or compensation that are presently available or may be made available hereafter under the laws and statutes of this State.

13.0 OPERATING RESPONSIBILITIES

13.1 Advertising and Promotional Materials

Concessionaire shall be responsible for all publicity and advertising of events at the Arena, and shall provide notice of publicity and advertising to the City Manager at least five (5) days prior to the event. Such materials include, but are not limited to, advertising in newspapers, magazines and trade journals, and radio and/or television commercials. This section shall not apply to the newly constructed billboard/LED sign as defined and set forth in Exhibit D – Capital Improvements. Advertisements, promotional materials and usage of the

billboard/LED sign shall be set forth and defined in a "Billboard Installation and Implementation Agreement" to be drafted and entered into by the Parties to this Agreement.

13.2 Compliance with Laws, Rules and Regulations

Concessionaire shall conform to and abide by all City and County ordinances, rules and regulations, and all State and Federal laws and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the concession, any related activity, and/or construction authorized herein, the same must be first obtained from the regulatory agency having jurisdiction thereover. Further, Concessionaire shall conform to and abide by all rules and regulations and policies that may hereinafter be specified by the City Manager.

13.3 Concessionaire's Staff and Employment Practices

13.3.1 Concessionaire shall maintain adequate and proper staffing for its operations at all times. All employees of Concessionaire are the sole responsibility of Concessionaire and not employees or agents of the City.

13.3.2 Concessionaire shall provide such personnel as may be required to render food and beverage service and/or services in relation to the conduct of the authorized events. Personnel shall maintain conduct to the satisfaction of the City Manager, as to their personal conduct, honesty, courtesy, health, personal appearance and willingness to cooperate with the employees of the City.

13.3.3 Concessionaire shall ensure that employees and personnel wear clean uniforms, approved by the City Manager, with a badge or patch indicating his/her name and employer.

13.3.4 Concessionaire shall designate one of its officers to serve as Manager with whom City may deal with on a daily basis, and submit in writing, the name and contact information of the designated Manger to the City Manager. The Manager shall devote his time and attention to the operation authorized herein, towards promoting, increasing and developing the business and renders such services and convenience to the public as are

required. The Operations Manager shall be fully acquainted with the concession operation, familiar with the terms and the conditions prescribed therefore by this Agreement, and authorized to act in the day-to-day operation thereof. The Manager or his/her designee shall personally attend all Arena events which are subject to this Agreement and be present from one-hour prior to the start of the event until one-hour after completion of the event. Concessionaire shall notify the City immediately of the appointment of a new manager.

13.3.5 The City Manager shall have the right to observe and inspect employees at any time. The City Manager may at any time give Concessionaire written notice to the effect that the conduct or action of a designated employee of Concessionaire is, in the reasonable belief of the City Manager, unsatisfactory or detrimental to the interest of the public patronizing the concession premises. Concessionaire shall, as directed by the City Manager, correct the cause of such dissatisfaction or remove the employee, from the premises within a reasonable time after such written notice is received.

13.3.6 Concessionaire shall not knowingly permit the use or possession of narcotics or illegal substances on the premises by any employee and shall promptly discharge any employee found to be in possession of or under the influence of narcotics.

13.3.7 Concessionaire warrants that it fully complies with all laws regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). Concessionaire shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. Concessionaire shall retain such documentation for all covered employees

for the period prescribed by law. Concessionaire shall indemnify, defend, and hold harmless, the City, its agents, officers and employees from employer sanctions and any other liability which may be assessed against Concessionaire or City or both in connection with any alleged violation of federal statutes or regulation pertaining to the eligibility for employment of persons performing services under this Agreement.

13.3.8 Concessionaire shall file with the City Manager, a certificate for each member of the food and beverage staff showing that within the last two (2) years, such person has been examined and has been found to be free of communicable tuberculosis. "Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000), Division 2 of the California Business and Professions Code, or a notice from a public health agency or unit of the Tuberculosis Association that indicates freedom from active tuberculosis.

13.4 Hours of Operation

Concessionaire shall determine the starting and ending time of events under this agreement and shall advise the City Manager of the hours of such events at least ten (10) days prior to such event.

13.5 [This Section Intentionally Left Blank.]

13.6 Disorderly Persons

Concessionaire agrees to exercise every reasonable effort to not allow any loud, boisterous or disorderly persons about the concession premises. City reserves the right to remove or cause to be removed from the premises any objectionable person or persons. The City, its officers, agents and employees, shall not be liable to Concessionaire for any damages that may be sustained by Concessionaire through exercise by the City of its right to remove.

13.7 Easements

City reserves the right to establish, grant or utilize easements or rights of way over, under, along and across the concession premises for utilities and/or public access provided that City shall exercise such rights in a manner as will avoid any

substantial interference with the operations to be conducted hereunder and shall be subject to the prior written approval of the District Engineer.

13.8 Habitation

No human habitation shall be permitted on the premises. This shall not be constructed to prohibit the Concessionaire from providing properly designed and approved guard stations for night watchmen or patrolmen approved by the City Manager.

13.9 Illegal Activities

Concessionaire shall not knowingly permit any illegal activities to be conducted upon the concession premises.

13.10 Maintenance

13.10.1 Concessionaire shall be responsible for cleaning and maintaining the premises in good and substantial repair and condition and in full compliance with the standards set forth in Attachment E, attached hereto and incorporated herein by reference.

13.10.2 In the event Concessionaire fails to comply with the maintenance standards, set forth in Exhibit E, attached hereto and incorporated herein by reference, Concessionaire shall have ten days (10) upon receipt of notice of same, to commence corrective work and diligently pursue same to completion. The City retains the right to use funds in the Security Deposit, as set forth in Section 10, for Concessionaire's failure to undertake corrective work and diligently pursue the same.

13.10.3 Either party may cure the default of the other party hereto with respect to the maintenance obligations assumed herein, and upon performance thereof shall acquire a right of reimbursement therefrom for the actual costs of same, including, but not limited to, the cost of labor, materials and equipment furnished in the correction thereof, provided there is prior mutual agreement between City Manager and Concessionaire upon the nature and scope of the work to be performed and the costs to be incurred thereby.

13.11 Merchandise

Concessionaire may provide an inventory of concession merchandise required to meet the needs of the public therefore. All food and beverages sold or kept for sale by Concessionaire shall be first-class in quality, wholesome and pure, and shall conform to the Federal, State and County food laws, ordinances and regulations in all respects. Concessionaire shall have the exclusive right to select all foods and beverages, including types and brands, to be sold; except that all beverages, including alcoholic beverages shall be dispensed in soft containers. No adulterated, misbranded or impure articles shall be sold or kept for sale by Concessionaire, and all merchandise kept on hand by Concessionaire shall be stored and handled with due regard for sanitation. In the event that the City Manager determines that any merchandise, and/or food products are below first class, the City Manager shall have the right to order the improvement of the quality of any such items kept or offered for sale.

13.11.1 Advertising of any alcoholic beverages outside of any buildings is not permitted.

13.11.2 Carry out package sales of hard liquor is prohibited.

13.12 Prices

13.12.1 Concessionaire shall at all times maintain a complete list or schedule of the prices collected for all food and beverages sold to the public on or from the concession premises. Prior to the commencement of the Agreement, Concessionaire shall submit to the City Manager for review and approval a complete list of items it proposes to sell and the prices it proposes to charge for said food and beverages. Approval or rejection of said prices shall be made in writing to the Concessionaire within five (5) days of receipt of said price list. All price increase requests shall be submitted in writing to the City Manager for approval. Prior written approval shall be received from the City Manager before price increases are enacted. Said prices shall be fair and reasonable and shall not exceed comparable prices charged by restaurants and other similar establishments in the City where food and beverages are sold. In the event the City Manager notifies

Concessionaire that prices being charged are not fair and reasonable, Concessionaire shall have the right to confer with the City Manager and justify said prices. Following reasonable conference and consultation thereon, Concessionaire shall make such price adjustments as may be ordered by the City Manager.

13.12.2 Concessionaire shall provide the City Manager with lists of prices, including souvenirs and merchandise and tickets prices to be charged at each event. Concessionaire shall also provide the City Manager with notice of any price changes at least fourteen (14) days prior to each event. Prices may be subject to the prior written approval of the City and/or Army Corps of Engineers.

13.13 Quality of Goods and Services Service to the public, with goods, services, and merchandise of the best quality and at reasonable charges, is of prime concern to City and is considered a part of the consideration for this Agreement. Therefore, Concessionaire agrees to operate and conduct its concession operation in a first-class manner, and comparable to other first-class facilities providing similar activities, programs and services. Concessionaire shall furnish and dispense foods, beverages, and merchandise of the best quality and shall maintain a high standard of service at least equal to that of similar events and programs conducted on City property and/or adjacent communities and to those prevailing in such areas for similar products and services, and without discrimination. Concessionaire, following receipt of written notification therefore, shall immediately withdraw or remove from sale any goods or services which may be found objectionable to the City Manager based on findings that the provision of such goods or services are harmful to the public welfare.

13.14 Safety Concessionaire shall immediately correct any unsafe condition of the concession premises, as well as any unsafe practices occurring thereon. Concessionaire shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the concession premises. Concessionaire shall cooperate fully with City in the investigation of any accidental injury or death occurring on the concession premises, including a

prompt report thereof to the City Manager. Concessionaire shall cooperate and comply fully with City, State, municipal, federal or any other regulatory agency having jurisdiction thereover, regarding any safety inspections and certifications of any and all Concessionaire's structures, enclosures, vehicles, booths, equipment and rides.

13.15 Sanitation. No offensive matter or refuse, or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain on the Concession Premises. Concessionaire shall within twenty-four (24) hours of the completion of an Arena event or event on the premises, event have all trash removed from the premises.

13.16 Security. Concessionaire shall, at their own cost and expense, provide the necessary security for all events on the premises. The Concessionaire shall seek approval from the City of the security services employed prior to entering into a contract with security services. The level of security shall be determined by the City.

13.17 Signs. Concessionaire shall not post signs upon premises or improvements thereon, nor make any alteration to signs on the premises unless prior approval thereof is obtained from the City Manager. Signs shall also be subject to review and control by the District Engineer in accordance with the Master Lease.

13.18 Equipment and Furnishings. Concessionaire shall provide and install, at his/her own expense, all appliances, furniture, furnishings, fixtures and equipment that are required for operation of the subject concession. During the last thirty (30) days preceding the termination of this Agreement, Concessionaire shall remove same from the premises, other than for those items of personality which have been furnished by City or so permanently affixed that their removal therefrom cannot be accomplished without damage to the realty. Should Concessionaire fail to so remove said appliances, furniture, fixtures, equipment, door locks and padlocks within said thirty (30) day period or in the event of default, Concessionaire shall lose all right, title and interest in and thereto, and City may elect to keep same upon the premises or to sell, remove or demolish same. Concessionaire shall reimburse City for any and all costs, as determined by the City Manager, incurred

in excess of any consideration received from the sale, removal or demolition thereof. The quality of all equipment and furnishings is subject to prior written approval of the City Manager.

13.19 Utilities. Concessionaire shall install and pay for all necessary utilities including gas, electric, water, telephone, and sewer.

13.19.1 The Concessionaire shall pay monthly water charges billed to the City by San Gabriel Valley Water Company ("SGVWC") for the premises in the amount equal to their pro rata share of water usage for the area of the Arena under their use and control and subject to the terms of this Agreement. The City shall calculate the Concessionaire's share and shall send a monthly invoice and billing statement from SGVWC for said premises to Concessionaire, who shall remit the total amount due to City within twenty (20) days of receiving The City shall send a monthly invoice and billing statement from SGVWC for said premises to Concessionaire, who shall remit the total amount due to City within twenty (20) days of receiving the invoice. The Concessionaire shall not be responsible for water supplied to the property used by USACE or for campground use.

13.19.2 The Concessionaire shall pay all electrical charges billed to City by Southern California Edison Company ("SCEC") for the premises.

14.0 TERMS AND CONDITIONS

14.1 AGREEMENT ENFORCEMENT AND AMENDMENTS TO THE AGREEMENT

14.1.1 The City Manager shall be responsible for the enforcement of this Agreement on behalf of City and shall be assisted therein by those officers and employees of City having duties in connection with the administration thereof. The City Manager shall have the discretion to implement, enforce, interpret, waive or suspend any and all terms of this Agreement on behalf of the City, consistent with the purpose and intent of the provisions of this Agreement.

a) Nothing in this Agreement shall be construed so as to allow the City Manager to terminate this Agreement, an option period or Concessionaire's exclusive negotiating rights, without first obtaining a vote approving such termination by a majority of the City Council.

b) All discretionary actions taken by the City Manager pursuant to this Agreement shall be subject to Concessionaire's right to appeal such decisions to the City Council and to a court of appropriate jurisdiction.

c) All discretionary actions taken by the City Manager under the terms of this Agreement shall reasonably be taken or withheld.

14.1.2 Any officers and/or authorized employees of City may enter upon the concession premises at any and all reasonable times for the purpose of determining whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of City within the concession premises.

14.1.3 In the event either party commences legal proceedings for the enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable court costs and attorney's fees incurred in the action brought thereon.

14.1.4 This document may be modified only by further written agreement between the parties with written concurrence from the District Engineer. Any such modification shall not be effective unless and until executed by Concessionaire and in the case of City, until approved by City Council of the City of Pico Rivera and executed by the Mayor and City Manager thereof and the District Engineer.

14.1.5 In addition to the terms of enforcement set forth in this Agreement, a City Sports Arena Ad Hoc Committee shall be established consisting of two (2) members of the City Council as selected by the City Council, along with the City Manager or his/her designee. The Ad

Hoc Committee shall meet quarterly throughout the term of this Agreement and shall be responsible to oversee, monitor and make recommendations over the implementation, enforcement and compliance of the terms of this Agreement.

14.2 CANCELLATION

14.2.1 Upon the occurrence of any one or more of the "Events of Default" hereinafter described in Subsection 14.6 or anywhere else in this Agreement, this Agreement shall be subject to cancellation if Concessionaire fails to cure within a reasonable period as provided herein. As a condition precedent thereto, the City Manager shall first give Concessionaire by registered or certified mail notice of the details of such violation, nonperformance or noncompliance constituting an event of default, and shall grant Concessionaire a period of thirty (30) days or longer period as shall be deemed to be in the best interest of the City to correct such default.

14.2.2 In the event Concessionaire fails to comply within the specified period, City shall have the right to cancel this Agreement and take possession of the concession premises, including all improvements, equipment, and inventory located thereon, and use same for the purpose of satisfying and/or mitigating all damages arising from a breach of this Agreement. The forgoing notwithstanding, Concessionaire and City shall cooperate to avoid forfeiture of any sublicense agreements for Permitted Events.

14.2.3 Action by City to effectuate a cancellation and forfeiture of possession shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

14.2.4 Concessionaire also agrees that the cost of personnel and equipment supplied by City pursuant to this Agreement, to remedy a failure to cure Concessionaire's default, shall be paid to the City by Concessionaire within thirty (30) days following receipt of an invoice from City documenting such costs, or in the alternative such costs may be deducted from said deposit.

14.2.5 In the event that, following service of the Notice of Cancellation of this Agreement under the provisions of this clause, it is determined for any reason that the Concessionaire was not in default under the provisions of this clause, that the default was excusable under provisions of this clause, or Concessionaire has, to the satisfaction of the City Manager, cured any default, the City Manager shall issue, within five (5) business days, a rescission of the Notice of Cancellation, and the rights and obligations of the parties shall be the same as if the Notice of Cancellation had not been issued.

14.2.6 Nothing contained in this Agreement shall be construed as a limitation on Concessionaires legal rights and remedies following wrongful termination or interruption of the rights afforded Concessionaire under this Agreement, whether such disruption is caused by intentional or negligent acts of the City or its agents and representative.

14.3 COMPLIANCE WITH CIVIL RIGHTS LAW

The Concessionaire hereby assures that it will comply with Subchapter VII of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, gender, religion, ancestry, age, condition of physical disability, marital status, sexual orientation, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Concessionaire shall comply with Exhibit F, Concessionaire's EEO Certification, attached hereto and incorporated herein by reference.

14.4 CONFLICT OF INTEREST

14.4.1 No City employee whose position with the City enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Concessionaire or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Concessionaire who may financially benefit from the performance of work

hereunder shall in any way participate in the City's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the City's approval or ongoing evaluation of such work.

14.4.2 The Concessionaire shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Concessionaire warrants that it is not now aware of any facts that create a conflict of interest. If the Concessionaire hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the City. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances.

14.5 CONCESSIONAIRE'S NON-COMPLIANCE

14.5.1 In the event the City Manager determines that there are deficiencies in Concessionaire's operations authorized and required herein, the City Manager will provide, as specified in Subsection 14.6 of this Agreement, Events of Default, a written notice to the Concessionaire to correct said deficiencies within specified time frames.

14.5.2 In the event that Concessionaire fails to correct the deficiencies within the prescribed time frames the City Manager may, at his option: (1) use the Security Deposit as provided for herein, and/or (2) exercise its rights under the Subsection 14.16 (Right of Entry) and/or (3) assess liquidated damages. The parties agree that it would be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Concessionaire to comply with the obligations for concession operations herein authorized and required. The parties hereby agree that under the current circumstances a reasonable estimate of such damage is $2,500 per day for each day of the period of time that the deficiencies exist, and that Concessionaire shall be liable to City for liquidated damages in said amount.

14.6 EVENTS OF DEFAULT

14.6.1 The failure of Concessionaire to punctually pay or make the payments required herein when due within twenty (20) days following written notice for payment thereof from the City Finance Director or City Manager.

14.6.2 The abandonment, vacation or discontinuance of its operations on the premises or any event at which Concessionaire is required to perform.

14.6.3 The failure of Concessionaire to keep, perform and observe all promises, covenants, conditions and agreements set forth in this Agreement, where such failure continues for more than thirty (30) days after written notice from the City Manager for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Concessionaire shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City Manager.

14.6.4 Determination by the City, the County, the California Fair Employment and Housing Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by Concessionaire in violation of State and/or Federal laws thereon.

14.6.5 Transfer of the majority controlling interest of Concessionaire to persons other than those who are in control at the time of the execution of this Agreement without approval thereof by the City Manager.

14.6.6 The filing of a voluntary petition of bankruptcy by Concessionaire; the adjudication of Concessionaire as a bankrupt entity; the appointment of any receiver of Contract's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arraignment of the reorganization of Concessionaire under any Federal Reorganization Act, including petitions, or answers under Chapter X or XI or Bankruptcy Act; the occurrence of any act which operates to deprive Concessionaire permanently of, the rights, powers and privileges necessary for the proper conduct and performance of the Agreement granted herein; the levy of any

attachment or execution which substantially interferes with Concessionaire's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside for a period of sixty (60) days.

14.7 FORCE MAJEURE; TIME EXTENSION

Notwithstanding any other provision contained in this Agreement, if performance by a party of any portion of this Agreement is made impossible or impractical by any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor, utilities, supplies or materials or reasonable substitutes for those items; administrative or court proceedings; government actions; civil commotions; fire, earthquake, war, weather, or other casualty; or other causes or circumstances beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused. Concessionaire's obligation to pay rent however is not excused by this Section.

14.8 GOVERNING LAW, JURISDICTION, AND VENUE

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Concessionaire agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

14.9 INDEPENDENT CONCESSIONAIRE

This Agreement is by and between the City of Pico Rivera and Concessionaire and is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association, as between City and Concessionaire. Concessionaire understands and agrees that all persons furnishing services on behalf of Concessionaire pursuant to this Agreement are, for purposes of Worker's Compensation Liability, employees solely of Concessionaire and not of City. Concessionaire shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from

or connected with services on behalf of Concessionaire pursuant to this Agreement.

14.10 INDEMNIFICATION

Concessionaire agrees to indemnify, defend and hold harmless City and the United States, their respective agents, officers, and employees from and against any and all liability, including but not limited to, demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with Concessionaire's acts and/or omissions arising from and/or relating to this Agreement. Concessionaire's duty to indemnify the City and the United States, shall survive the expiration or other termination of this Agreement.

14.11 INSURANCE REQUIREMENTS

At the time of execution of this Agreement, the Concessionaire shall provide and maintain at its own expense the following programs of insurance specified in this Agreement. Such insurance is to be provided by an insurance company acceptable to the City with an A.M. Best rating of not less than A: VII, unless otherwise approved by the City. Further, all such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the City and, shall name the City of Pico Rivera, its respective officers, employees and agents as additional insureds, insuring, indemnifying, and saving harmless and agreeing to defend said additional insured against all suits, loss, damage, liability, claims or actions of any persons for, or on account of, any injuries or damages to persons or property sustained from, or arising out of, in any way related to, the conduct of the authorized events and the operation of the concessions herein mentioned, or consequences thereof whether directly or indirectly, and to pay all judgments, costs and expenses of litigation in connections with.

14.11.1 Public Liability Insurance.

Said public liability insurance shall provide for a single limit for liability covered in the amount of two million dollars ($4,000,000.00) during scheduled events, and two million dollars ($2,000,000.00) at all other times during this Agreement.

14.11.2 Workers Compensation Insurance. A policy covering the full liability of Concessionaire to any and all, persons employed by them directly or indirectly, in accordance with the provisions of the Labor Code, State of California, relating to Workers' Compensation Insurance. Concessionaire shall also provide Workers' Compensation and Liability Insurance, in accordance with the provisions of the Labor Code, State of California, under the same terms and conditions as set forth in the above paragraph, to cover all of the events conducted by sublessees.

14.11.3 Evidence of Coverage. Certificate(s) or other evidence of coverage satisfactory to City shall be delivered to City, prior to commencement of this Agreement. In lieu of actual delivery of such policies, a certificate issued by the insurance carrier showing such policies to be in force for the period covered by the agreement may be delivered to the City. Such policies and such certifications shall be in a form approved by the City Attorney.

14.11.4 Notification of Incidents, Claims or Suits Concessionaire shall report to City:

a. Any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Concessionaire and/or City. Such report shall be made in writing within twenty-four (24) hours of occurrence.

b. Any third party claim or lawsuit filed against Concessionaire arising from or related to services performed by Concessionaire under this Agreement.

c. Any injury to a Concessionaire employee which occurs on City property. This report shall be submitted on a City Non-employee Injury Report" to the City contract manager.

d. Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of City property, monies or securities entrusted to Concessionaire under the terms of this Agreement.

14.11.5 Failure to Procure Insurance

a. Failure by Concessionaire to procure or maintain the required insurance, or to provide evidence of insurance coverage acceptable to the City, shall constitute a material breach of the agreement upon which City may immediately terminate or suspend this Agreement. City, at its sole option, may obtain damages from Concessionaire resulting from said breach. Alternatively, City may purchase such required insurance coverage, and without further notice to Concessionaire, City may deduct from sums due to Concessionaire any premium costs advanced by City for such insurance.

b. Notwithstanding the above and in the event that Concessionaire fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to City, Concessionaire shall pay full compensation for all costs incurred by City.

14.12 NON-DISCRIMINATION AND AFFIRMATIVE ACTION

14.12.1 The Concessionaire certifies and agrees that all persons employed by it, its affiliates, subsidiaries or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, gender, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

14.12.2 [This Section Intentionally Left Blank.]

14.12.3 The Concessionaire shall take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to or because of race, color,

religion, ancestry, national origin, sex, gender, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

14.12.4 The Concessionaire certifies and agrees that it will deal with its sub-Concessionaires and vendors without regard to or because of race, color, religion, ancestry, national origin, sex, gender, age, physical or mental disability, marital status, or political affiliation.

14.12.5 The Concessionaire certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, gender, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any other project, program, or activity supported by this Agreement.

14.12.6 The Concessionaire shall allow City representatives access to the Concessionaire's employment records during regular business hours to verify compliance with the provisions of this Sub-Paragraph 14.12 when so requested by the City.

14.12.7 If the City finds that any provisions of this Sub-Paragraph 14.12 have been violated, such violation shall constitute a material breach of this Agreement upon which the City may terminate or suspend this Agreement. While the City reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by

the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Concessionaire has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by City that Concessionaire has violated the anti-discrimination provisions of this Agreement.

14.12.8 Concessionaire agrees that there shall be no segregation or discrimination practiced in the Arena or on the premises due to race, color, religion, ancestry, national origin, sex, gender, age, physical or mental disability, marital status, or political affiliation, or that any of those individuals will be excluded from events on the premises based on those characteristics.

14.12.9 The parties agree that in the event Concessionaire violates the non-discrimination provisions of this Agreement, City shall, at its sole option, be entitled to the sum of Five Hundred Dollars ($500) for each such violation pursuant to California Civil Code 1671 as liquidated damages in lieu of canceling, terminating or suspending this Agreement.

14.13 NOTICE TO EMPLOYEES REGARDING FEDERAL EARNED INCOME CREDIT

The Concessionaire shall notify its employees, and shall require each sub-Concessionaire to notify its employees, that they may be eligible for the Federal Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

14.14 NOTICES

Any notice required to be given under the terms of this Agreement or any law applicable thereto may be: (1) delivered by personal service; or (2) placed in a sealed envelope, with postage paid, return receipt requested, addressed to the person on whom it is to be served, and deposited in a post office, mailbox, sub-post office, substation or mail chute, or other like facility regularly maintained by

the United States Postal Service. The address to be used for any notice served by mail upon Concessionaire shall be:

LEBA, Inc.
2800 South Vermont Avenue
Los Angeles, CA 90007

or such other place as may hereafter be designated in writing to the City Manager by Concessionaire. The address to be used for any notice served by mail upon City shall be addressed to the:

City of Pico Rivera
City Manager
City of Pico Rivera
6615 Passons Boulevard
Pico Rivera, CA 90660

or such other place as may hereafter be designated in writing to Concessionaire by the City Manager. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

The address to be used for any notice served by mail upon District Engineer for the Los Angeles District of the Army Corps of Engineers shall be:

Chief, Asset Management Division
U.S. Army Corps of Engineers, Los Angeles District
PO Box 532711
Los Angeles, CA 90053-2325

or such other place as may hereafter be designated in writing to Concessionaire or the City. Service by mail shall be deemed complete upon deposit in the above-mentioned manner.

14.15 PUBLICITY

In recognizing the Concessionaire's need to identify its services and related clients to sustain itself, the City shall not inhibit the Concessionaire from publishing its role under this Contract within the following conditions:

a. The Concessionaire shall develop all publicity material in a professional manner; or

b. During the term of this Contract, the Concessionaire shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the City without the prior written consent of the City Manager. The City shall not unreasonably withhold written consent.

14.16 RIGHT OF ENTRY AND INSPECTION

14.16.1 Any officers and/or employees or representatives of USACE and City may enter upon the concession premises at any and all reasonable times for the purpose of inspection and observation of Concessionaire's operations, or to determine whether or not Concessionaire is complying with the terms and conditions hereof, or for any other purpose incidental to the rights of the City and USACE within the concession premises. During these inspections such individuals shall have the right to utilize photographic devices and other instruments for recording conditions and events taking place upon the premises. Said inspections may be made by persons identified as employees of the City or USACE, or may be independent Concessionaires engaged by the City. Inspections may include be for the purpose of, but are not limited to, determining whether conditions set forth in this Agreement are being complied with or observing transactions between Concessionaire and patrons to evaluate the quality and quantity of merchandise, service and courtesy extended to the public.

14.16.2 In the event of an abandonment, vacation or discontinuance of operations for a period in excess of twenty-four (24) hours, Concessionaire hereby irrevocably appoints City as an agent for continuing operation of the concession granted herein, and in connection therewith authorizes the officers and employees thereof to (1) take possession of the concession premises, including all improvements, equipment and inventory thereon; (2) remove any and all persons or property on said premises and place any such

property in storage for the account of and at the expense of Concessionaire; (3) sublease or sublicense the premises; and (4) after payment of all expenses of such subleasing or sublicensing, apply all payments realized therefore to the satisfaction and/or mitigation of all damages arising from Concessionaire's breach of this Agreement. Entry by the officers and employees of City upon the premises for the purpose of exercising the authority conferred hereon as agent of Concessionaire shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

14.16.3 No re-entry or taking of the premises by City pursuant to Sub-Paragraph 14.16.2 of this section shall be construed as an election to terminate this Agreement unless a written notice of such intention be given to Concessionaire or unless the termination thereof be decreed by a court of competent jurisdiction.

14.17 SEVERABILITY

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall not be affected thereby and shall remain in full force and effect.

14.18 SUBLEASE

14.18.1 Concessionaire, with prior written approval from the City Manager, and written concurrence from the District Engineer , may sublease the Arena premises to third parties to conduct authorized events.

14.18.2 Concessionaire shall not, without the prior written consent of the City Manager, assign this Agreement, nor assign or sublet any rights thereunder. In the event the City determines the Concessionaire has assigned this Agreement without such consent, the assignment shall be null and void, and the City may elect to cancel the Agreement.

14.18.3 In the event the City determines that the Concessionaire has violated the sublicense provision contained herein, the same shall constitute a material breach of contract upon which the City may determine to cancel, terminate, or suspend this Agreement, or assess liquidated damages.

14.19 SURRENDER

14.19.1 Upon expiration of the term hereof, or cancellation thereof as herein provided, Concessionaire shall peaceably vacate the concession premises and any and all improvements located thereon and deliver up the same to City in a reasonably good condition, ordinary wear and tear excepted, subject to the right of City to demand removal thereof to the extent that Paragraph 4.6 hereinbefore may be applicable thereto.

14.19.2 Upon expiration of the term, Concessionaire shall execute and deliver to City within thirty (30) days after service of written demand, a good and sufficient quitclaim deed of the Concessionaire's interest in this Agreement and the premises. Should Concessionaire fail or refuse to deliver to City a quitclaim deed as aforesaid, a written notice by City reciting the failure of the Concessionaire to execute and deliver the quitclaim deed shall, after ten (10) days from the date of recordation of the notice, be conclusive evidence against Concessionaire and all persons claiming under Concessionaire, of the termination of this Agreement.

14.20 TAXES AND ASSESSMENTS

14.20.1 The property interest conveyed herein may be subject to real property taxation and/or assessment thereon, and in the event thereof, Concessionaire shall pay before delinquency all lawful taxes, including but not limited to possessory interest taxes, assessments, fees or charges which at any time may be levied by

the State, City or any other tax or assessment-levying body upon the concession premises and any improvements located thereon.

14.20.2 Concessionaire shall also pay all taxes, assessments, fees and charges on goods, merchandise, fixtures, appliances and equipment owned or used therein.

14.21 TERMINATION FOR IMPROPER CONSIDERATION

14.21.1 City may, by written notice to Concessionaire, immediately terminate the right of Concessionaire to proceed under this Agreement if it is found that consideration, in any form, was offered or given by Concessionaire, either directly or through an intermediary, to any City officer, employee or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment or extension of the Agreement or the making of any determinations with respect to the Concessionaire's performance pursuant to the Agreement. In the event of such termination, City shall be entitled to pursue the same remedies against Concessionaire as it could pursue in the event of default by the Concessionaire.

14.21.2 Concessionaire shall immediately report any attempt by a City officer, employee or agent to solicit such improper consideration. The report shall be made either to the City manager charged with the supervision of the employee or to the Auditor-Controller's Fraud Hotline at (213) 974-0914 or (800) 544-6861 or to such other number as may be provided to Concessionaire in writing by City.

14.21.3 Among other items, such improper consideration may take the form of cash, discounts, and service, the provision of travel or entertainment, or tangible gifts.

14.22 TERMINATION FOR INSOLVENCY

14.22.1 To the extent permitted by law, the City may terminate this Agreement forthwith in the event of the occurrence of any of the following:

a. The filing of a voluntary or involuntary petition regarding the Concessionaire under the Federal Bankruptcy Code;

b. The appointment of a Receiver or Trustee for Concessionaire; or

14.22.2 The rights and remedies of City provided in this Subsection 14.22 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14.23 TERMINATION UPON TRANSFER OF TITLE OR ARENA CLOSURE

14.23.1 Notwithstanding any other provision of this Agreement, in the event the City transfers its interest in the Whittier Narrows Recreation Area and the concession premises to a governmental agency assignee), the City reserves the right to: terminate this Agreement; or provided there is consent by an assignee, assign the City's interest in this Agreement to said assignee. City shall provide the Concessionaire with notice of termination or assignment of this Agreement pursuant to this provision.

14.23.2 Notwithstanding any other provision of this Agreement, in the event the City closes the Whittier Narrows Recreation Area, this Agreement shall be terminated upon the effective date of such closure. Upon the effective date of park closure, Concessionaire shall immediately cease its operations, and within fifteen (15) days therefrom remove all items of its personal property, equipment, and inventory. City shall provide advance notice to the Concessionaire of such park closure.

14.24 TRANSFERS

14.24.1 Concessionaire shall not, without the prior written consent of the City Manager and District Engineer, transfer, assign, sublicense, hypothecate or mortgage this Agreement. Any attempted transfer, assignment, sublicense, hypothecation or mortgage without the

prior written consent of the City Manager and District Engineer shall be null and void, and shall constitute a material breach of this Agreement.

14.24.2 Each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Concessionaire shall be binding upon any transferee thereof.

14.24.3 The concession shall not be transferable by testamentary disposition or the State laws of interstate succession, as the rights, privileges, and use conferred by this Agreement shall terminate prior to the date for expiration thereof in the event of the death of Concessionaire occurring within the term herein provided. Additionally, neither this Agreement nor any interest therein shall be transferable in proceedings in attachment or execution against Concessionaire, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Concessionaire, or by any process of law including proceedings under Chapter X or XI of the Bankruptcy Act.

14.24.4 Shareholders and/or partners of Concessionaire may transfer, sell, exchange, assign or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment or divestment is affected in such a way as to give majority control of Concessionaire to any persons, corporation, partnership or legal entity other than the majority controlling interest therein at the time of the execution of this Agreement, the City Manager's approval thereof shall be required. Consent to any such transfer shall be refused if the City Manager finds that the transferee is lacking in experience and/or financial ability to conduct the concession.

14.24.5 The prohibition herein contained shall not be applicable with respect to transfers of this Agreement arising from the exercise of a power of sale or judicial foreclosure pursuant to the terms and

conditions of a hypothecation or mortgage previously approved by the City Manager.

14.25 WAIVER

14.25.1 Any waiver by City of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of City to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping City from enforcing the full provisions thereof.

14.25.2 No delay, failure, or omission of City to re-enter the concession premises or to exercise any right, power, privilege or option, arising from any default, nor any subsequent acceptance of payments then or thereafter accrued shall impair any such right, power, privilege or option, or be construed as a waiver of or acquiescence in such default or as a relinquishment of any right.

14.25.3 No notice to Concessionaire shall be required to restore or revive "time of the essence" after the waiver by City of any default.

14.25.4 No option, right, power, remedy or privilege of City shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options and remedies given City by this Agreement shall be cumulative.

14.26 WARRANTY AGAINST CONTINGENT FEES

14.26.1 The Concessionaire warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any Agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Concessionaire for the purpose of securing business.

14.26.2 For breach of this warranty, the City shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

14.27 ENTIRE AGREEMENT

This document and the Exhibit(s) attached hereto constitute the entire agreement between City and Concessionaire for the use granted at the Pico Rivera Sports Arena. All other agreements, promises and representations with respect thereto, other than contained herein, are expressly revoked, as it has been the intention of the parties to provide for a complete integration within the provisions of this document, and the Exhibit(s) attached hereto, the terms, conditions, promises and covenants relating to the Sports Arena Operation and Concession and the premises to be used in the conduct thereof. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions thereof unenforceable, invalid or illegal. This Agreement supersedes any rights and responsibilities set forth in Agreement No, 92-514, as amended from time to time, and any conflicts between the two agreements shall be resolved with reference to this Agreement.

14.28 AUTHORIZATION WARRANTY

Concessionaire represents and warrants that the signatory to this Agreement is fully authorized to obligate Concessionaire hereunder and that all corporate acts necessary to the execution of this Agreement have been accomplished.

IN WITNESS WHEREOF, Concessionaire has executed this Concession Agreement, or caused it to be duly executed, and City of Pico Rivera, by order of its City Council, has caused this Concession Agreement to be executed on its behalf by the Mayor of Pico Rivera and the City Manager and attested by City Clerk, the day and year first above written.

CONCESSIONAIRE

By_____
Leonardo Lopez, President

By_____
Gustavo V. Camacho, Mayor

ATTEST:

APPROVED AS TO FORM:

By_____
Arnold M. Alvarez-Glasman, City Attorney

By_____
Charles L. Murray III, Attorney for LEBA Inc.

Exhibits:

A. Maintenance Standards

B. Description of Pico Rivera Sports Arena Complex

C. Services to be Provided by Concessionaire

D. Capital Improvements

E. Army Corps of Engineers Agreement DACW09-1-85-4

Exhibit A

MAINTENANCE STANDARDS

Concessionaire shall maintain upkeep and repair the Arena and those areas under their supervision and control in a clean and sanitary condition. Concessionaire shall dispose of all rubbish, garbage and other waste generated from the use of the Arena and shall maintain those areas under their control free from trash, litter, and toxic or hazardous materials or other debris which may be generated at or from the use of the Arena. All landscaping and plant material shall be kept in an aesthetic and visual pleasing manner consistent with the use of the Arena.

Concessionaire shall maintain and upkeep all electrical, gas and plumbing fixtures and keep them as clean and sanitary as reasonably possible. Concessionaire shall repair any damage caused by the Concessionaire or its patrons to the Arena and also those area under the Concessionaire's control. All buildings, signage and other surfaces shall be kept free from graffiti, markings or other damage and Concessionaire shall take steps to remove such graffiti, markings or damage as expeditiously as possible.

City shall have the right to inspect the Arena and surrounding facilities by providing reasonable notice to the Concessionaire of the City's intent to inspect. If there are areas of concern to the City, the City and Concessionaire shall meet to develop a plan to address the needs in order to insure that the Arena is maintained in a manner consistent with the Maintenance Standards set forth herein and in the Agreement.

Exhibit B

DESCRIPTION OF THE PICO RIVERA SPORTS ARENA COMPLEX

The premises include the Pico Rivera Sports Arena, its grounds and improvements, rodeo and equestrian facilities and equipment, including but not limited to restaurant equipment if any, tractors, trucks, maintenance vehicles, the adjacent unpaved parking area, paved parking area, all improvements contained thereon, and all Arena signage. The premises shall include that area commonly known as the "Pico Rivera Horse Stables."

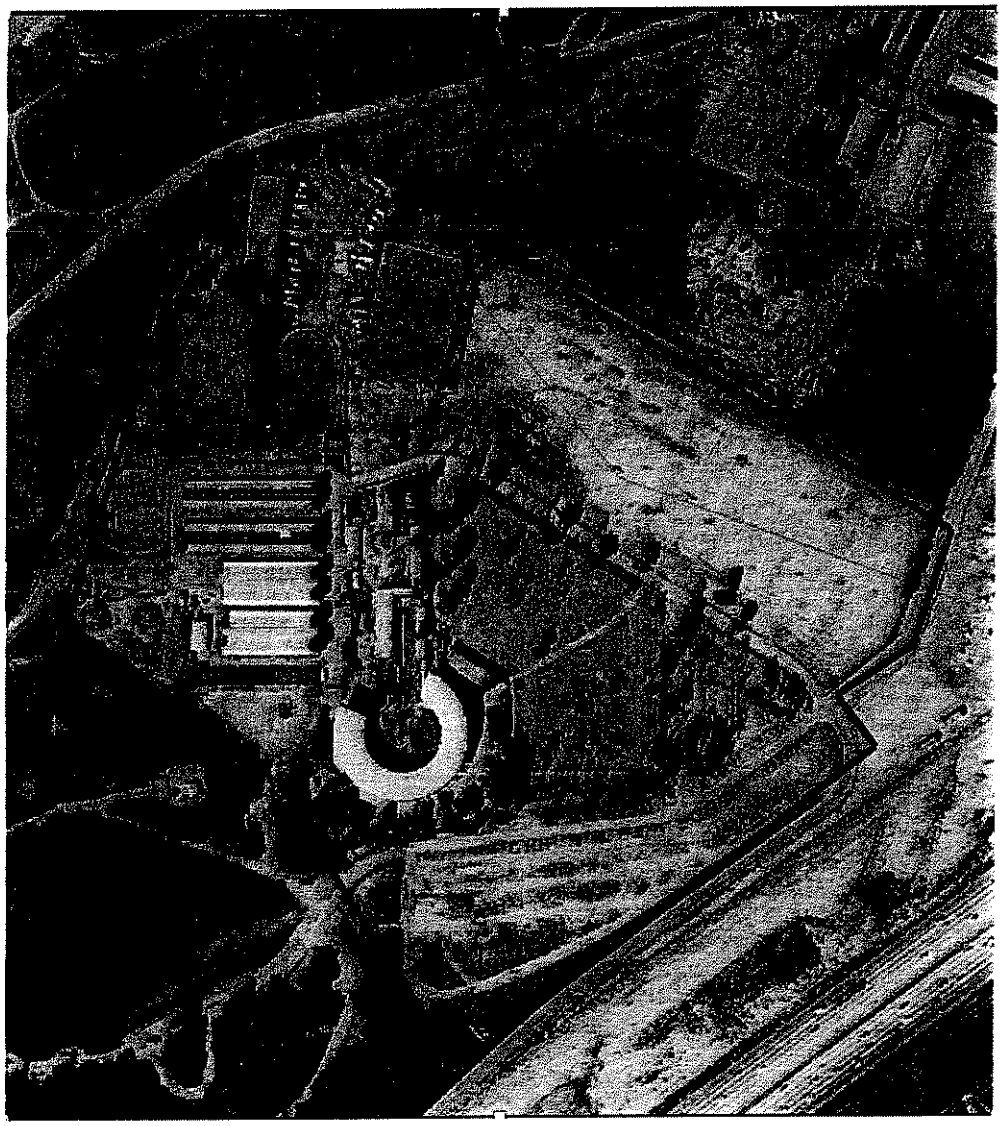


Exhibit C

SERVICES TO BE PROVIDED BY CONCESSIONAIRE

1. Permitted Events

A. The events conducted at the Arena, are limited to the following and subject to the terms and conditions in the Agreement ("Permitted Events"):

1. American Rodeos

2. Mexican Rodeos and/or charreadas, including Mexican style horse racing, excluding any event of or relating to bullfighting.

3. Variety Shows, including singers, dancers, and musicians.

4. Equestrian events

a. Lippizan Stallion Shows

b. Hunger/Jumper Shows/Exhibitions

c. Dressage

d. Western Class Shows/Exhibitions

5. Musical Concerts

a. Religious concerts, including soul, gospel, and choir or any combination thereof.

b. Contemporary concerts, including jazz, rock, country, and western.

c. Classical concerts, including ensembles, symphony, stage bands, soloists.

d. Spanish language concerts of all musical styles.

e. All Rave type events will not be permitted

6. Carnivals, including animal shows, side shows, and game booths.

7. Circus, including aerialists, trained animal acts, and clowns.

8. Boxing, including amateur, professional, and exhibitions sanctioned by the California Athletic Commission.

9. Wrestling, including Greco-Roman, high school, collegiate, professional and amateur matches.

10. Religious events, including regional meetings and other special events. No regular and/or continuing use by a single congregation or other religious group is permitted. Lessee/Contractor shall not sublease the Arena for more than seven religious events per year. No one event shall have a duration in excess of six consecutive days during any consecutive thirty-day period.

B. Use. Permission is hereby granted to Lessee/Concessionaire to use the premises for the sole purpose of presenting those Permitted Events, with admission gate open to the general public. Any deviation from this general admission requirement shall only be with the written consent of the City Manager or designee.

C. Prior Approval. All Permitted Events shall be subject to the review and written approval of the City Manager or designee at least thirty (30) days prior to being scheduled by the Lessee/Concessionaire. No Agreement shall be entered into by either the Lessee/Concessionaire or subleesse for the presentation of events prior to receipt of such written approval from the City Manager or designee. From time to time, the City Manager or a designee may approve a "non-planned event" five days prior to the event date if, the event is a Permitted Event and the Arena is available. A non-planned event is an event that may be marketed to LEBA by a promoter on short notice. All terms and conditions for each Permitted Event shall be established in writing by the City Manager or designee. The conduct of all Permitted Events shall comply with applicable Federal, State, and local laws and regulations. The City Manager or designee shall provide astandard form contract to be used by the Lessee/Concessionaire and/or sublessee for Arena Permitted Events.

D. Seating. The sale, including space assigned for handicapped persons, of tickets for the Arena shall not exceed four-thousand and three-hundred (4,300) seats. This seating limitation shall be adjusted upon the completion of the improvements contemplated by Capital Improvements – Phase Three as set forth in Exhibit D and subject to adjustment and approval of the City Manager. Floor seating shall be only with the consent of the City and in accordance with a City-approved seating plan. The floor seating plan shall be submitted to the City at least thirty (30) days prior to the event date. Lessee/Concessionaire and performer guest lists will be counted in the aforesaid capacity.

II. Responsibilities of Concessionaire

A. Personnel and Equipment at Lessee/Concessionaire's Cost and Expense

1. Equipment and Supplies. City shall provide, at Lessee/Concessionaire's cost and expense, any maintenance, equipment or services required by City or by Lessee/Concessionaire and approved by City, pursuant to rate schedule and procedure provided by City Manager or designee.

2. Personnel. City shall provide at the cost and expense of the Lessee/Concessionaire in numbers to be determined by City, the following personnel, and any other additional personnel which it

may require, pursuant to rate schedule and procedures provided by the City Manager or designee:

a. Licensed veterinarian for the inspection of pertinent livestock and/or other animals.

b. Equipment Operators.

B. Additional Duties of Lessee/Concessionaire

1. Lessee/Concessionaire shall procure, pay, accommodate, transport, produce and conduct, and otherwise provide for all artists and other personnel, equipment and animals related to the production of each Permitted Event unless otherwise set forth in this Agreement.

2. Lessee/Concessionaire will directly pay all costs for the Arena telephone, ground supplies, including but not limited to sprinklers, controller, pipe, and electrical, and restroom rental.

C. Cancellation of Permitted Events

1. If a Permitted Event is cancelled due to rain or other incapacitating weather and is not rescheduled, Lessee/Concessionaire shall pay to the City any costs incurred by the City in the provision of personnel or equipment pursuant to section II(B).

2. If a cancelled show is postponed and due to rain or other incapacitating weather the postponed show is cancelled, Lessee/Concessionaire shall pay the City any costs incurred by the City in the provision of personnel or equipment pursuant to section II(B).

D. Vending Machines. Lessee/Concessionaire shall have the right to establish and operate legal vending machines in and upon the premises provided that prior written approval of the City Manager or designee is first obtained. The City Manager or designee shall retain the right to determine and control the location, type, kind of machines and products vended so that the public may be best served and may revoke any such authorization given at any time and for any reason.

E. Concession Facilities. All concession stands and vehicles shall be subject to the prior approval of the City Manager or designee as to the number, type and location.

III. Parking

A. City grants to Lessee/Concessionaire the exclusive right to operate and manage the parking facilities during the Permitted Event conducted pursuant to this Agreement in those areas designated on a map and/or diagram provided to Lessee/Concessionaire by City Manager or designee in advance of the Permitted Event.

B. Lessee/Concessionaire shall not charge more than $15.00 for ticketed events and $25.00 for non-ticketed or free events for parking. These fees may be increased subject to the approval of the City Manager.

C. City Manager or designee may request that parking tickets be sold and/or parking fees collected only at such time as the car to be parked is permanently parked in the designated parking area.

D. Access roads shall be kept clear of parked vehicles at all times. The City reserves the right to remove any car parked in an access road.

E. Campground patrons shall be afforded access to those areas without charge.

F. Placement and removal of barricades and cones shall be the responsibility of the Lessee/Concessionaire. Location of barricades and cones is subject to prior written approval by the City.

IV. General Provisions Applicable to All Concessions Granted by This Agreement.

A. Permits and Licenses. Lessee/Concessionaire agrees that he/he shall obtain, at his/her own expense, any and all permits or licenses that may be required in connection with the operation of the concessions including, but not limited to, tax permits, business licenses, health permits, and an On-Sale General License issued by the California Department of Alcohol Beverage Control. Permits and licenses shall be obtained by Lessee/Concessionaire prior to the commencement date of this Agreement. Subject to the consent of the California Department of Alcohol Beverage Control and other controlling agencies, Lessee/Concessionaire will consent to the transfer of all permits and licenses to Lessee/Concessionaire's successor to the concessions which are subject to this Agreement, upon adequate consideration therefore and Lessee/Concessionaire will not unreasonably withhold such consent nor unreasonably refuse to execute necessary acts in affecting such transfer.

B. Standards of Operation. Lessee/Concessionaire's privileges referred to herein are granted upon the following express standards and conditions:

1. No boxes, barrels, supplies or rubbish in any form shall be kept piled or stored outside the concession premises or at any refreshment stand or vehicle and the Lessee/Concessionaire shall keep all concession areas in a clean and sanitary condition, as mandated by applicable law.

2. Lessee/Concessionaire shall maintain all equipment and conduct all operations in a safe and orderly manner and shall, at the request of the City Manager or designee, refrain from using any equipment or cease any operation deemed to be unsafe or detrimental for use by the public.

3. All Events shall be conducted pursuant to all federal, state and local laws and regulations.

Exhibit D

CAPITAL IMPROVEMENTS

Safety or Code-Enforcement Related

1. Upgrade all public restrooms, including fixtures. In addition, existing toilets for use by disabled individuals must be brought into ADA compliance.

2. Video inspection and jetting of sewer lines.

3. Repair/upgrade of irrigation system, including necessary booster pumps and backflow prevention valves.

Aesthetic Repairs

4. Repair and painting of the Sports Arena building facade and perimeter fencing.

5. Installation of landscaping, including grass, shrubs and trees, at the following locations:

East side of the Sports Arena.

Parking lots, including existing medians and islands.

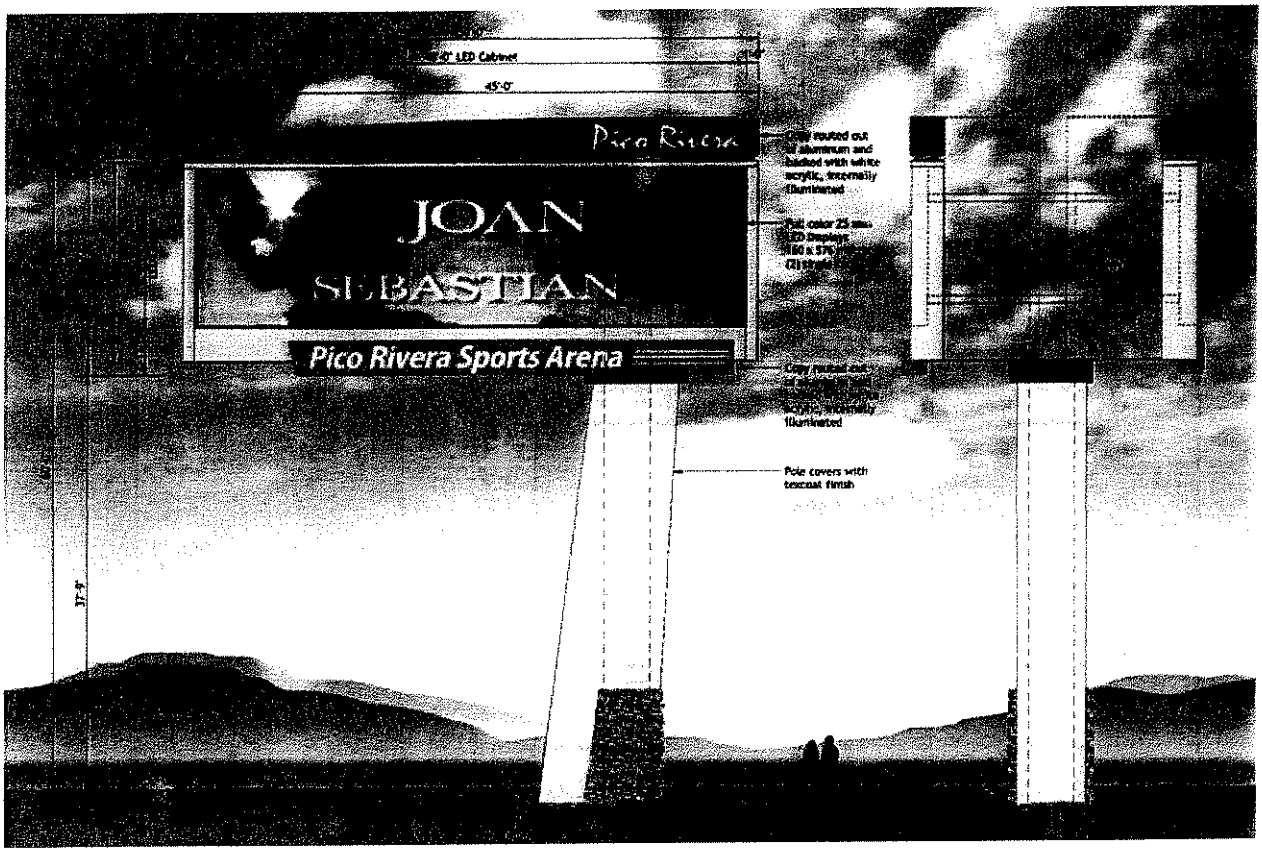
North main) Entrance to Sports Arena facility.

Capital Improvements Phase One - Billboard/LED Sign Construction

Concessionaire shall have constructed and installed a state of the art LED sign, subject to the approval of the City, for the purpose of advertising events at the Sports Arena and other community/City activities. The City shall fund an amount of twenty (20%) of the total cost of the LED sign in an amount not to exceed $60,000. All other costs of design, construction, installation, maintenance, repair, improvements, cost of electricity and other related costs shall be the sole responsibility of the Concessionaire. The cost of design, construction and installation shall be no less than $400,000.00 and shall be similar to the sample billboard/LED sign depicted below. Once defined, the plans, drawings and renderings of the billboard/LED sign shall be deposited with the City Manager. The specific terms relating to the operation, maintenance, repair, method of advertisement and usage of the billboard/LED sign shall be defined and set forth in the "Billboard Installation and Implementation Agreement" to be entered into by the Parties. However, it is understood that once installed by the Concessionaire the billboard/LED sign shall (i) be under the control and operation of the City, (ii) be subject to a revenue sharing agreement wherein the City shall receive no less than fifty percent (50%) of the advertising

revenues from the billboard/LED sign, and (iii) the construction and maintenance of the billboard/LED sign shall also be consistent with the terms of operation as defined by the United States Army Corps of Engineers.

Date of Completion: July 31, 2015, subject to an extension by the City Council, but no later than July 31, 2016.



Capital Improvements Phase Two – Infrastructure Improvements

Concessionaire shall contribute a minimum of $200,000.00 toward infrastructure improvements to the Sports Arena complex as identified and agreed upon by and between the City and the Concessionaire.

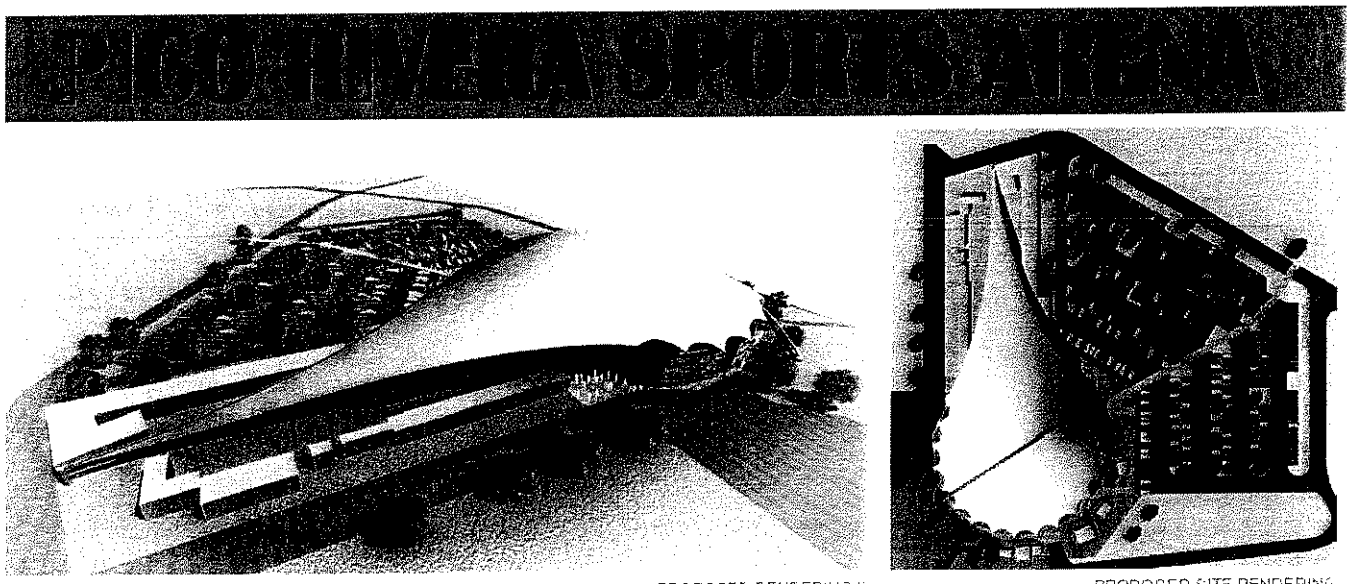
Date of Completion: July 31, 2015, subject to an extension by the City Council, but no later than July 31, 2016.

Capital Improvements Phase Three – Sports Arena Facility Improvements

Concessionaire shall design and construct, subject to the prior written approval of the City and the District Engineer, improvements to the Sports Arena Facility, including but not limited to improvements to the seating of the Arena and to install a free-standing cover over the Arena. The

minimum cost and contribution by the Concessionaire of Phase Three improvements shall not be less than $6,400,000.00. Once all Phase Three improvements are identified the City and Concessionaire shall enter into a separate Sports Arena Facility Improvement Implementation Agreement to identify the duties, obligations, rights and responsibilities of the parties.

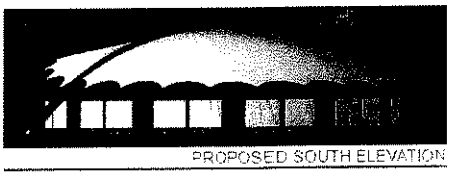
The City agrees to earmark ten percent (10%) of the Annual Concession Payment for purposes of providing contributions to the Phase Two and Phase Three capital improvements. Additionally, the City agrees to fairly calculate, but not waive, fees for processing the capital improvements such as permit and inspections fees. The City also agrees to process the requisite plans, permits and other related City services in an expedited fashion.



PROPOSED RENDERING II

PROPOSED SITE RENDERING

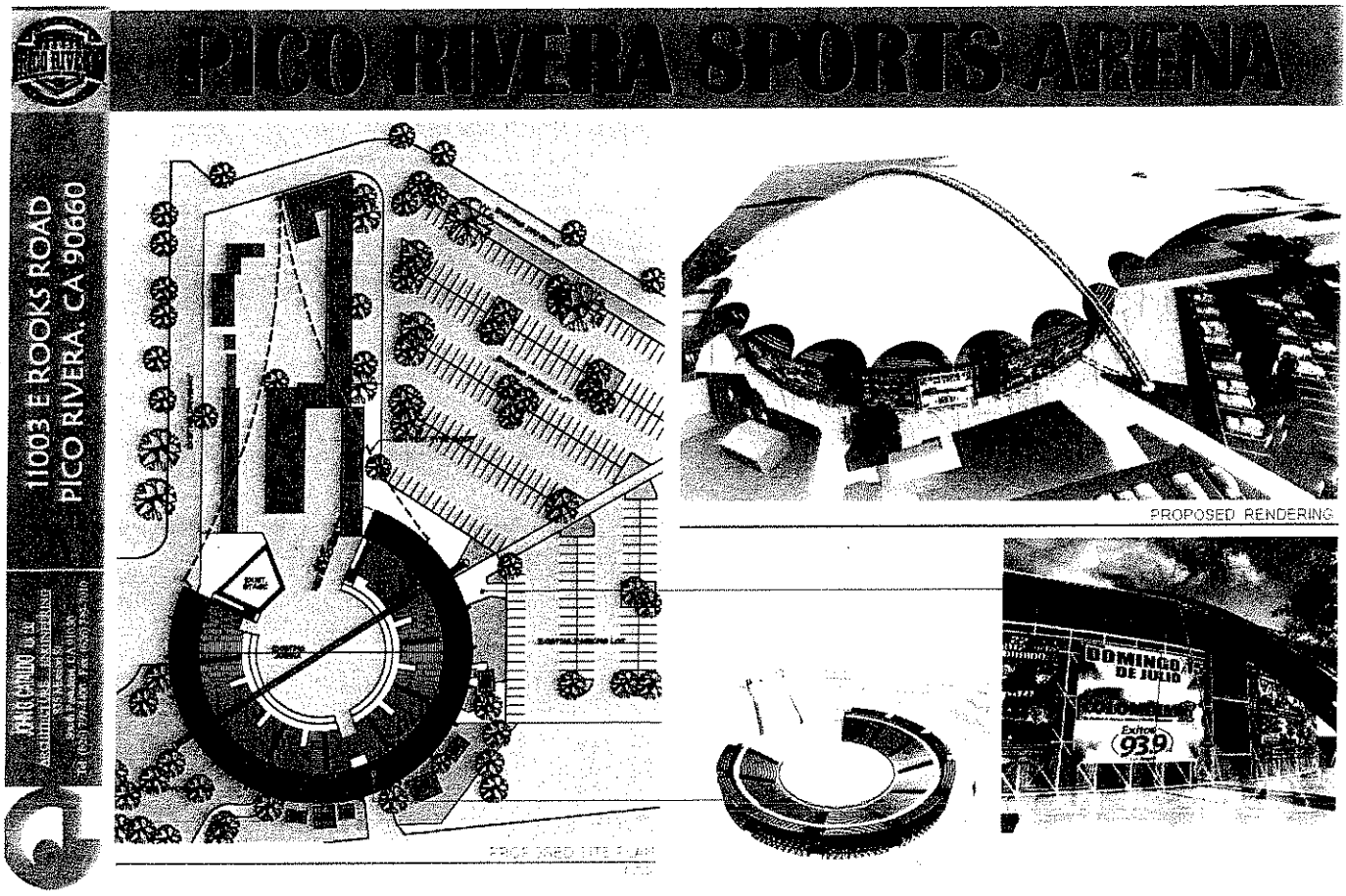
PROPOSED EAST ELEVATION



PROPOSED SOUTH ELEVATION

PROPOSED WEST ELEVATION

PROPOSED NORTH ELEVATION



Date of Completion: July 31, 2017, subject to an extension by the City Council, but no later than July 31, 2018.

Exhibit E

ARMY CORPS OF ENGINEERS AGREEMENT DACW09-1-85-4

Lease No. DACW09-1-85-4
(formerly No. DACW09-1-82-13)
City of Pico Rivera
Whittier Narrows Flood Control Basin
Los Angeles County, California

ADDENDUM NO. 1

THIS ADDENDUM NO. 1 changes the lease number

From: DACW09-1-82-13

To: DACW09-1-85-4

so that the effective date of the lease coincides with the Government's Fiscal Year.

WILLIAM P. CHEADLE JR.
Chief, Real Estate Division
U.S. Army Engineer District, L.A.

RE Files
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Mgt Sec
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AGREEMENT NO. 84-246

DEPARTMENT OF THE ARMY

LEASE

FOR PUBLIC PARK AND RECREATIONAL AND/OR
FISH AND WILDLIFE PURPOSES

PROJECT AREA: WHITTIER NARROWS FLOOD CONTROL BASIN

NO. DACW09-1-82-13

THE SECRETARY OF THE ARMY under authority of Section 4 of the Act of Congress approved 22 December 1944, as amended (16 USC 460d), and the Federal Water Project Recreation Act, 79 Stat. 214 (16 USC 460L-13), and pursuant to a contract entered into on 3 February 1975, by and between the United States of America, and the City of Pico Rivera, (hereinafter referred to as the Contract), hereby grants to the City of Pico Rivera, hereinafter referred to as Lessee, a lease for a period of fifty (50) years commencing on 1 December 1984, and ending on 30 November 2034, to use and occupy approximately 120.44 acres of land and water areas under the primary jurisdiction of the Department of the Army in the Project Area, hereinafter referred to as the premises, as shown on attached Exhibit "A", Drawing No. 142-K-229.2, dated 7 March 1975, Revised 9 June 1978 and 17 September 1979, and described in Legal Description File No. 142-K-229.2, dated 18 September 1979, marked Exhibit "B", both Exhibits being attached hereto and made a part hereof.

THIS LEASE is granted subject to the following conditions:

1. The Lessee shall conform to such regulations as the Secretary of the Army may issue to govern the public use of the project area, and shall comply with the provisions of the above-cited Acts of Congress. The Lessee shall protect the premises from fire, vandalism, and soil erosion, and may make and enforce such regulations as are necessary and within its legal authority, in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with provisions of the above-cited Acts of Congress.

2. The Lessee agrees to administer the land and water areas included in the lease for recreation, and to bear the costs of operation, maintenance and replacement of all facilities and improvements on the premises at the commencement of this lease or added during its term. As used in this lease the term "replacement" shall be construed to mean the replacement in whole or in part of any structure or improvement so worn or damaged by any cause as to no longer adequately serve its designed function with normal maintenance. The Lessee shall be guided by an Annual Plan of Operation and Maintenance adopted pursuant to Article 2(c) of the Contract (Exhibit C), by this reference made a part hereof. On or before the anniversary date of the lease each year, the parties shall agree on the Annual Plan which shall include but is not limited to the following:

a. Plans for management activities to be undertaken by the Lessee including improvements and other facilities to be constructed thereon in accordance with the Contract.

b. Report of the Management, maintenance and development accomplishments of the Lessee for the preceding year.

c. Significant modifications of policies or procedure which have developed or are to be applied.

d. Minor modifications to the Plan of Recreation Development and Management (major modifications to be accomplished by amendment of the Plan).

3. In addition to the fees and charges authorized under the provisions of Article 5 of the Contract, the Lessee and his sublessees may conduct such revenue producing activities as are within the scope of Article 4 of the Contract.

4. That upon the commencement of this lease the parties hereto shall cause to be made an inventory (EXHIBIT D) of all improvements constructed in whole or in part with Federal funds under the terms of the Contract. From time to time, there shall be added to said inventory such additional improvements as may be constructed pursuant to the aforesaid Contract. Certain types of "Additional Facilities," including but not limited to restaurants, golf courses, clubhouses, overnight or vacation type structures, stables, marinas, swimming pools, commissaries, and such similar revenue producing facilities constructed under the authority of Article 4 of the Contract shall not be added to this inventory. The inventory of improvements shall include descriptions and drawings sufficient to permit their identification and condition, and to replace them if required during the term or on the expiration or termination of this lease. Said inventory and all amendments thereto shall be approved in writing by authorized representatives of the parties hereto and shall thereupon become a part of this lease as if originally annexed.

5. The Lessee may grant permits and licenses, and sublease all or portions of the leased property for purposes which are consistent with the terms and conditions of this lease and with the Plan of Recreation Development and Management. All such grants shall state that they are granted subject to the provisions of this lease. On reservoirs where concessions are operated under leases granted by the Government or by its other grantees, the terms and conditions of permits, licenses, and subleases granted by the lessee for revenue producing purposes shall first be approved by the Commander, US Army Engineer District, Los Angeles, Corps of Engineers, in writing. In order to protect the investments of sublessees, the said Commander is authorized to approve subleases which require the Government to continue to honor such parts of the subleases which may be necessary to assure the continuation of the subleased activities upon a default which would result in a revocation of prime lease under condition 15 thereof.

6. No permits, licenses or subleases will be granted to adjacent private property owners for use, alteration, improvement, addition of facilities, or

any other purpose which would confer upon them privileges not available to the general public or which would infer or imply exclusive private use of public lands. Any permits, licenses or subleases granted to adjacent private property owners for use, alteration, improvement, addition of facilities, or any other purpose will be conditioned such as:

a. Not to restrict use thereof by the general public.

b. To permit free and unimpeded passage.

c. To be compatible with the Environmental Impact Statement adopted for the project.

d. To have signs posted to the effect that "This is public property open to general public use."

7. The Lessee shall establish and maintain adequate records and accounts and render annual statements of receipts and expenditures to the Commander, except for annual or weekly entrance fees which also are honored at other recreational areas operated by the Lessee. The Commander shall have the right to perform audits of the Lessee's records and accounts, and to require the Lessee to audit the records and accounts of sublessees and furnish the Commander a copy of the result of such an audit.

8. The rates and prices charged by the Lessee or its grantees for revenue producing activities shall be reasonable and comparable to rates charged for similar goods and services by others in the community and on the reservoir. The Government shall have the right to review such rates and prices and require an increase or reduction where it finds the objective of this paragraph has been violated.

9. The right is reserved to the United States, its officers, agents, and employees, to enter upon the premises at any time to make inspections concerning the operation and maintenance of the lands and facilities provided hereunder, and for any purpose necessary or convenient in connection with river and harbor and flood control work, and to remove timber or other materials required for such work, to flood the premises when necessary, and/or to make any other use of the land as may be necessary in connection with public navigation and flood control, and the Lessee shall have no claim for damages of any character on account thereof against the United States or any agent, officer or employee thereof.

10. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents, servants, or employees or others who may be on the premises at their invitation or the invitation of any one of them, arising from or incident to the flooding of the premises by the Government or flooding from any other cause, or arising from or incident to any other governmental activities, and the Lessee shall hold the United States harmless from any and all such claims.

11. *That at the time of the commencement of this lease, the Lessee will obtain from a reputable insurance company, acceptable to the Government, liability or indemnity insurance providing for minimum limits of $50,000.00 per person in any one claim, and an aggregate limit of $150,000.00 for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, and $5,000.00 for damages to property suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease.

12. The Lessee or its grantees shall not discriminate against any person or persons because of race, creed, color, sex, or national origin in the conduct of its operations hereunder. The Lessee has furnished as part of the Contract an assurance that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, and all grantees shall supply like assurances.

13. This lease is subject to all existing easements, and easements subsequently granted for roadways, and utilities and for other purposes located or to be located on the premises, provided that the proposed grant of any easement will be coordinated with the Lessee and easements will not be granted which will, in the opinion of the Commander, interfere with developments, present or proposed, by the Lessee.

14. The Lessee shall comply promptly with any regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency and/or a State Water Pollution Control Agency having jurisdiction to abate or prevent water pollution. Such regulations, conditions or instructions in effect or prescribed by the Environmental Protection Agency or State Agency are hereby made a condition of this lease.

15. This lease may be revoked by the Secretary of the Army in the event the Lessee violates any of the terms and conditions of this lease and continues and persists therein for thirty (30) days after notice thereof, in writing, by the Commander. Such a termination shall not derogate or diminish such other remedies in law as may be available to the Government and in no way shall it act to relieve the Lessee of its responsibilities and obligations under the Contract. In lieu of revocation, the Commander, in his discretion, upon finding that a violation constitutes a health or safety hazard may suspend the use of that operation or facility until such deficiency is rectified.

16. On or before the date of expiration of this lease, the Lessee shall vacate the premises, remove its property therefrom, and restore the permises to a condition satisfactory to the Commander. If however, this lease is revoked the Lessee shall vacate the permises, remove its property therefrom, and restore the permises as aforesaid within such time as the Secretary of the Army may designate. In either event, if the Lessee shall fail or neglect to remove its property and so restore the permises, then its property shall become the property of the United States without compensation therefor, and no

*Not applicable when local sponsor is self-insured.

claim for damages against the United States, or its officers or agents shall be created by or made on account thereof.

17. All notices to be given pursuant to this lease shall be addressed, if to the Lessee, to the city of Pico Rivera; if to the Government, to Commander, US Army Engineer District, Los Angeles, P.O. Box 2711, Los Angeles, California 90053, or as may from time to time be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope or wrapper, addressed as aforesaid and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a post office regularly maintained by the United States Government.

18. That the areas initially made available to the Lessee for public park and recreational purposes by this lease, and any additional areas which may be made available to the Lessee from time to time hereafter, shall be known as the Whittier Narrows Reservoir Corps of Engineers-City of Pico Rivera Recreational Area, and said areas shall hereafter be referred to as the "recreational areas."

19. The Lessee shall not grant any concession privileges, permits, or leases of any portion of the recreational areas covered by this lease for private farming or private agricultural use.

20. That in order to protect the United States and the City of Pico Rivera against claims for damages which might arise out of the use and occupation of said recreational areas by persons to whom the Lessee may grant concessions or licenses, the Lessee herein agrees to insert a condition in such concessions or licenses which it grants pursuant to Condition No. 5. hereof, which shall be in substantially the following form:

"The concessionaire or licensee, in consideration of the granting of this concession or license, agrees to hold the United States and the City of Pico Rivera harmless from any and all claim or rights of action for damages which may or might arise or accrue to said concessionaire or licensee, his officers, agents, servants, employees, or others who may be on the licensed premises at his invitation or the invitation of any one of them, by reason of injury to the property, or the person of any of them resulting from the entry upon or the use of the licensed premises by the United States, the City of Pico Rivera, or any of them, for any purpose necessary or convenient in connection with river and flood control work, or for the removal of timber required or necessary for such work, or by reason of the flooding of the licensed premises, or any part thereof, when in the judgement of any of them, such flooding is necessary in connection with flood control work."

A proposed copy of each concession agreement or license granted by the Lessee herein shall be submitted to the Commander for approval prior to its execution.

21. That the Lessee will remove all debris within the perimeter of this lease and will maintain the property at all times in a clean condition, free from weeds, brush, and gullies at its own expense. Refuse receptacles shall

be nonfloatable and refuse disposed of in a manner approved by local health agencies.

22. That the Lessee shall cut no timber, except in furtherance of the plans for public park and recreational area approved in writing by said Commander, and shall conduct no mining or drilling operations, remove no sand, gravel, or kindred substances from the ground, except such sand, gravel, or kindred substances as may be used in connection with buildings, filling, landscaping, and improvement operations on the leased premises by the Lessee in accordance with the plan approved in writing by said Commander, and shall commit no waste of any kind or in any manner substantially change the contour or condition of the leased premises except in accordance with the plans approved in writing by said Commander, but the Lessee may salvage such fallen or dead timber as may be required for use as firewood.

23. That the Lessee shall not permit gambling on the said leased premises, or install or operate, or permit to be installed or operated, on the leased premises, any device which, in opinion of the said Commander is contrary to good morals or is otherwise objectionable; or sell or permit to be sold on the said leased premises intoxicating liquors, excepting beer and light wines; or use the said leased premises or permit them to be used for any illegal or immoral business or purpose; there shall not be carried on or permitted upon the said premises any activity which would constitute a nuisance.

24. That it is understood that this instrument is effective only insofar as the rights of the United States in the property covered by this lease are concerned, and the Lessee shall obtain such permission as may be necessary on account of any other existing rights.

25. For the purpose of maintaining attendance records, the Lessee shall obtain and submit public use visitation data to said leased premises, in compliance with such use regulations, and shall furnish such data on attendance and use as may be requested by the Commander.

26. All monies received by the Lessee from operations conducted on the leased premises, including, but not limited to, entrance and admission fees, and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation, and development of the leased premises. Any such monies not so utilized or programmed for utilization in a reasonable time by the Lessee shall be paid to the Commander at the expiration of each 5-year period of this lease. The Lessee shall establish and maintain adequate records and accounts and render annual statements of receipts and expenditures to the Commander.

27. That no member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any monetary benefit to arise therefrom. Nothing however, herein contained shall be construed to extend to any incorpo[illegible] company, if the lease is for the general benefit of such corpo[illegible] pany.

28. That the lease shall construct perimeter fencing of such design and at locations required and approved by the Commander.

29. That the city of Los Angeles Department of Water and Power Boulder Transmission Line is located on a portion of the lands herein leased. The Lessee shall not construct any facilities on the power line right-of-way that have not been approved in writing by the City of Los Angeles. There are two existing steel towers on the said right-of-way which present an attraction for climbing. Fencing shall be constructed around the towers to prevent such activity. Golf balls which may fall within the said fenced areas may be retrieved by Golf Course officials by means of entrance through a locked gate.

30. That all structures shall be constructed and landscapping accomplished in accordance with plans approved by the Commander. Further, the Lessee shall not discharge waste or effluent from the premises in such a manner that such discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

31. That no changes will be made in the topography which would deplete the storage capacity of the reservoir.

32. That no human habitation shall be permitted on the premises. This shall not be construed to prohibit the Lessee from providing properly designed and approved guard stations for night watchman or other patrolmen.

33. That the Lessee shall exercise control of the area to insure compliance with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein said permises are located, including the Fish and Game Commission laws of the State of California.

34. That any and all taxes which may be lawfully imposed by the state, or any of its subdivisions upon the premises, the concessions, or other improvements placed upon the premises by the Lessee or by third parties under agreement with the Lessee, shall be promptly paid by the Lessee or such third parties as their interest may appear.

35. That the United States acquired no mineral rights within the leased area; and nothing within this lease shall be construed to indicate that the United States, in granting this lease, prohibits drilling or exploration work by owners of mineral rights or their lessees.

36. That, except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the Commander, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the said officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Lessee mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been

fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the Lessee shall be afforded an opportunity to be heard or to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of the contract and in accordance with the said officer's decision.

37. That this condition does not preclude consideration of law questions in connection with decisions provided for in paragraph 36 above, provided that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

38. That this lease supersedes Lease No. DA-04-353-CIVENG-66-137.

IN WITNESS WHEREOF I have hereto set my hand by authority of the Secretary of the Army this 15th day of October 19 84.

WILLIAM P. CHEADLE, JR.
Chief, Real Estate Division
US Army Engineer District, Los Angeles

THIS LEASE IS also executed by the Lessee this 1st day of October 19 84

CITY OF PICO RIVERA

John G. Chavez (SEAL)
John G. Chavez, Mayor

P.O. Box 1016
(Post Office Address)

Pico Rivera, California 90660

Signed and sealed in the presence of:

Thelma M. Kail
Thelma M. Kail, City Clerk

Approved as to Form:

Samuel Siegel
Samuel Siegel, City Attorney

Attachment "B"

From: Serpa, Phil Sr. SPL [mailto:Phillip.J.Serpa@usace.army.mil]
Sent: Thursday, August 22, 2013 11:38 AM
To: Raymond Chavez
Subject: Pico Rivera Sports Arena Concession Agreement

Ray,

The US Army Corps of Engineers has finalized its review of the City of Pico Rivera's proposed Concession Agreement with LEBA, Inc. for the operation and maintenance of the Pico Rivera Sports Arena, Whittier Narrows Flood Control Basin.

Since the terms of the Master Lease No. DACW09-1-85-4 allow for the sublease of the premises under certain conditions, we have no objections to the proposed concession/sublease agreement. Our approval is subject to our edits which are shown in the marked up Pico Rivera Sports Arena Concession Agreement (attached).

Please provide this office with a copy of the executed Concession Agreement for our records.

If you have any questions or would like further information, please feel free to contact me.

Thank you,

Phil Serpa
Asset Management Division
USACE, Los Angeles District, 915 Wilshire Blvd., Los Angeles, CA 90017
Office: (213) 452-3402; BlackBerry: (213) 447-2893