

*For further information on an agenda item, please contact the City at
101 North "D" Street, or call (951) 943-6100*

AGENDA
JOINT MEETING OF THE CITY COUNCIL, SUCCESSOR
AGENCY TO THE REDEVELOPMENT AGENCY, PUBLIC
FINANCE AUTHORITY, PUBLIC UTILITY AUTHORITY,
HOUSING AUTHORITY, PERRIS JOINT POWERS
AUTHORITY AND PERRIS COMMUNITY ECONOMIC
DEVELOPMENT CORPORATION OF THE CITY OF PERRIS
Tuesday, February 13, 2018
6:30 P.M.
City Council Chambers
(corner of San Jacinto and Perris Boulevard)
101 North "D" Street
Perris, California

CLOSED SESSION: 6:00 P.M.

ROLL CALL:

Rabb, Rogers, Burke, Corona, Vargas

- A. Conference with Legal Counsel – Existing Litigation –
Government Code Section 54956.9(d) (2); 1 case:
1. Pfeifer v. City of Perris
U.S. District Court, Central District of California
Case No. 5:17-cv-02491-RGK (KKx)
- B. Conference with Real Property Negotiators – Government Code
Section 54956.8
- | | |
|----------------------|---|
| Property: | APN #311-120-026
227 North D St., Perris |
| City Negotiator: | Richard Belmudez, City Manager |
| Negotiating Parties: | Boys and Girls Club of Perris |
| Under Negotiation: | Price and terms of payment |

1. **CALL TO ORDER:** 6:30 P.M.

2. **ROLL CALL:**

Rabb, Rogers, Burke, Corona, Vargas

3. **INVOCATION:**

Pastor Terry Wells
First Baptist Church of Perris
311 E. 5th St.
Perris, CA 92571

4. **PLEDGE OF ALLEGIANCE:**

Councilman Rabb will lead the Pledge of Allegiance.

5. **REPORT ON CLOSED SESSION ITEMS:**

6. **PRESENTATIONS/ANNOUNCEMENTS:**

At this time, the City Council may recognize citizens and organizations that have made significant contributions to the community and it may accept awards on behalf of the City.

A. Presentation of Proclamation to Pastor Terry Wells recognizing his appointment as Pastor of First Baptist Church of Perris.

B. Presentation of Proclamation to Mr. Sidney Lee recognizing his 90th Birthday.

C. City of Perris Employee of the Quarter

7. **APPROVAL OF MINUTES:**

A. Approve the Minutes of the Regular Joint Meeting held on January 30, 2018 of the City Council, Successor Agency to the Redevelopment Agency, Public Finance Authority, Public Utility Authority, Housing Authority, Perris Community Economic Development Corporation and the Perris Joint Powers Authority.

8. **CONSENT CALENDAR:**

*Consent Calendar items are normally enacted in one motion. The Mayor or City Council may remove a Consent Calendar item for separate action. **Public comment is limited to three (3) minutes.***

- A. Adopt the second Reading of Ordinance Number 1360 regarding Amendment No. 1 to the ParkWest Development Agreement for the ParkWest Specific Plan and Tentative Tract Map 31157. (Applicant: Palin Enterprises)

The Proposed Second Reading of Ordinance Number 1360 is entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, APPROVING AMENDMENT NO. 1 TO THE DEVELOPMENT AGREEMENT WITH PARKWEST ASSOCIATES AND EAST WEST PROPERTIES.

- B. Approve Contract Services Agreement for the Preparation of a Community Economic Development Strategy with Julie Fonseca.
- C. Approve Settlement Agreement with BAI Investor, LLC for the acquisition of McCanna Ranch Water Company by the Perris Public Utility Authority.
- D. Adopt Resolution number (next in order) approving a Three Party Tender Agreement and Mutual Final Release between the City of Perris, Argonaut Insurance Company, and Millsten Enterprises, Inc, for the Construction of the Perris Valley Storm Drain Trail.

The Proposed Resolution Number (next in order) is entitled:

A RESOLUTION OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, APPROVING A THREE PARTY TENDER AGREEMENT AND MUTUAL FINAL RELEASE BETWEEN THE CITY OF PERRIS, ARGONAUT INSURANCE COMPANY, AND MILLSTEN ENTERPRISES, INC, FOR THE CONSTRUCTION OF THE PERRIS VALLEY STORM DRAIN TRAIL.

- E. Adopt Resolution number (next in order) authorizing the submittal of an application for Local Government Partnership Program funding through the Mobile Source Air Pollution Reduction Review Committee.

The Proposed Resolution Number (next in order) is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, APPROVING PARTICIPATION IN THE MOBILE SOURCE AIR POLLUTION REDUCTION REVIEW COMMITTEE "LOCAL GOVERNMENT PARTNERSHIP PROGRAM."

9. PUBLIC HEARINGS:

*The public is encouraged to express your views on any matter set for public hearing. It is our procedure to first receive the staff report, then to ask for public testimony, first from those in favor of the project followed by testimony from those in opposition to it, and if there is opposition, to allow those in favor, rebuttal testimony only as to the points brought up in opposition. To testify on the matter, you need to simply come forward to the speaker's podium at the appropriate time, give your name and address and make your statement. After a hearing is closed, you may not further speak on the matter unless requested to do so or are asked questions by the Mayor or a Member of the City Council. **Public comment is limited to three (3) minutes.***

- A. Consideration to Introduce the First Reading of Ordinance Number (next in order) to amend Zoning Code Chapter 19.69 "Parking and Loading Standards" of the Perris Municipal Code to update the Multi-Family Residential parking ratios for guest parking, studios, one-bedroom, two-bedroom, and three-bedroom parking requirements.

The First Reading of Proposed Ordinance Number (next in order) is entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, FINDING THE PROPOSED PROJECT EXEMPT FROM CEQA PURSUANT TO SECTION 15061(B)(3), AND APPROVING ORDINANCE AMENDMENT 17-05214 TO AMEND CHAPTER 19.69 "PARKING AND LOADING STANDARDS", AND MAKE FINDINGS IN SUPPORT THEREOF.

Introduced by: Dr. Grace Williams, Director of Planning and Economic Development

PUBLIC COMMENT:

10. BUSINESS ITEMS: (not requiring a "Public Hearing"):

*Public comment will be called for each non-hearing item. Please keep comments brief so that everyone who wishes to speak has the opportunity to do so. After public comment is closed, you may not further speak on the matter unless the Mayor or City Council requests further clarification of your statement. **Public Comment is limited to three (3) minutes.***

- A. Presentation on the Pathway to Homeownership Program.

Introduced by: Rebecca Miranda, Project Manager

PUBLIC COMMENT:

- B. Review and consideration of a report by the Campaign Transparency Ad Hoc Sub-Committee concerning Council Term Limits.

Introduced by: Eric Dunn, City Attorney

PUBLIC COMMENT:

11. PUBLIC COMMENT/CITIZEN PARTICIPATION:

*This is the time when any member of the public may bring a matter to the attention of the Mayor and the City Council that is within the jurisdiction of the City Council. The Ralph M. Brown act limits the Mayor's, City Council's and staff's ability to respond to comments on non-agendized matters at the time such comments are made. Thus, your comments may be agendized for a future meeting or referred to staff. The City Council may discuss or ask questions for clarification, if desired, at this time. **Public comment is limited to three (3) minutes.***

12. COUNCIL COMMUNICATIONS:

(Committee Reports, Agenda Items, Meeting Requests and Review etc.)

*This is an opportunity for the Mayor and City Councilmembers to report on their activities and the actions of the Committees upon which they sit, to bring a matter to the attention of the full Council and staff, and to request agenda items. Any matter that was considered during the public hearing portion is not appropriate for discussion in this section of the agenda. **NO ACTION CAN BE TAKEN AT THIS TIME.***

13. CITY MANAGER'S REPORT:

14. ADJOURNMENT:

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Building Official (951) 443-1029. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**CITY COUNCIL/
SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY/
PERRIS PUBLIC FINANCE AUTHORITY/
PERRIS PUBLIC UTILITIES AUTHORITY/HOUSING
AUTHORITY/PERRIS JOINT POWERS AUTHORITY/PERRIS
COMMUNITY ECONOMIC DEVELOPMENT CORPORATION
AGENDA SUBMITTAL**

TO: The Honorable Mayor and Members of the City Council
FROM: Nancy Salazar, City Clerk NS
DATE: February 13, 2018
SUBJECT: *Approval of Minutes*

BACKGROUND: None.

FISCAL IMPACT: None.

- **RECOMMENDATION:** Motion to approve the Minutes of the Regular Joint Meeting held on January 30, 2018 of the City Council, Successor Agency to the Redevelopment Agency, Public Finance Authority, Public Utility Authority, Housing Authority, Perris Community Economic Development Corporation and Perris Joint Powers Authority

Prepared by: Judy L. Haughney, CMC, Assistant City Clerk JL
Approved by: Nancy Salazar, City Clerk

Attachments:

- Minutes of the Regular Joint Meeting held on January 30, 2018 of the City Council, Successor Agency to the Redevelopment Agency, Public Finance Authority, Public Utility Authority, Housing Authority, Perris Community Economic Development Corporation and Perris Joint Powers Authority

CITY OF PERRIS

MINUTES:

Date of Meeting: January 30, 2018

06:30 PM

Place of Meeting: City Council Chambers

CLOSED SESSION

Mayor Vargas called the Closed Session to order at 6:01 p.m.

ROLL CALL

Present: Corona, Rabb, Rogers, Burke, Vargas

Staff Present: City Manager Belmudez, City Attorney Dunn and City Clerk Salazar

- A. Conference with Real Property Negotiators – Government Code Section 54956.8
Property: APN #313-093-023 City Negotiator: Richard Belmudez, City Manager
Negotiating Parties: Rick Lozano, CBRE Under Negotiation: Price and terms of payment
- B. Conference with Legal Counsel – Existing Litigation – Government Code Section 54956.9(d)(2); 2 cases:
 1. BAI Investor LLC v. City of Perris, Perris Public Utilities Authority, Riverside County Superior Court Case No. RIC 1611770
 2. BAI Investor LLC V. City of Perris, Perris Public Utilities Authority, Orange County Superior Court Case No. 30-2017-00944362-CU-BC-CJC

The City Council adjourned to Closed Session at 6:02 p.m.

1. CALL TO ORDER: 6:30 P.M.

Mayor Vargas called the Regular City Council meeting to order at 6:31 p.m.

2. ROLL CALL: Corona, Rabb, Rogers, Burke, Vargas

Present: Corona, Rabb, Rogers, Burke, Vargas

Staff Members Present: City Manager Belmudez, City Attorney Dunn, City Engineer Motlagh, Assistant City Manager Madkin, Assistant City Manager Miramontes, Police Captain Fellows, Director of Planning and Economic Development Williams, Director of Administrative Services Carlos, Director of Community Services and Housing Chavez, Director of

Finance Erwin, Director of Public Works Hartwill, Public Information Officer Vargo and City Clerk Salazar.

3. INVOCATION:

In the absence of Pastor Benjamin Briggs, the Invocation was given by Councilmember Rogers.

4. PLEDGE OF ALLEGIANCE:

Mayor Pro Tem Corona led the Pledge of Allegiance.

5. REPORT ON CLOSED SESSION ITEMS:

City Attorney Dunn reported that the City Council met in Closed Session to discuss the items listed on the agenda. He noted that an update was given, direction was given to staff, but no reportable action was taken.

6. PRESENTATIONS/ANNOUNCEMENTS:

A. Proclamation declaring California's Earned Income Tax Credit Month and Presentation by Blanca Lopez, Inland Region Campaign Director for the Golden State Opportunity Foundation.

Mayor Vargas took Item 6.C. before Item 6.B.

C. Certificate of Recognition presented to Mrs. Perris Vivian Rey.

B. Ebere Amadi-Azuogu, Youth Advisory Committee (YAC) Vice President, announced the openings for the YAC application period for the 2018-2019 year.

7. APPROVAL OF MINUTES:

A. Approved the Minutes of the Regular Joint Meeting held on January 9, 2018 of the City Council, Successor Agency to the Redevelopment Agency, Public Finance Authority, Public Utility Authority, Housing Authority, Perris Community Economic Development Corporation and the Perris Joint Powers Authority.

The Mayor called for a motion.

M/S/C: Moved by Malcolm Corona, seconded by David Starr Rabb to Approve the Minutes as presented.

AYES: Malcolm Corona, David Starr Rabb, Rita Rogers, Tonya Burke, Michael Vargas

NOES:

ABSENT:

ABSTAIN:

8. CONSENT CALENDAR:

Mayor Vargas requested that Item 8.F. be pulled due to the number of people who wished to speak on this item.

Councilmember Rogers requested that Item 8.A. be pulled for separate consideration.

Mayor Vargas called for Public Comment on the balance of the Consent Calendar. There was no Public Comment on the balance of the Consent Calendar.

- A. Adopted the second Reading of Ordinance Number 1358 amending Chapter 5.54 and 5.58 to permit commercial wholesale marijuana distribution and manufacturing, permit co-location of commercial marijuana uses, and clarify terms within the code for site selection.

The Second Reading of Ordinance Number 1358 is entitled:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, CALIFORNIA, AMENDING, CHAPTER 5.58 (COMMERCIAL MARIJUANA OPERATIONS REGULATORY PROGRAM) OF TITLE 5 OF THE PERRIS MUNICIPAL CODE TO PERMIT THE COMMERCIAL MARIJUANA USES OF (WHOLESALE) DISTRIBUTION AND MANUFACTURING TO CLARIFY THE DEFINITION OF "PLACES OF WORSHIP", TO PERMIT CO-LOCATION OF COMMERCIAL MARIJUANA USES AS ALLOWED BY STATE LAW, AND TO PROVIDE PROCEDURES FOR DISTRIBUTION AND MANUFACTURING COMMERCIAL MARIJUANA OPERATIONS TO ENTER INTO CITY COMMUNITY BENEFIT AGREEMENTS; AND AMENDING CHAPTER 5.54 (MEDICAL MARIJUANA DISPENSARY REGULATORY PROGRAM) OF TITLE 5 OF THE PERRIS MUNICIPAL CODE TO CLARIFY THE DEFINITION OF "PLACES OF WORSHIP"

**The following Councilmember spoke:
Rogers**

The Mayor called for Public Comment. There was no Public Comment.

The Mayor called for a motion.

M/S/C: Moved by Malcolm Corona, seconded by David Starr Rabb to Approve the second reading of Ordinance Number 1358 as presented.

AYES: Malcolm Corona, David Starr Rabb, Michael Vargas

NOES: Rita Rogers, Tonya Burke

ABSENT:

ABSTAIN:

- B. Adopted Resolution Numbers 5219, 5220 and 5221 regarding Initiation of Annual Proceedings for City's Maintenance Districts (FY 2018/2019). The Districts include residential tracts and

commercial developments throughout the City.

Resolution Number 5219 is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, INITIATING PROCEEDINGS TO LEVY AND COLLECT ASSESSMENTS FOR FISCAL YEAR 2018/2019 IN THE CITY OF PERRIS MAINTENANCE DISTRICT NUMBER 84-1 PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972; APPOINTING THE ENGINEER OF WORK, AND ORDERING PREPARATION OF AN ENGINEER'S REPORT

Resolution Number 5220 is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, INITIATING PROCEEDINGS TO LEVY AND COLLECT ASSESSMENTS FOR FISCAL YEAR 2018/2019 IN THE CITY OF PERRIS LANDSCAPE MAINTENANCE DISTRICT NUMBER 1 PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972; APPOINTING THE ENGINEER OF WORK, AND ORDERING PREPARATION OF AN ENGINEER'S REPORT

Resolution Number 5221 is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, INITIATING PROCEEDINGS TO LEVY AND COLLECT ASSESSMENTS FOR FISCAL YEAR 2018/2019 IN THE CITY OF PERRIS FLOOD CONTROL MAINTENANCE DISTRICT NUMBER 1 PURSUANT TO THE BENEFIT ASSESSMENT ACT OF 1982; APPOINTING THE ENGINEER OF WORK, AND ORDERING PREPARATION OF AN ENGINEER'S REPORT

- C. Approved the Settlement Agreements for the Acquisition of Fee Simple Interests for the Widening of Goetz Road.
- D. Approved the installation of Bollards at the Intersection of Evans Road and Limousin Street, along the northeast corner.
- E. Approved a one year extension of the Annual Contract with RK Engineering for traffic services.
- F. Approved installation of Audio Detection System at signalized intersections.

The Mayor called for Public Comment. The following people spoke at Public Comment:

Natasha Reyes

Feliciano Godoy

Bobbie Brown

**The following Councilmember spoke:
Rogers**

The Mayor called for a motion.

M/S/C: Moved by Tonya Burke, seconded by Malcolm Corona to Approve the item as presented, to include the recommendation made by Natasha Reyes regarding the 4th Eligibility Guideline and allowing the use of audible traffic signals in residential areas.

AYES: Malcolm Corona, David Starr Rabb, Rita Rogers,
Tonya Burke, Michael Vargas

NOES:

ABSENT:

ABSTAIN:

- G. Approved the Eastern Municipal Water Sewer Project at "G" Street and approved the temporary road and lane closure on "G" Street and Case Road.
- H. Adopted Resolution Number 5222 regarding Annexation of Parcels into CFD 2001-3 (North Perris Public Safety District) - Annexation No. 25. Project: Optimus Logistics Center II (Owner(s): Mader Incorporated and CPT Perris Industrial). APN: 314-160-001 and 314-160-002.

Resolution Number 5222 is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS ACTING AS THE LEGISLATIVE BODY OF COMMUNITY FACILITIES DISTRICT NO. 2001-3 (NORTH PERRIS PUBLIC SAFETY) OF THE CITY OF PERRIS DECLARING ITS INTENTION TO ANNEX CERTAIN TERRITORY THERETO (ANNEXATION NO. 25)

- I. Approved the Recognized Obligation Payment Schedule (ROPS) for the Successor Agency to the Redevelopment Agency of the City of Perris.
- J. Awarded contract for Construction Survey to the Thomsen Company, Inc. and awarded contract for Geotechnical Services to Inland Foundation Engineering, Inc. for Ethanac Road Widening Project.
- K. Approved Contract with Cho Design Associates, Inc. for Plan Check Services regarding Green Valley Bridge.
- L. Approved the invoice for emergency asphalt street repairs throughout the City due to the inclement weather on January 10, 2018.
- M. Approved Contract with Greer's Contracting and Concrete, Inc. to build animal control kennels at Animal Control Services located at 1093 Harley Knox Boulevard.

- N. Approved the purchase of one Animal Control Vehicle.
- O. Approved funding of Compressed Natural Gas (CNG) Vehicles to Alternative Fuel Vehicles using AQMD funding.
- P. Approved the DIF Credit/Reimbursement Agreement with Metz & A LLC for improvements related to the Villa Verona Apartments, located at the northeast corner of A Street and Metz Road.
- Q. Approved the Electrical Engineering Services Contract with Budlong & Associates, Inc. for the Linear Park Lighting Project (CIP #P-038).
- R. Received and Filed the City's Comprehensive Annual Financial Report, Public Utility Authority, Public Financing Authority, Joint Powers Authority, Community Economic Development Corporation (CEDC), and Housing Authority Financial Statements for 2016-17.
- S. Approved a two year Contract Service Agreement extension and approved Change Order #1 with Cho Design Associates, Inc., for the Nuevo Road Bridge Replacement Project (CIP #S076).
- T. Approved a City contribution of \$10,000 to be added to GoFundMe donations already received for the Perris Victims of Neglect Fund.
- U. Adopted Resolution Number 5223 approving an application submittal for Land and Water Conservation Fund Program funding through the California Department of Parks and Recreation for Foss Field Park Improvements.

Resolution Number 5223 is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, APPROVING THE APPLICATION FOR LAND AND WATER CONSERVATION FUND FOR THE FOSS FIELD PROJECT

- V. Approved the City of Perris monthly Check Register for December 2017.

The Mayor called for a motion.

M/S/C: Moved by David Starr Rabb, seconded by Tonya Burke to Approve the balance of the Consent Calendar with the exception of items 8.A. and 8.F.

AYES: Malcolm Corona, David Starr Rabb, Rita Rogers, Tonya Burke, Michael Vargas

NOES:

ABSENT:

ABSTAIN:

9. PUBLIC HEARINGS:

- A. Adopted Resolution Numbers 5224, 5225 and 5226 regarding

Annexation of Parcel Map 37055 to the City's Maintenance Districts. Parcel Map 37055 is a 23.13 acre industrial project. Interstate 215 is located along the project's west boundary; Harley Knox Boulevard is located along the north and easterly boundaries; and, Oleander Avenue is located along the project's south boundary. (Ownership of: Perris Gateway Investors, LLC).

Resolution Number 5224 is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ORDERING THE WORK IN CONNECTION WITH ANNEXATION OF PARCEL MAP 37055 TO CITY OF PERRIS MAINTENANCE DISTRICT NUMBER 84-1, GIVING FINAL APPROVAL OF THE ENGINEER'S REPORT, AND LEVYING THE ASSESSMENT FOR FISCAL YEAR 2017-2018

Resolution Number 5225 is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ORDERING THE WORK IN CONNECTION WITH ANNEXATION OF PARCEL MAP 37055 TO BENEFIT ZONE 130, CITY OF PERRIS LANDSCAPE MAINTENANCE DISTRICT NUMBER 1, GIVING FINAL APPROVAL OF THE ENGINEER'S REPORT, AND LEVYING THE ASSESSMENT FOR FISCAL YEAR 2017-2018

Resolution Number 5226 is entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ORDERING THE WORK IN CONNECTION WITH ANNEXATION OF PARCEL MAP 37055 TO BENEFIT ZONE 96, CITY OF PERRIS FLOOD CONTROL MAINTENANCE DISTRICT NUMBER 1, GIVING FINAL APPROVAL OF THE ENGINEER'S REPORT, AND LEVYING THE ASSESSMENT FOR FISCAL YEAR 2017-2018

This item was presented by Roxanne Shepherd, Willdan Financial.

Councilmember Rabb left the City Council Chambers at 7:13 p.m. and returned at 7:14 p.m.

The Mayor opened the Public Hearing at 7:17 p.m. There was no Public Comment.

The Mayor closed the Public Hearing at 7:17 p.m.

The Mayor asked City Clerk Salazar to open the ballots. City Clerk Salazar opened the ballots and reported that all three were marked YES.

The Mayor called for a motion.

M/S/C: Moved by Malcolm Corona, seconded by Rita Rogers to Approve Resolution Numbers 5224, 5225 and 5226 as presented.

AYES: Malcolm Corona, David Starr Rabb, Rita Rogers,
Tonya Burke, Michael Vargas

NOES:

ABSENT:

ABSTAIN:

- B. Introduced the First Reading of Ordinance Number 1360 regarding Amendment No. 1 to Park West Development Agreement for the Park West Specific Plan and Tentative Tract Map 31157. (Applicant: Palin Enterprises).

The First Reading of Ordinance Number 1360 is entitled:
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
PERRIS, CALIFORNIA, APPROVING AMENDMENT NO. 1 TO
THE DEVELOPMENT AGREEMENT WITH PARKWEST
ASSOCIATES AND EAST WEST PROPERTIES

This item was presented by Planning Manager Phung.

The following Councilmember's spoke:

Vargas
Corona
Rabb

The Mayor opened the Public Hearing at 7:31 p.m. There was no Public Comment.

The Mayor closed the Public Hearing at 7:31 p.m.

The Mayor called for a motion.

M/S/C: Moved by Tonya Burke, seconded by David Starr Rabb to Approve the First Reading of Ordinance Number 1360 as presented.

AYES: Malcolm Corona, David Starr Rabb, Rita Rogers,
Tonya Burke, Michael Vargas

NOES:

ABSENT:

ABSTAIN:

10. BUSINESS ITEMS:

- A. Approved an Agreement with Study.Com for the Perris Scholars Program for City Employees.

This item was introduced by Director of Administrative Services Carlos and turned over to Human Resources and Risk Supervisor Amozgar for presentation.

The following Councilmembers spoke:

Burke
Rabb

**Vargas
Corona
Rogers**

Councilmember Rogers left the City Council Chambers at 7:31 p.m. and returned at 7:34 p.m.

The Mayor called for Public Comment. There was no Public Comment.

The Mayor called for a motion.

M/S/C: Moved by Rita Rogers, seconded by Malcolm Corona to Approve the agreement with Study.com as presented.

AYES: Malcolm Corona, David Starr Rabb, Rita Rogers, Tonya Burke, Michael Vargas

NOES:

ABSENT:

ABSTAIN:

B. Presentation on the Perris Economic Development Strategy Plan and Schedule.

Director of Planning and Economic Development Williams gave the presentation on this item.

The following Councilmembers spoke:

**Corona
Vargas**

The Mayor called for Public Comment. There was no Public Comment.

C. Update for the construction of Line E along Ramona Expressway (Optimus/Rockefeller Group).

City Engineer Motlagh introduced this item and turned the presentation over to Marc Berg, Rockefeller Group.

The following Councilmembers spoke:

Burke

The Mayor called for Public Comment. The following person spoke at Public Comment:

Marwan Alabbasi

11. PUBLIC COMMENT/CITIZEN PARTICIPATION:

The following people spoke at Public Comment:

**Bill Lamb
Yolanda Williams**

Lovella Singer

12. COUNCIL COMMUNICATIONS:

The following Councilmembers spoke:

Rabb

Burke

Rogers

Corona

Vargas

13. CITY MANAGER'S REPORT:

14. ADJOURNMENT:

There being no further business the Mayor adjourned the Regular City Council meeting in honor of the 13 Turpin Family children and in memory of those that lost their lives in the City of Perris, including Elizabeth Lozano, Skydiver Aime-Jean St. Hilaire-Adam, of Calgary, Canada and Perris Deputy Norma Sandoval at 9:09 p.m.

Respectfully Submitted,

Nancy Salazar, City Clerk

CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: February 13, 2018

SUBJECT: Second Reading of Amendment No. 1 to ParkWest Development Agreement – Consideration of a request to adopt an amendment to the Development Agreement for the ParkWest Specific Plan and Tentative Tract Map 31157. Applicant: Palin Enterprises

REQUESTED ACTION: Adopt Second Reading of Ordinance No. 1360 to provide findings and approve Amendment No. 1 to the Development Agreement for the ParkWest Specific Plan and Tentative Tract Map 31157.




CONTACT: Dr. Grace Williams, Director of Planning and Economic Development 

BACKGROUND/DISCUSSION:

On January 30, 2018, the City Council voted unanimously to extend the life of the Development Agreement (DA) between the City of Perris and ParkWest Associates (aka ParkWest Specific Plan) by an additional ten years from the date that was previously approved by the City Council in early 2007. The ParkWest Specific Plan is located south of Nuevo Road and generally between Dunlap Road and the Perris Valley Storm Drain Channel, that will provide for development of 534 acres of vacant land into 1,533 single family dwellings and 474 townhome units, along with other facilities and open space amenities. As a provision for the extension, the developer will dedicate right of way and contribute a \$2,000,000 Public Benefit Fee which the City may use toward improvements to Nuevo Road and the Nuevo Crossing over the Perris Valley Storm Drain Channel. Upon adoption, Ordinance No. 1360 will become effective on March 16, 2018.

BUDGET (or FISCAL) IMPACT: Costs for staff preparation of this item are borne by the applicant.

Prepared by: Kenneth Phung, Planning Manager 

City Attorney: N/A
Assistant City Manager: Darren Madkin 
Assistant City Manager: Clara Miramontes 
Director of Finance: Jennifer Erwin 

Consent: February 13, 2018

Attachments:

1. Ordinance No. (Next in Order) to approved Amendment No. 1 to the ParkWest Specific Plan
2. Proposed Development Agreement
3. Approved 2007 Development Agreement
4. City Council submittal dated January 30, 2018

ORDINANCE NO. 1360

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
PERRIS, CALIFORNIA, APPROVING AMENDMENT NO. 1
TO THE DEVELOPMENT AGREEMENT WITH PARKWEST
ASSOCIATES AND EAST WEST PROPERTIES**

WHEREAS, the ParkWest Specific Plan and Tentative Tract Map 31157 are subject to a Development Agreement (“Agreement”) between the City of Perris and ParkWest Associates and East West Properties. The Agreement is dated March 28, 2007 and was recorded in the Official Records of Riverside County on April 5, 2007 as Document No. 2007-230751; and

WHEREAS, the Agreement provides that with respect to Phase I, the Agreement will expire on March 27, 2017, or ten (10) years after the Effective Date of the Agreement; and

WHEREAS, various market forces and permit requirements have prevented the developer from commencing construction prior to expiration of the Agreement. The developer has requested an extension to provide time for a possible amendment of the Specific Plan. Through an administrative process, the City previously granted short extensions to consider possible changes to the Specific Plan and Agreement. The proposed Amendment No. 1 (“Amendment”) would include a formal extension of the Agreement until January 27, 2028; and

WHEREAS, in exchange for the City granting the extension, the developer has agreed to dedicate right of way and contribute a \$2,000,000 Public Benefit Fee that may be used for improvements to Nuevo Road and the Nuevo Crossing over the Perris Valley Storm Channel; and

WHEREAS, Mitigated Negative Declaration (“MND”) No. 2220 was adopted for the Agreement pursuant to the California Environmental Quality Act (“CEQA”). The Amendment does not include changes to the Specific Plan nor does it trigger changes to the previously adopted MND No. 2220; as such, no further CEQA action is required for the proposed Amendment; and

WHEREAS, on January 3, 2018, the Planning Commission conducted a duly noticed public hearing on the proposed Amendment, considered testimony and materials in the staff report and accompanying documents, and recommended approval of the proposed Amendment to the City Council; and

WHEREAS, on January 30, 2018 the City Council conducted a duly noticed public hearing on the proposed Amendment, and considered testimony and materials in the staff report, accompanying documents and exhibits; and

WHEREAS, all legal prerequisites for the adoption of this Ordinance have occurred.

ATTACHMENT - 1

THE CITY COUNCIL OF THE CITY OF PERRIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Recitals Incorporated. The foregoing Recitals are incorporated herein as if set forth in full.

Section 2. CEQA. The City Council has reviewed and considered the information included in the staff report and accompanying attachments prior to taking action on the proposed Amendment and finds the City has complied with the California Environmental Quality Act, and this determination reflects the independent judgment of the City.

Section 3. Findings. Based on the information contained within the staff report and the accompanying attachments and exhibits, the City Council hereby finds that the provisions of the Amendment are consistent with City's General Plan and ParkWest Specific Plan, the requirements of Development Agreement Law and Perris Zoning Ordinance Chapter 19.54.

Section 3. Approval. The City Council hereby approves Amendment No. 1 to the Development Agreement. The Amendment is attached hereto as Exhibit "A."

Section 4. Effective Date. This Ordinance shall take effect 30 days after its adoption. The Amendment shall be effective upon the Effective Date of this Ordinance.

Section 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portions thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or portions thereof be declared invalid or unconstitutional.

Section 6. Certification. The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Perris.

Section 7. Execution of Amendment. The City Council hereby authorizes and directs the Mayor and City Clerk to execute the Amendment on behalf of the City upon adoption of this Ordinance.

ADOPTED, SIGNED and APPROVED this 13th day of February, 2018.

MAYOR, MICHAEL M. VARGAS

ATTEST:

City Clerk, Nancy Salazar

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF PERRIS)

I, Nancy Salazar, CITY CLERK OF THE CITY OF PERRIS, DO HEREBY CERTIFY that the foregoing Ordinance Number 1360 was duly adopted by the City Council of the City of Perris at a regular meeting of said Council on the 13th day of February, 2018, and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

City Clerk, Nancy Salazar

Exhibit "A"

Amendment No. 1 to Development Agreement

[Attached]

Exhibit A

RECORDING REQUESTED BY:

Clerk, City Council
City of Perris

WHEN RECORDED MAIL TO:

City of Perris
101 N. D Street
Perris, CA 92570
Attn: City Clerk

AMENDMENT NO. 1 TO

PARKWEST DEVELOPMENT AGREEMENT

This Amendment No. 1 to ParkWest Development Agreement (hereinafter "**Amendment**") is entered into as of the ____ day of January, 2018, by and between the CITY OF PERRIS, a municipal corporation (hereinafter "**City**"), and PARKWEST ASSOCIATES, a California general partnership ("**ParkWest**"), and EAST WEST PROPERTIES, a California general partnership ("**East West**"), (hereinafter collectively referred to as "**Developer**").

RECITALS

A. City and Developer are parties to that certain Development Agreement dated March 28, 2007 and recorded in the Official Records of Riverside County on April 5, 2007 as Document No. 2007-230751 (the "Agreement" or "Development Agreement"). The legal description of the real property subject to the Agreement and this Amendment is attached hereto as Exhibit "A".

B. Unless otherwise provided herein, capitalized terms used in this Amendment shall carry the same definitions as those set forth in the Agreement.

C. The Agreement provides that with respect to Phase I, the Development Agreement term will expire on March 27, 2017, the date that is ten (10) years after the Effective Date of the Development Agreement.

D. City acknowledges that following the Effective Date and during the Great Recession, Developer has spent significant effort and resources preparing for the development of the Project, including Developer's participation in the San Jacinto River Planning and Perris Valley Storm Drain Floodplain Study, preparing design plans and the final map for Tract No. 31157, and pursuing partnerships with other developers and merchant builders. However, market forces and certain permit requirements have prevented Developer from commencing with construction prior to the termination of the Agreement.

E. Section 9.10 of the Agreement provides that the Agreement term may be extended to allow for delays beyond the reasonable control of Developer. Section 9.19 of the Agreement

provides that City and Developer may, from time to time, execute operating memoranda to clarify matters relating to City's and Developer's performance under the Agreement.

F. City and Developer entered into an operating memorandum dated March 24, 2017, extending the term of the Agreement for six (6) months, to September 27, 2017 ("First Operating Memorandum").

G. Thereafter, City and Developer entered into a second operating memorandum dated September 20, 2017, extending the term of the Agreement for an additional four (4) months, to January 27, 2018 ("Second Operating Memorandum").

H. City and Developer have determined that these additional extensions of the term of the Development Agreement with respect to Phase I was warranted to allow the parties to negotiate the terms and conditions of an amendment to the Agreement.

I. After the execution of the Second Operating Memorandum, on or about September 27, 2017, Developer provided to City an Irrevocable Offer of Dedication ("IOD") for a certain portion of its real property frontage so that the City could implement certain improvements to Nuevo Road.

J. In an effort to provide time for the Developer and City to consider future amendments to the Specific Plan, City and Developer desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, obligations and covenants contained herein, City and Developer hereby agree as follows:

1. Recitals Incorporated. The foregoing Recitals are true and correct and are incorporated herein by reference.

2. Extension of Term of Development Agreement. The term of the Development Agreement with respect to Phase I (described in Section 2.5(a)), is hereby extended an additional ten (10) years, to January 27, 2028.

3. Nuevo Crossing Improvements. Pursuant to Section 3.4 of the Development Agreement, Developer is required to comply with the Nuevo Condition by constructing the Nuevo Crossing Improvements prior to the issuance of the Certificate of Occupancy for the 250th dwelling unit within Phase I. City has determined to construct the Nuevo Crossing Improvements as part of City's capital improvement program. City shall include the Project frontage in the City's project except as provided below. The City's project shall include the bridge, traffic lanes, curb and gutter. The City's project shall not include other improvements, such as medians, landscaping, parkways, sidewalks, street lights, utilities, or storm drains, all of which shall remain the responsibility of Developer. City's completion of the Nuevo Crossing Improvements shall satisfy the Nuevo Condition except for any work remaining the responsibility of Developer.

4. Additional Public Benefits. In consideration for the extension of the term of the Agreement and City's construction of the Nuevo Crossing Improvements, Developer has agreed to

provide a TWO MILLION DOLLAR (\$2,000,000.00) monetary contribution to the City (“Public Benefit Fee”), which may be used for any purpose. Within thirty (30) business days after the effective date of this Amendment, Developer shall provide a letter of credit to the City in a form approved by the City Attorney, in the amount of the Public Benefit Fee. City agrees and herein covenants not to draw on such letter of credit until (i) thirty (30) days prior to commencing construction of the Nuevo Crossing Improvements and (ii) written notice is first provided to Developer at least thirty-five (35) days prior to commencing construction of the Nuevo Crossing Improvements. In lieu of the letter of credit City may in its sole discretion agree to accept a lien on the Property, which lien shall secure the Public Benefit Fee, shall be senior to any other liens on the Property, and shall be in a form approved by the City Attorney.

If Developer pays the Public Benefit Fee prior to the City’s commencement of the Nuevo Crossing Improvements, whether through a cash payment or a City draw on the letter of credit, the City’s project shall include the Project frontage (except for medians, landscaping, parkways, sidewalks, street lights, utilities, and storm drains, all of which shall remain the responsibility of Developer).

If Developer does not pay the Public Benefit Fee prior to City’s commencement of the Nuevo Crossing Improvements, then at City’s discretion the City’s project shall not include the Project frontage, which shall remain Developer’s responsibility. However, if the Public Benefit Fee is secured by a lien, City shall retain the lien on the Property to secure the Public Benefit Fee.

Developer acknowledges it shall not receive credit or reimbursement for the Public Benefit Fee from any local or regional development impact fee program.

5. No Further Amendments. Except as expressly set forth herein, the provisions of the Development Agreement shall remain in full force and effect.

[Signatures on Following Page]

IN WITNESS WHEREOF, this Amendment has been executed by the parties on the date and year first above written.

CITY:

CITY OF PERRIS, a municipal corporation

By: _____
Richard Belmudez
City Manager, City of Perris

ATTEST:

By: _____
Nancy Salazar, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Eric L. Dunn, City Attorney

DEVELOPER:

ParkWest Associates, a California general partnership

By: _____
Mickey Palin, Partner

East West Properties, a California general partnership

By: _____
Mickey Palin, Partner

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

State of California)
County of _____)

On _____, 2018, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

Exhibit A

Legal Description

07-223

Recording Requested by And
When Recorded Return to:

City of Perris
101 North "D" Street
Perris, CA 92570
Attn: City Clerk

COPY of Document Recorded
04-05-07 07-230751
Has not been compared with original.
Original will be returned when
processing has been completed.
COUNTY Riverside

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code § 6103)

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is entered into as of 28th day of March, 2007, (hereinafter the "Effective Date") by and between the CITY OF PERRIS, a municipal corporation (hereinafter "City"), and PARKWEST ASSOCIATES, a California general partnership ("ParkWest"), and EAST WEST PROPERTIES, a California general partnership ("East West"), (hereinafter collectively referred to as "Developer").

RECITALS

A. California Government Code Sections 65864 *et seq.* ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. Developer is the owner of legal and/or equitable interests in certain real property legally described in Exhibit "A" attached hereto (the "Property"), and thus qualifies to enter into this Agreement in accordance with Development Agreement Law.

C. Developer and City agree that a development agreement should be approved and adopted for this Property in order to memorialize the property expectations of City and Developer as more particularly described herein.

D. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan and any applicable specific plans. This Agreement and the proposed "Project" (as hereinafter defined) will achieve a number of City objectives, including the orderly development of the Property; the providing of public benefits to the City and its residents through public improvements, including public parks, improvements to the Property, and street improvements in and around the Property.

E. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 1209 of the City Council have been duly and regularly taken.

ATTACHMENT - 3

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1. **Definitions.** This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in this Agreement. The defined terms include the following:

1.1.1 "Agreement" means this Development Agreement and all attachments and exhibits hereto.

1.1.2 "City" means the City of Perris, a municipal corporation.

1.1.3 "City Council" means the City Council of the City.

1.1.4 "Developer" means ParkWest and East West and each of their respective successors and assigns to all or any part of the Property.

1.1.5 "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and other facilities and improvements necessary or appropriate for the Project, and, subject to the provisions of Section 3.17.2 below, the maintenance, repair, or reconstruction of any building, structure, improvement, landscaping or facility after the construction and completion thereof on the Property.

1.1.6 "Development Approvals" means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals include, but are not limited to, general plan amendments, specific plans, site plans, tentative and final subdivision and parcel maps, design guidelines, variances, zoning designations, conditional use permits, grading, building, and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports and negative declarations, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals includes the City Council's adoption of a Mitigated Negative Declaration, dated October 24, 2006, in accordance with the requirements of the California Environmental Quality Act ("CEQA"), General Plan Amendment 03-0289, ParkWest Specific Plan Amendment No. 2 (Planning No. 03-0290) (the "Specific Plan"), and Tentative Tract Map 31157 (Planning No. 03-0019) ("TT 31157"), each of which has been approved by the City at or about the same time as the approval of this Agreement. The term Development Approvals shall also include any "Subsequent Development Approvals" (as hereinafter defined). Subject to the provisions of Section 3.2 below, the term Development Approvals does not include (i) rules, regulations, policies, and other enactments of general application within the City, or (ii) any matter where City has reserved authority under Section 3.9 below.

1.1.7 "Development Plan" means the proposed plan for Development of the Property pursuant to the Development Approvals. The Development Plan for the Property is reflected in the Specific Plan and contemplates the development of approximately 534 acres into a master planned community that will include approximately 1,533 single family detached homes and approximately 474 townhome units for a total of 2,027 dwelling units, 57 of which dwelling units represent an overlay of the "School Site" (as hereinafter defined), with an overall growth project density of approximately 3.8 dwelling units per acre. Other land uses contemplated for the Development Plan include approximately 35.6 acres reserved as regional detention basin/open space, 6.5 acres reserved as water treatment basins, 12.3 acres reserved as an elementary school site, 15 acres of landscaped paseos, 37.8 acres of park space and 90.2 acres that will be reserved for Western Riverside Multiple Species Habitat Conservation Plan ("MSHCP") conservation area. Phase I of the Development Plan ("Phase I") will be comprised of "Planning Areas" (as hereinafter defined) 1-5 and 19A, 19B and 20 of the Specific Plan, which will include approximately 163 acres and up to 586 dwelling units, the 12.3-acre elementary school site, a 5.0-acre neighborhood park (the "Neighborhood Park") and a 14.8-acre community park (the "Phase I Community Park"). If Planning Area 20 is purchased and used by the Ferris Elementary School District (the "School District") as an elementary school site (the "School Site"), Developer may locate 57 dwelling units within "Phase II" and/or "Phase III" (as those terms are hereinafter defined) of the Project in accordance with the provisions of Section 3.23 below. If Planning Area 20 is not purchased for use as an elementary school site, Planning Area 20 may alternatively be developed with medium density residential uses (7,000 square foot lots) with a maximum of 57 units. Phase II of the Development Plan will be comprised of Planning Areas 6-14, 17B, 17C and 18B of the Specific Plan, which will include approximately 221 acres, 967 dwelling units, 41.6 acres that will be reserved for MSHCP conservation area, 10.5 acres of regional detention basin/open space in Planning Area 17B and 6.1 acres of regional detention basin/open space in Planning Area 17C ("Phase II"). Phase III of the Development Plan will be comprised of approximately 139 acres, 474 dwelling units, an 18.0-acre community park, 48.6 acres reserved for MSCHP conservation area, 18.9 acres of regional detention basin/open space, a 3.3-acre water treatment basin in Planning Area 21A and a 3.2-acre water treatment basin in Planning Area 21B ("Phase III").

1.1.8 "Effective Date" means the date inserted into the preamble of this Agreement after this Agreement has been approved by ordinance of the City Council and signed by Developer and City.

1.1.9 "Existing Land Use Regulations" means the Land Use Regulations which have been adopted and are in effect on or before the Effective Date of this Agreement.

1.1.10 "Land Use Regulations" means all ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City's General Plan, any applicable specific plan, and Municipal Code and Zoning Code and including all development impact fees (except as otherwise provided in Section 3.7), which affect, govern or apply to the development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development of the Property, subject to the terms of this Agreement. Except as otherwise set forth in this Agreement, the term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupancies generally; taxes and assessments; regulations for the control and abatement of nuisances; uniform codes; utility easements;

encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; health and safety regulations; environmental regulations; or similar matters or any other matter reserved to the City pursuant to Section 3.9 below.

1.1.11 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender or each of their respective successors and assigns.

1.1.12 "Park Improvements" means the public park improvements to be constructed by Developer on the Property, as further described in the Specific Plan.

1.1.13 "Planning Area" means an individual Planning Area depicted in the Specific Plan.

1.1.14 "Production Residential Units" means the residential units constructed on the Property, but excluding model homes until such time when a model home receives a certificate of occupancy, is the subject of a recorded final map and the Developer has made the model home available for sale to the public, at which time each such model home shall be deemed a Production Residential Unit.

1.1.15 "Project" means the Development of the Property consistent with the Development Plan, the Specific Plan and this Agreement.

1.1.16 "Property" means the real property described in and shown in Exhibit "A."

1.1.17 "Public Improvements" means the improvements to be constructed on, adjacent, and related to the Property, as further described in the Development Plan and the Specific Plan and as may be required by City as a condition of a Subsequent Development Approval relating to Phase II and/or Phase III of the Project.

1.1.18 "Reservation of Authority" means the rights and authority excepted from the assurances and rights provided to Developer under this Agreement and reserved to City under Section 3.9 of this Agreement.

1.1.19 "Subsequent Development Approvals" means all Development Approvals issued subsequent to the Effective Date in connection with Development of the Property.

1.1.20 "Subsequent Land Use Regulations" means any Land Use Regulations effective after the Effective Date of this Agreement, which govern development and use of the Property.

1.1.21 "Term" shall mean the period of time from the Effective Date until the termination of this Agreement as provided in Section 2.5, unless earlier terminated as provided in this Agreement.

1.2. Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit "A" (Legal Description); Exhibit "B" (Assignment and Assumption Agreement), Exhibit "C" (Nuevo Crossing Improvements), Exhibit "D" (San Jacinto Improvements),

and Exhibit "E" (Evans Road Improvements). Exhibits "C," "D," and "E" are conceptual plans; the final design of the improvements may vary.

2. GENERAL PROVISIONS.

2.1. Binding Effect of Agreement. From and following the Effective Date, actions by the City and Developer with respect to the Development of the Property, including actions by the City on applications for Subsequent Development Approvals affecting the Property, shall be subject to the terms and provisions of this Agreement.

2.2. Ownership of Property. City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Property and thus Developer is qualified to enter into and be a party to this Agreement under the Development Agreement Law.

2.3. Transfer Restrictions. Prior to the expiration of this Agreement, Developer shall not transfer this Agreement or any of Developer's rights or obligations hereunder, or any interest in the Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, which approval shall be made on a timely basis and shall not be unreasonably conditioned or withheld, and if so purported to be transferred without such approval, the same shall be null and void. In considering whether it will grant approval to any transfer by Developer of any interest in the Property, City shall consider factors such as the following ("Transfer Factors"): (i) whether the completion or implementation of the Project is or may be jeopardized; (ii) the financial strength and capability of the proposed transferee to perform Developer's obligations hereunder, and/or (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In the absence of specific written approval by City, the approval of which shall not be unreasonably withheld, delayed or conditioned by City, no transfer by Developer of all or any portion of Developer's interest in the Property or this Agreement (including without limitation an assignment or transfer not requiring City's approval hereunder) shall be deemed to relieve it or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Property which is so transferred. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in the form attached hereto as Exhibit "B." City shall approve or disapprove of a proposed transferee within thirty (30) "business days" (as hereinafter defined) of Developer's request for approval of a transferee and submission by Developer to City of information relating to the Transfer Factors. If City disapproves of a proposed transferee, City shall provide Developer with the reasons for such disapproval. Failure of City to approve or disapprove a proposed transfer within thirty (30) "business days" of City's receipt of Developer's request (including the Transfer Factor information) shall be deemed City's approval of the proposed transferee. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, the City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferee, and any

amendment to this Agreement between the City and a transferee shall only affect the portion of the Property owned by such transferee.

The foregoing prohibition shall not apply to any of the following:

(a) Any mortgage, deed of trust, or other form of conveyance for financing, but Developer shall notify City of any such mortgage, deed of trust, or other form of conveyance for financing pertaining to the Property.

(b) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above.

(c) The granting of easements to any appropriate public agency or utility or permits to facilitate the development of the Property.

(d) A sale or transfer in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(e) A sale or transfer of 49% or more of ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the trustor or transfers to a corporation, partnership or limited liability company or partnership in which the immediate family members or shareholders of the transferor have a controlling majority interest of 51% or more.

(f) A sale of a completed dwelling unit to an individual purchaser.

(g) A transfer to a "Developer Affiliate." The term "Developer Affiliate" shall mean any of the following:

(i) Any corporation in which either ParkWest and/or East West owns and controls, directly or indirectly, fifty-one percent (51%) or more of the common stock (a "Developer Controlled Corporation"); and

(ii) Any general or limited partnership, or limited liability company or partnership in which either ParkWest and/or East West, or a Developer Controlled Corporation, is the managing general partner or member or, if not the managing general partner or member, a partner or member having 51% or more ownership interest.

(h) A transfer of forty-nine percent (49%) or less of a partnership interest in ParkWest and/or East West.

2.4. Transfer to Public Entity. Transfer of any portion of the Property to a public entity, including but not limited to a school district, whether such transfer is voluntary or involuntary, shall not relieve Developer of its obligation to construct the Park Improvements and the Public Improvements required by this Agreement. Subject to the provisions of Section 2.3 above, Developer specifically acknowledges and agrees to construct the Park Improvements and Public Improvements irrespective of such a transfer.

2.5. Term of Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the following dates:

(a) With respect to Phase I, the date that is ten (10) years from and after the Effective Date; and

(b) With respect to Phases II and III, the earlier of (i) twenty (20) years from and after the Effective Date or (ii) ten (10) years following Developer's submittal of an application for approval of a tentative tract map for any portion of Phase II or III of the Project.

3. DEVELOPMENT OF THE PROPERTY.

3.1. Rights to Develop. Subject to and during the Term of this Agreement, Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan, the Development Approvals, the Existing Land Use Regulations, and this Agreement.

3.2. Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be as set forth in the Existing Land Use Regulations which were in full force and effect as of the Effective Date of this Agreement. Pursuant to Government Code Section 66452.6 and 65863.9, the term of any tentative subdivision or parcel map, including TT 31157, for the Property or any portion thereof and the term of each of the Development Approvals shall automatically be extended for the term of this Agreement (as applicable for each Phase, e.g., TT 31157 shall be extended for a maximum of ten (10) years). Any tentative subdivision map prepared for the Project shall comply with the provisions of California Government Code Section 66473.7.

3.3. Timing of Development; Scope of Development. Except as set forth herein, Developer shall be under no obligation to commence or complete the Development of the Property in any particular order or time frame, or at all. The purpose of this Agreement is to set forth the applicable rules and regulations applicable to the Development of the Property or any portion thereof. The Property shall be developed with single family residential homes, townhomes and related improvements, in substantial conformance with the Development Approvals as conditioned and approved by the City. Notwithstanding the foregoing, Developer shall commence and complete the Park Improvements in accordance with the provisions of Section 3.17.3 below (relating to the Phase I Community Park) and Section 3.17.4 (relating to the Neighborhood Park).

3.4. Construction of Nuevo Crossing Improvements. Pursuant to Engineering Condition of Approval No. 26 for TT 31157 (the "Nuevo Condition"), Developer is required to construct a crossing over the Perris Valley Storm Drain at Nuevo Road sufficient to withstand a 100-year storm event without flooding. The crossing over the Perris Valley Storm Drain will generally consist of the improvements described in Exhibit "C" attached hereto (the "Nuevo Crossing Improvements"). The Nuevo Crossing Improvements do not include any improvements to Nuevo Road that are otherwise required for the Project if the Nuevo Crossing is not completed. Other developers in the vicinity of the Project may also be conditioned (either by the City or by the County of Riverside (the "County")) to construct all or part of the Nuevo Crossing Improvements. Unless

such other developers have already completed the Nuevo Crossing Improvements, the Nuevo Crossing Improvements must be completed prior to the issuance of the Certificate of Occupancy for the 250th dwelling unit within Phase I of the Project.

On or before the Effective Date of this Agreement, Developer shall initiate the process for obtaining any permits, approvals and other authorizations to construct the Nuevo Crossing Improvements that may be required by any Federal, State, or local public agency with jurisdiction, including, without limitation, a 404 Permit from the Army Corps of Engineers ("Jurisdictional Permits"), and shall diligently and in good faith pursue each of the Jurisdictional Permits through issuance. Developer shall also diligently and in good faith pursue the design and approval of the Nuevo Crossing Improvements. Subject to the provisions of Government Code Section 66462.5, Developer shall be responsible for acquiring any right of way necessary for the Nuevo Crossing Improvements.

Upon completion of all of the following conditions ("Pre-Construction Conditions"), City agrees to assume control of and construct the Nuevo Crossing Improvements and, if applicable, the "Evans Road Improvements" (as hereinafter defined) as City project(s), at Developer's cost: (i) all Jurisdictional Permits have been obtained; (ii) the design has been completed and approved; (iii) all necessary right of way has been obtained; (iv) the bid documents have been prepared; (v) sufficient "Funding Sources" (as hereinafter defined), as reasonably determined by City and Developer, are available to fund the Nuevo Crossing Improvements and, if applicable, the Evans Road Improvements; and (vi) all other actions required before a public project can be bid have been completed.

Prior to the issuance of the Certificate of Occupancy for the 100th dwelling unit within Phase I, and as reasonably requested by City at other times thereafter, Developer shall submit written documentation to the City Engineer and City Manager regarding the status of the Nuevo Crossing Improvements and the required Jurisdictional Permits, and, if applicable, the projected schedule for completing the "San Jacinto Improvements" (as hereinafter defined) or the Evans Road Improvements.

If the Nuevo Crossing Improvements have not been completed prior to the issuance of the Certificate of Occupancy for the 250th dwelling unit within Phase I, and if such failure to complete the Nuevo Crossing Improvements is due solely to the inability of Developer to obtain the required Jurisdictional Permits through no fault of Developer, then Developer shall be entitled to the issuance of additional Certificates of Occupancy for the remaining dwelling units in Phase I (through completion of Phase I); provided, however, City shall not issue such additional Certificates of Occupancy until Developer has completed either (a) the Nuevo Crossing Improvements, (b) the "San Jacinto Improvements" (as hereinafter defined) or (c) the Evans Road Improvements. The San Jacinto Improvements shall be designed to facilitate traffic during five-year storm events and shall generally consist of the improvements described in Exhibit "D" attached hereto (the "San Jacinto Improvements"). The Evans Road Improvements shall be designed to facilitate traffic during 100-year storm events and shall generally consist of the improvements described in Exhibit "E" attached hereto (the "Evans Road Improvements"). The final design of the Nuevo Crossing Improvements, the San Jacinto Improvements and/or the Evans Road Improvements shall be subject to the approval of the City Engineer and the Riverside County Flood Control District.

If neither the Nuevo Crossing Improvements, the San Jacinto Improvements nor the Evans Road Improvements have been completed prior to the issuance of the Certificate of

Occupancy for the 250th dwelling unit within Phase I, but a construction contract for the Nuevo Crossing Improvements has been formally awarded following the public bidding process, then Developer shall be entitled to the issuance of Certificates of Occupancy for up to fifty (50) additional dwelling units (i.e., a total of three hundred (300)). No additional Certificates of Occupancy shall be issued (beyond three hundred (300)) until either the Nuevo Crossing Improvements, the San Jacinto Improvements or the Evans Road Improvements are completed.

If the Nuevo Crossing Improvements have not been completed prior to the issuance of the Certificate of Occupancy for the 250th dwelling unit within Phase I but the Evans Road Improvements have been completed, then Developer shall be entitled to the issuance of additional Certificates of Occupancy for the remaining dwelling units in Phase I.

In any event, the Nuevo Crossing Improvements must be completed prior to the issuance of the Certificate of Occupancy for the 1st dwelling unit in Phase II of the Project; provided, however, if the Pre-Construction Conditions for the Nuevo Crossing Improvements have been satisfied and the Evans Road Improvements have been completed, then Developer shall be entitled to the issuance of Certificates of Occupancy for dwelling units in Phase II of the Project. The Nuevo Crossing Improvements, the San Jacinto Improvements and/or the Evans Road Improvements shall be deemed "completed" for the purposes of this Section 3.4 when they are actually open for use by the public.

With respect to the financing of the Nuevo Crossing Improvements and the Evans Road Improvements, City and Developer anticipate that sufficient funding will be available from a combination of sources including, without limitation, "TUMF" fees (as hereinafter defined), Area Drainage Plan ("ADP") fees, the "Development Impact Fees" (as hereinafter defined), a Road and Bridge Benefit District, a community facilities district, and/or contributions from other developers ("Funding Sources"). Such financing may include cash disbursements, fee credits and/or reimbursements. Developer and City agree to cooperate on one or more financing programs designed to ensure the timely construction of the Nuevo Crossing Improvements (subject to Developer obtaining the Jurisdictional Permits) and the Evans Road Improvements. However, City makes no representation or warranty that the Funding Sources will be sufficient to finance the Nuevo Crossing Improvements or the Evans Road Improvements, and Developer acknowledges that the unavailability of Funding Sources shall not relieve Developer of its obligation to satisfy the Nuevo Condition as described in this Section 3.4.

3.5. Moratorium. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

3.6. Development Plan; Subsequent Development Approvals. The Development Plan for the Project will require the processing of Subsequent Development Approvals. Subject to the provisions of Section 3.19 below, the City shall accept for processing, review and action all

applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters in accordance with the Existing Land Use Regulations. The Parties acknowledge that subject to the Existing Land Use Regulations, under no circumstances shall City be obligated in any manner to approve any Subsequent Development Approval, or to approve any Subsequent Development Approval with or without any particular condition, except that (i) the Subsequent Development Approvals shall be generally consistent with the Specific Plan, the Park Improvements and Public Improvements and (ii) the transfer of density within the Project shall be subject to the density transfer provisions and restrictions of the Specific Plan. Notwithstanding the provisions of the preceding sentence, to the extent an application for a Subsequent Development Approval is consistent with the Specific Plan, City shall not unreasonably withhold, delay or condition its approval of such application. However, unless otherwise requested by Developer, City shall not amend or rescind any Development Approval, including any Subsequent Development Approval, respecting the Property after such approvals have been granted by the City. Processing of Subsequent Development Approvals or changes in or amendments to the Development Approvals or Development Plan made pursuant to Developer's application shall not require an amendment to this Agreement.

3.7. Development Impact Fees. Notwithstanding anything to the contrary in this Agreement, all requisite development impact fees ("Development Impact Fees") shall be those existing on the date the applicable Development Approvals or Subsequent Development Approvals are granted. Development impact fees shall be paid at such time as payment for such fees is due and payable in accordance with the Land Use Regulations in effect at that time, for the portion of the Property to which such fees apply; provided, however, with respect to Phase I, except as otherwise provided in this Agreement, and specifically excluding fees set by entities not controlled by City that are collected by City, City shall only charge and impose those fees and exactions, including, without limitation, dedications and any other fee or tax (including excise, construction or any other tax) relating to development or the privilege of developing within Phase I, which are in effect as of the Effective Date.

3.8. Fee Credits. Developer shall be entitled to the following fee credits:

3.8.1 Parks. The installation of park improvements required by the Specific Plan, TT 31157 and this Agreement, including, without limitation, improvements to the Neighborhood Park, the Phase I Community Park and the Phase III Community Park, and the offer of dedication of park lands in accordance with the provisions of the Specific Plan, TT 31157 and this Agreement, shall constitute full and complete compliance with and satisfaction of the City's park requirements and the park component of the Development Impact Fees for the Project.

3.8.2 TUMF. City and Developer hereby acknowledge that some Public Improvements may be eligible for TUMF credits or reimbursements; therefore, City and Developer agree to work cooperatively with the Western Riverside County of Governments ("WRCOG") to determine and achieve TUMF credits and/or reimbursements; provided, however, that Developer acknowledges such credits and/or reimbursements may be subject to the approval of WRCOG.

3.8.3 MSHCP. City and Developer hereby acknowledge that certain areas of the Project may, from time to time, be eligible for MSHCP funding for land acquisition, fee credits or reimbursements; therefore, City and Developer agree to work cooperatively to determine and achieve MSHCP funding for land acquisition, fee credits and/or reimbursements for the Project in accordance with the "HANS" (as hereinafter defined) and as described in Section 6.1.1 of the MSHCP; provided,

however, that Developer acknowledges such funding for land acquisition, credits and/or reimbursements may be subject to the approval of the Western Riverside County MSHCP Regional Conservation Authority ("RCA").

3.8.4 River Project. As the lead agency for the "River Project" (as hereinafter defined), the City hereby agrees, in structuring financing for the River Project, including the provision of credits for contributions made and expenditures incurred (before and after the Effective Date) by developers within the River Project, to use reasonable efforts to ensure that Developer receives full credit for any costs and/or fees paid by Developer to design, entitle, develop and construct the River Project; provided, however, that (a) City does not represent or warrant that such credits will be made or available, and (b) in no event shall City be liable to Developer for any unreimbursed costs related to the River Project.

3.8.5 Development Impact Fees. In addition to the park fee credits described in Section 3.8.1 above, Developer shall also be entitled to any credits and/or reimbursements that are available in connection with the Development Impact Fees pursuant to the credit/reimbursement policies adopted by the City.

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3.8.6 Line "Q" – Area Drainage Plan Fees. City and Developer have determined that Phase I of the Project will be responsible for approximately Three Hundred Thousand Dollars (\$300,000.00) in ADP fees (the "Phase I ADP Fees"). Prior to the execution of this Agreement, City, Developer and other developers have entered into a Memorandum of Understanding dated June 27, 2006 (the "Line Q MOU") whereby the ultimate Line "Q" storm drain facility ("Line 'Q'") will be extended from its current terminus point and connected to the Perris Valley Storm Drain . The extension of Line "Q" will be financed through various sources, including, without limitation, contributions from developers. The extension of Line "Q" will be constructed by the City. In accordance with the provisions of the Line Q MOU, Developer hereby agrees that, following (a) City's approval of the Specific Plan, TT 31157 and this Agreement and (b) the expiration of all statutes of limitations for challenging the Specific Plan, TT 31157 and this Agreement, without any challenge having been filed or, if a challenge has been filed against the Specific Plan, TT 31157 or this Agreement, such challenge has been resolved, Developer shall immediately thereafter advance the City the full amount of the Phase I ADP Fees and Developer shall receive credit for the payment of the Phase I ADP Fees. Upon payment of the Phase I ADP Fees and the completion of Line "Q" by the City, Developer shall be deemed to have satisfied the second bullet of Engineering Condition No. 1.g (requiring the elimination of nuisance runoff at the intersection of Evans Road and Nuevo Avenue) and Engineering Condition No. 1.n (requiring the completion of Line "Q"). In addition, Developer shall be deemed to have satisfied all obligations relating, directly or indirectly, to the construction of Line "Q" and shall have no further obligations relating, directly or indirectly, to the construction of Line "Q", including, without limitation, any relocation of Line "Q" that might be required in connection with the construction of the Nuevo Crossing Improvements. For the purposes of this Section, Line "Q" does not include any connections, pipes, catch basins or other improvements that may be required to convey water from the Project to Line "Q"; such improvements shall be Developer's responsibility.

3.8.7 Ramona Mobility Fee. Developer hereby acknowledges that the City is currently participating in discussions regarding the possible adoption of a fee relating to the expansion of the Ramona Expressway and other streets in the vicinity of the Project (the "Ramona Mobility Fee"). Developer hereby acknowledges that if a Ramona Mobility Fee is adopted by the City, Developer shall be responsible for the payment of the Ramona Mobility Fee as such fee may be

applicable to any units in the Project for which building permits have not yet been issued. To the extent building permits have been issued prior to the Ramona Mobility Fee going into effect, no units for which such permits have been issued shall be obligated to pay the Ramona Mobility Fee. Notwithstanding the foregoing, if Developer completes the Nuevo Crossing Improvements and/or the Evans Road Improvements, then Developer shall not be required to pay the Ramona Mobility Fee for the units in Phase I.

3.9. Reservation of Authority.

3.9.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development of the Property:

(a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, and also adopted by City as Subsequent Land Use Regulations, if applicable City-wide.

(d) Regulations that may be in conflict with the Development Plan, any Development Approval, or this Agreement, if City determines that the failure of the City to enforce any such regulation would place the residents of the Project or the residents of the City, or both, in a condition dangerous to their health or safety, or both.

(e) Regulations that are not in conflict with the Development Plan or this Agreement.

(f) Regulations that are in conflict with the Development Plan or this Agreement, provided Developer has given written consent to the application of such regulations to Development of the Property.

(g) Federal and State laws and regulations which City is required to enforce against the Property or the Development of the Property.

3.9.2 Future Discretion of City. Subject to the provisions of Sections 3.6 above and 3.19 below, this Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Existing Land Use Regulations.

3.9.3 Modification or Suspension by Federal or State Laws. In the event that Federal or State laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. Where any Federal or State laws or regulations or case law allows City to exercise any discretion or take any act with respect to that law, City shall (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

3.10. Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other public agencies.

3.11. Park Improvements and Public Improvements. Developer shall construct the Park Improvements and, except as otherwise provided in this Agreement, the Public Improvements. In addition, and notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals (relating to Phase II and/or Phase III of the Project) to require Developer to dedicate necessary land and/or to construct (or contribute a fair share of funding the construction of) Public Improvements ("Exactions") at such time as City shall determine subject to the following conditions:

3.11.1 The dedication or construction must be to alleviate an impact caused by the Project or be of benefit to the Project.

3.11.2 The timing of the Exaction should be reasonably related to the phasing of the development of the Project and subject to the provisions of Section 3.13 below, the Public Improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of the public.

3.11.3 When Developer is required by this Agreement and/or the Development Plan to construct any public works facilities which will be dedicated to the City or any other public agency upon completion, Developer shall perform such work to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work.

3.12. Fees, Taxes and Assessments. During the term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Plan. This Agreement shall not prohibit the application of fees, taxes or assessments as follows:

3.12.1 Developer shall be obligated to pay those fees, taxes or City assessments which exist as the Effective Date or are included in the Development Plan;

3.12.2 Developer shall be obligated to pay any taxes, and increases thereof, imposed on a City-wide basis such as business license taxes, sales or use taxes, utility taxes, and public safety, e.g., police and fire, taxes;

3.12.3 Developer shall be obligated to pay any future assessments imposed on an area-wide basis (such as landscape and lighting assessments and community services assessments), provided that Developer reserves its right to protest the establishment or amount of any such assessments through the method prescribed by law;

3.12.4 Developer shall be obligated to pay any fees imposed pursuant to any assessment district established within or of benefit to the Project otherwise proposed or consented to by Developer;

3.12.5 So long as such fees do not duplicate other fees Developer is required to pay to the City or to other public agencies and subject to the provisions of Section 3.8 above, Developer shall be obligated to pay any fees that may be imposed in connection with the implementation of the Transportation Uniform Mitigation Fee ("TUMF") program, the MSHCP, and the River Project; and

3.12.6 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code.

3.13. **Infrastructure Phasing Flexibility.** Notwithstanding the provisions of any phasing requirements in the Development Approvals, Developer and City recognize that economic and market conditions may necessitate changing the order in which the infrastructure is constructed. Therefore, City and Developer hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Development Approvals, Developer and City shall collaborate and City agrees not to unreasonably withhold or condition its approval of any modification requested by Developer so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed. The provisions of this Section 3.13 shall not affect the provisions of this Agreement relating to Developer's obligation to construct the Park Improvements or Developer's obligations relating to the Nuevo Crossing Improvements.

3.14. **Development Agreement/Development Approvals.** In the event of any inconsistency between any Existing Land Use Regulation and a Development Approval, the provisions of the Development Approval shall control. In the event of any inconsistency between any Existing Land Use Regulation, Development Approval and this Agreement, the provisions of this Agreement shall control.

3.15. **Reimbursement.** Nothing in this Agreement precludes City and Developer from entering into any reimbursement agreements for the portion (if any) of the cost of any dedications, public facilities and/or infrastructure that City may require as conditions of the Development Approvals, to the extent that they are in excess of those reasonably necessary to mitigate the impacts of the Project.

3.16. **Public Financing of Improvements.** In order to establish the method to finance the fees and exactions required and/or permitted by the provisions of Section 3.7 of this Agreement, the Public Improvements, and/or other infrastructure improvements, fees and exactions as may be required by or as may be set forth in a joint community facilities agreement with any other public

agency, Developer shall have the right to request City to initiate and to use best efforts to conclude (in light of public hearing and protest rights) appropriate proceedings for the formation of assessment, or other financing districts (including without limitation a community facilities district) under applicable laws and ordinances. A community facilities district shall be authorized to levy a special tax on the Property, or any portion thereof, to finance public improvements and facilities and development impact and school facilities mitigation fees in accordance with the policies adopted and amended by City from time to time. Developer shall also have the right to request City to utilize any other financing method then available under ordinances or laws; provided that in connection with any such request relating to any other financing method, City shall give due consideration to utilization of the requested other financing method, taking into account the requirements of applicable ordinances and laws, to achieve the intent of the parties hereunder. City agrees not to unreasonably withhold, delay or condition its approval of any such financing methods so requested by Developer, provided that such financing methods are consistent with the City policies then in effect. After such good faith consideration as aforesaid, City agrees to use its best efforts to take all actions as may be necessary or appropriate in order to implement such request, and Developer shall cooperate in connection therewith.

3.17. Design/Development Standards. Notwithstanding the provisions of the Existing Land Use Regulations, the following design/development standards shall apply to the Project:

3.17.1 Easements. Easements dedicated for pedestrian use shall be permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities so long as they do not unreasonably interfere with pedestrian use and are approved by the City Engineer.

3.17.2 Maintenance Obligations. City shall require Developer to maintain parks, parkways, medians, detention basins, street lights and similar types of improvements for a period of up to one hundred and eighty (180) days. Areas containing these improvements shall be annexed into an appropriate maintenance district prior to recordation of the applicable final map. Developer's maintenance period shall commence when the improvements have passed inspection by the appropriate City department and shall terminate one hundred and eighty (180) days following the commencement of Developer's maintenance for the improvement.

3.17.3 Development of the Phase I Community Park. The Phase I Community Park (in Planning Area 19B) was originally designed in the Specific Plan to be located and constructed as part of Phase II of the Project; however, Developer, as part of the consideration for this Agreement, agreed to relocate the Phase I Community Park into Phase I. Developer therefore agrees that, subject to the "Community Park Conditions" (as hereinafter defined), the Phase I Community Park shall be completed as part of Phase I of the Project, shall include the improvements described in the Specific Plan and shall be completed by Developer prior to the issuance of the Certificate of Occupancy for the 100th dwelling unit within Phase I of the Project. The City hereby acknowledges that, except for restroom facilities, the Phase I Community Park will, when completed, be located in a floodway. The restroom facilities described in the Specific Plan will be located above the floodway.

The timing for commencement and completion of the Phase I Community Park shall be subject only to the following "Community Park Conditions": (a) City issuing a grading permit for the Phase I Community Park without requiring a Conditional Letter of Map Revision (CLOMR) or Letter of Map Revision (LOMR), (b) Developer having received any permits,

including, without limitation, grading and building permits, that may be required by the City, the Riverside County Flood Control and Water Conservation District (the "Flood Control District") or any other Federal, State or local public agency to develop the Phase I Community Park; (c) Developer having received the CLOMR that allows the construction of the Park Improvements; and (d) utilities being available to serve the Phase I Community Park.

3.17.4 Timing of Development of Neighborhood Park. Developer hereby agrees that the Neighborhood Park (in Planning Area 19A) shall be completed on or before the issuance of the 100th Certificate of Occupancy for a dwelling unit within Phase I of the Project.

3.17.5 MSHCP Consistency and Impact on Project of the River Project. City and Developer have been working together and with other parties, including the Flood Control District and the County and several private parties, on the design and development of the San Jacinto River and Perris Valley Storm Drain River Plan Project (the "River Project"). In addition, City and Developer are subject to the MSHCP and Habitat Acquisition and Negotiation Strategy ("HANS") Process. In connection with the design and development of Phase I of the Project and the Phase I Community Park, the City and Developer have processed a HANS application through the City and Joint Project Review by the RCA in which the Project was determined to be consistent with the MSHCP. City and Developer hereby acknowledge that the current design of the Project contemplates a set-aside of lands in Planning Areas 18A and 18B and Planning Areas 17A-C in the Specific Plan, which set-asides are designed to meet the MSHCP requirements, including cell criteria interpretations, as required by the City MSHCP Interim Development Guidelines (the "Interim Development Guidelines"). The parties hereby acknowledge that Phases II and III of the Project could be affected by various scenarios (as contemplated in the Interim Development Guidelines and based upon the River Project as it is ultimately adopted), which could result in a revised Land Use Plan under the Specific Plan, changes to the developable residential acreage in the Specific Plan and/or reduced density of the Project from the density currently contemplated by the Specific Plan.

Developer and City therefore agree that if the developable residential acres and/or density currently contemplated by the Specific Plan is modified as a result of the Project being redesigned, directly or indirectly, as a result of the final design of the River Project, City and Developer shall use all reasonable efforts to relocate the lost density and/or developable residential acreage into other Specific Plan Planning Areas, including, without limitation, any MSHCP Conservation Areas (Planning Areas 18A and 18B) and any regional detention basin open space areas that are not required to be dedicated as MSHCP Conservation Areas or as part of the River Project.

If density is not able to be relocated so as to maintain the number (and value) of units currently contemplated by the Specific Plan, or if the developable residential acreage is reduced, the City shall cooperate with Developer and shall use all reasonable efforts to assure Developer that it is compensated by the RCA (i) for the fair market value of lost or relocated density and/or (ii) for lands set aside for the MSHCP (beyond the lands currently set aside for the MSHCP under the Specific Plan). Notwithstanding the foregoing sentence, in no event shall City have any liability to Developer arising out of Project or Specific Plan revisions that result from the River Project.

In addition to the foregoing, City and Developer hereby agree that any revisions to the Specific Plan that are required, directly or indirectly, as a result of the approval of the River Project shall not require an amendment to the Specific Plan or this Agreement but may be

approved administratively by the City Manager with the consent of the City Council without the formal hearing procedures normally required for a Specific Plan.

3.17.6 HANS/MSHCP Property Dedication. City hereby acknowledges that the RCA has determined that no HANS/MSHCP property including, without limitation, Planning Areas 17A-C and Planning Areas 18A and 18B, will be required to be dedicated in connection with Developer's development of Phase I of the Project or Developer's development, completion and dedication of the Phase I Community Park.

3.17.7 Acceptance of Completed Infrastructure Improvements. Upon written notice by Developer that specific infrastructure improvements have been completed, the City shall inspect such improvements within ten (10) business days and shall advise Developer of any deficiencies in such improvements, based on previously approved improvement plans. Such process shall continue until any deficiencies noted by City have been corrected and such improvements have been accepted by City whereupon, in accordance with the City's normal procedures, ninety percent (90%) of any improvement bonds shall be released. The remaining ten percent (10%) of any improvement bonds shall be retained for one (1) year to protect the City against defective work or materials or necessary maintenance.

3.17.8 Administrative Development Plan Reviews. City and Developer hereby agree that any Administrative Development Plan Review ("ADPR") required by the Existing Land Use Regulations for any portion of the Project, including, without limitation, any of the Park Improvements, shall be reviewed administratively by the City; provided, however, that City shall retain its discretionary authority over the ADPR, including but not limited to the right to refer ADPR decisions to the Planning Commission and/or City Council.

3.17.9 Interchange Signals. Engineering Condition of Approval No. 22 requires Developer, among other things, to install traffic signals at the I-215 and Fourth Street Interchange (the "Interchange Signals") prior to the issuance of any Certificates of Occupancy for the Project. The design of the Interchange Signals shall be subject to the approval of the City Engineer. City hereby agrees that, for Phase I, no other improvements, including, without limitation, widening of on ramps and/or off ramps, shall be required of Developer with respect to the I-215 and Fourth Street Interchange. In addition, City hereby agrees that Developer shall receive partial credit against the New Development Impact Fee for Interchange Signals that are installed as interim improvements and full credit for Interchange Signals that are installed as permanent improvements, pursuant to the credit/reimbursement policies adopted by City. Developer hereby agrees to make application for and diligently pursue any permits that may be required in order to install the Interchange Signals including, without limitation, any permits that may be required from the California Department of Transportation ("CALTRANS"), and upon receipt of such permits, to diligently pursue installation of the Interchange Signals; provided, however, if, notwithstanding Developer's diligent pursuit of permits to install the Interchange Signals, Developer is not able to obtain such permit(s), City hereby agrees that it shall continue to issue Certificates of Occupancy for the Project. To the extent the City is required to be a party to any application for permits that may be required in order to install the Interchange Signals, the City shall execute such application and provide such other material and information as shall be reasonably required in connection with such application.

3.18. Model Homes. Prior to recordation of any final map, City agrees to issue building permits and occupancy certificates for the construction of model homes (and related model home complex structures) that will be used by Developer and/or merchant builders for the purpose of

promoting sales of residential units within the Project; provided, however, in no event shall City be required to issue more than five (5) building permits for the construction of model homes within each Planning Area of the Specific Plan, and in no event shall Developer be permitted to sell or transfer any model home until a final map has been recorded on that portion of the Project where the model home is located.

3.19. Processing. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall, subject to all legal requirements, promptly initiate, diligently process, complete at the earliest possible time all required steps and expeditiously grant any approvals and permits necessary for the development by Developer of the Property in accordance with this Agreement, including, but not limited to, the following:

(a) the processing of applications for and issuance of all discretionary approvals requiring the exercise of judgment and deliberation by City, including without limitation, the Subsequent Development Approvals;

(b) the holding of any required public hearings;

(c) the processing of applications for and issuing of all approvals requiring the determination of conformance with the Existing Land Use Regulations, including, without limitation, site plans, development plans, land use plans, grading plans, improvement plans, building plans and specifications, and ministerial issuance of one or more final maps, zoning clearances, demolition permits, grading permits, improvement permits, wall permits, building permits, lot line adjustments, encroachment permits, conditional and temporary use permits, sign permits, certificates of use and occupancy and approvals and entitlements and related matters as may be necessary for the completion of the development of the Property. Notwithstanding the foregoing, nothing herein guarantees that a particular approval will be granted, or granted with or without any particular condition, except as provided in this Agreement. In addition, City shall cooperate with Developer in Developer's endeavors to obtain (i) any other permits and approvals that may be required from other governmental or quasi-governmental agencies having jurisdiction over any aspect of the Project and (ii) any grants for which Developer may make application.

3.20. Processing During Third Party Litigation. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals, any Subsequent Development Approvals or to other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Development Approval, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

3.21. Grading Between Phases I and II. Notwithstanding the provisions of any Existing Land Use Regulations to the contrary and subject to the approval of grading plans by the City Engineer, which approval shall not be unreasonably withheld, delayed or conditioned, Developer shall be authorized to borrow soil from Phase II of the Project and place it within Phase I. Developer acknowledges that such grading may require approval from agencies other than City.

3.22. School Site. In the event the School District fails to acquire the School Site within five (5) years following the approval of the final map for TT 31157 (that contains the School Site), the School Site may be developed with medium density residential uses (7,000 sq. ft. lots) with a maximum of 57 units, subject to Developer obtaining any necessary Subsequent Development

Approvals that may be required for such units. Any required Subsequent Development Approvals shall be processed in accordance with this Article 3.

3.23. Fifty-Seven (57) Units. If the School District does acquire the School Site within the time period specified in Section 3.22 above, City hereby agrees that Developer may locate fifty-seven (57) units, which may consist of single family detached homes, townhome units and/or multi-family units, or any combination thereof, within Phase II and/or Phase III of the Project in densities and locations proposed by Developer and approved by City, such approval not to be unreasonably withheld; however, in no event shall the density of the overall Project exceed 2,027 dwelling units.

3.24. Parcel Map. If requested by Developer, City hereby agrees to process a Parcel Map that will permit the conveyance of large parcels of the Property for financing purposes and/or for sale to merchant builders.

3.25. Development Approval Conditions Satisfied by Others. To the extent any condition required by any of the Development Approvals is satisfied by someone other than Developer, such condition shall be deemed to have been satisfied.

3.26. Evans Road Improvements In-Lieu of "B" Street. Engineering Condition No. 16 to TT 31157 currently requires the Developer to complete "B" Street from Evans Road to San Jacinto Avenue (the "B" Street Condition"). As an alternative to being required to comply with the "B" Street Condition, Developer, by notifying the City in writing, may elect to complete the Evans Road Improvements. If the Developer notifies the City in writing that it has elected to substitute the completion of the Evans Road Improvements for the "B" Street Condition, Engineering Condition No. 16 shall be deemed to be amended in its entirety to read as follows (the "Evans Road Condition"):

"16. Evans Road from the southerly boundary of Phase I to San Jacinto Avenue shall be improved with four lanes of paving within dedicated right-of-way, including a 100-year crossing at the Perris Valley Storm Drain, and shall include street lights as determined by City Engineer."

If the Developer elects to substitute the Evans Road Condition for the "B" Street Condition, all requirements of the City that would have been applicable (under the Existing Land Use Regulations) to the improvements required by the "B" Street Condition, including, without limitation, bonding and subdivision agreement requirements, shall instead be applicable to the improvements required by the Evans Road Condition.

3.27. Eminent Domain. City shall cooperate with Developer in implementing the conditions of the Development Approvals, including the exercise of its power of eminent domain, provided that the City, in its independent exercise of judgment following all applicable procedures, has made the requisite findings properly supported by evidence that the exercise of such power is appropriate.

3.28. Dedication of Land for Evans Road/Nuevo Road Traffic Signal. Pursuant to Engineering Conditions of Approval No. 22 and 23 for TT 31157, Developer is required to dedicate land for and construct a traffic signal at the intersection of Evans Road and Nuevo Road. The required parcel is estimated to be approximately 6,600 square feet and is described on preliminary plans which have been reviewed by Developer. The exact area and dimensions of the parcel shall be

determined in conjunction with the final plans. Developer hereby agrees that, following (a) City's approval of the Specific Plan, TT 31157 and this Agreement and (b) the expiration of all statutes of limitations for challenging the Specific Plan, TT 31157 and this Agreement, without any challenge having been filed or, if a challenge has been filed against the Specific Plan, TT 31157 or this Agreement, such challenge has been resolved, Developer shall immediately thereafter dedicate to City or convey to City's designee the required parcel for the traffic signal, at no cost to City.

4. REVIEW FOR COMPLIANCE.

4.1. Annual Review. The City Council shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Developer with the terms of this Agreement ("Annual Review"). No failure on part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement.

4.2. Special Review. The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("Special Review"). Developer shall cooperate with the City in the conduct of such Special Reviews.

4.3. Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with this Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If on the basis of the parties' review of any terms of this Agreement, either party concludes that the other party has not complied in good faith with the terms of this Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefor and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have thirty (30) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such thirty (30) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice, it shall do so by responding in writing to said Notice within thirty (30) days after receipt of the Notice. If the response to the Notice of Non-Compliance has not been received in the offices of the party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall, for a period of not less than fifteen (15) days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice. In the event that a cure or remedy is not timely effected or, if the Notice is contested and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 5. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "*force majeure*" as defined in, and subject to the provisions of, Section 9.10. City's failure to perform an Annual Review shall not constitute or be asserted as a default by Developer.

4.4. Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("Certificate") to Developer stating that after the most recent Annual Review or Special Review and based upon the information known or made known to the City Manager, Planning Commission, and City Council that (1) this

Agreement remains in effect and (2) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer may record the Certificate with the County Recorder. Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property, or any lot or parcel within the Property.

5. DEFAULT AND REMEDIES.

5.1. Specific Performance Available. The parties acknowledge and agree that other than the termination of this Agreement pursuant to Section 5.2, specific performance is the only remedy available for the enforcement of this Agreement and knowingly, intelligently, and willingly waive any and all other remedies otherwise available in law or equity. Accordingly, and not by way of limitation, and except as otherwise provided in this Agreement, Developer shall not be entitled to any money damages from City by reason of any default under this Agreement. Further, Developer shall not bring an action against City nor obtain any judgment for damages for a regulatory taking, inverse condemnation, unreasonable exactions, reduction in value of property, delay in undertaking any action, or asserting any other liability for any matter or for any cause which existed or which the Developer knew of or should have known of prior to the time of entering this Agreement, Developer's sole remedies being as specifically provided above. Developer acknowledges that such remedies are adequate to protect Developer's interest hereunder and the waiver made herein is made in consideration of the obligations assumed by the City hereunder. The Developer's waiver of the right to recover monetary damages shall not apply to any damages or injuries to a third party caused by the City's negligence.

5.2. Termination of Agreement.

5.2.1 Termination of Agreement for Material Default of Developer. City in its discretion may terminate this Agreement for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 4.3.

5.2.2 Termination of Agreement for Material Default of City. Developer in its discretion may terminate this Agreement for any material default by City; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 4.3.

5.2.3 Rights and Duties Following Termination. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, or (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination. Termination of this Agreement shall not affect either party's rights or obligations with respect to any Development Approval granted prior to such termination.

5.2.4 Termination of Agreement with Respect to Sales of Individual Production Residential Units. Notwithstanding any other provision of this Agreement, this

Agreement shall terminate with respect to each individual Production Residential Unit upon the issuance by City of a Certificate of Occupancy for that Production Residential Unit, without the execution or recordation of any further document.

6. THIRD PARTY LITIGATION.

City shall promptly notify Developer of any claim, action or proceeding filed and served against City to challenge, set aside, void, annul, limit or restrict the approval and continued implementation and enforcement of this Agreement, including but not limited to challenges of the environmental review of the Project and this Agreement conducted pursuant to CEQA. Developer and City agree to confer and cooperate with respect to such third party litigation. Developer shall defend, indemnify and hold harmless City, its agents, officers and employees from any such claim, action or proceeding, and shall indemnify City for all costs of defense and/or judgment obtained in any such action or proceeding; provided, however, if Developer elects, in its sole discretion, not to defend the action (preferring to either allow judgment to be entered or to enter into a settlement with plaintiff(s) which declares this Agreement to be void, annulled, or which limits or restricts this Agreement), Developer shall so notify City in writing and City shall then have the option, in its sole discretion, of defending the action at City's cost. In the event this Agreement, as a result of a third party challenge, is voided or annulled, or is limited or restricted in such a manner that the intent and purposes of this Agreement cannot be implemented as mutually desired by the parties hereto, this Agreement shall terminate and be of no further force or effect as of the date such judgment or settlement so voids, annuls, limits, or restricts the intent and purpose of this Agreement.

7. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold, delay or condition its consent to any such requested interpretation or modification provided City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the

notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Plan applicable to the Property or such part thereof so acquired by the Mortgagee.

8. INSURANCE; INDEMNIFICATION.

8.1. Insurance.

8.1.1 Types of Insurance.

(a) **Commercial General Liability Insurance.** Prior to commencement and until completion of construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force commercial general liability ("CGL") insurance against liability for bodily injury or death and for property damage (all as defined by the policy or policies) arising from the use, occupancy, disuse or condition of the Property, providing limits of at least Five Million Dollars (\$5,000,000) bodily injury and property damage per occurrence limit, Five Million Dollars (\$5,000,000) general aggregate limit, and Five Million Dollars (\$5,000,000) products-completed operations aggregate limit.

(b) **Builder's Risk Insurance.** Prior to commencement and until completion of construction by Developer on the Property, Developer shall procure and shall maintain in force, or caused to be maintained in force, builder's risk insurance written on a "special causes of loss" form, on a replacement cost basis, including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees.

(c) **Workers' Compensation.** Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor or subcontractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.

(d) **Other Insurance.** Developer may procure and maintain any insurance not required by this Agreement.

(e) **Insurance Policy Form, Sufficiency, Content and Insurer.** All insurance required by express provisions hereof shall be carried only by insurance companies licensed to do business in California, rated "A" or better in the most recent edition of Best Rating Guide or in The Key Rating Guide and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent commercially reasonably obtainable, to the effect that (i) under the builder's risk policy, any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) under the worker's compensation policy, the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled except after thirty (30) days' written notice (ten (10) days in the event of cancellation for non-payment of premium) by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on the commercial general liability insurance and on the builder's risk insurance (as its interest may appear) policies required to be procured by the terms of this Agreement. In the event the City's Risk Manager determines reasonably that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates a materially increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the CGL and builder's risk insurance policies required by this Section 8.1.1 may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that such increased limits are available at commercially reasonable premiums. Developer shall have the right to appeal such determination of increased limits to the City Council within thirty (30) days of receipt of notice from the City's Risk Manager.

8.1.2 Failure to Maintain Insurance and Proof of Compliance. Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(a) For insurance required above, within thirty (30) days) after the Effective Date.

(b) For any renewal or replacement of a policy already in existence, within ten (10) days after the binding of such renewal or replacement policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder.

8.2. Indemnification.

8.2.1 General. Developer shall indemnify the City, its officers, employees, and agents 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 out of or in connection with the work, operations, or activities of Developer, its agents, employees, contractors, subcontractors, or invitees, hereunder, upon the Property.

(a) Developer 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) Developer will promptly pay any judgment rendered against the City, its officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of the Developer hereunder, and Developer 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 the action or proceeding filed or prosecuted against for such damages or other claims arising out of or in connection with operation or activities of Developer hereunder, Developer agrees to pay 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.

8.2.2 Exceptions. The foregoing indemnity shall not include claims or liabilities arising from the negligence or willful misconduct of the City, its officers, agents, or employees.

8.2.3 Loss and Damage. City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature; provided, however, the provisions of this Section 8.2.3 shall not apply (a) to any portion of the Property to which City has accepted dedication or for which City or an assessment district or some other public agency has accepted maintenance responsibilities or (b) any claims or liabilities arising from the negligence or willful misconduct of the City, its officers, agents or employees.

8.2.4 Period of Indemnification. The obligations for indemnity under this Section 8.2 shall begin upon the Effective Date and shall terminate upon termination of this Agreement, provided that indemnification shall apply to all claims or liabilities arising during that period even if asserted at any time thereafter.

8.3. Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any loss or damage to Developer or to any person or property (a) to the extent covered and paid by the CGL or the builder's risk insurance and (b) to the extent permitted by the CGL and the builder's risk policies, except as specifically provided hereunder, and Developer shall (if required by the policy) give notice to the insurance carrier of the foregoing waiver of subrogation, and shall obtain from such builder's risk carrier a waiver of right of recovery against City, its agents and employees.

9. MISCELLANEOUS PROVISIONS.

9.1. Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.2. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.3. Severability. If any material term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

9.4. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

9.5. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

9.6. Singular and Plural. As used herein, the singular of any word includes the plural.

9.7. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.8. Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.9. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations or delays in the issuance of any governmental permits, approvals or other authorizations (beyond the reasonable control of Developer), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than one (1) year.

9.11. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

9.12. Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

9.13. Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, or such other appropriate court in said county.

Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California.

In the event of any action between City and Developer seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorney's fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

9.14. Covenant not to Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, or based on any allegation or assertion in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15. Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private Development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property and as future holder of fee title to such property, on the other hand. City agrees that by its approval of, and entering into, this Agreement that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and

that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement, including but not limited to Developer's obligation to provide the Public Improvements set forth herein.

9.16. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

9.17. Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

9.18. Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of all parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. Notwithstanding the foregoing, implementation of the Project may require minor modifications of the details of the Development Plan and performance of the parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, modifications of the Development Plan or Development Approvals, which are found by the City Attorney to be non-substantive and procedural shall not require an amendment to this Agreement. A modification will be deemed non-substantive and/or procedural if it does not result in material change in fees, cost, density, intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and construction standards and specifications for the Project.

9.19. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer and the refinements and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 9.18 above. The City Manager may execute any operating memorandum agreed to by the City and Developer.

9.20. Amendments to Development Approvals. It is contemplated by City and Developer that Developer may, from time to time, seek amendments to one or more of the Development Approvals. Any such amendments are contemplated by City and Developer as being within the scope of this Agreement as long as they are consistent with the Existing Land Use Regulations and/or this Agreement and shall, upon approval by City, continue to constitute the Development Approvals as referenced herein. The parties agree that any such amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

9.21. **Authority.** The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, 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 such party is bound.

9.22. **Notices.** All notices under this Agreement shall be effective when delivered by (i) personal delivery, or (ii) reputable same-day or overnight courier or messenger service, (iii) overnight United States Postal Service Express Mail, postage prepaid, or (iv) by United States Postal Service mail, registered or certified, postage prepaid; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

To City: City of Perris
101 North "D" Street
Perris, CA 92570
Attn: City Manager

With copy to: Aleshire & Wynder, LLP Tower 17
18881 Von Karman Avenue, Suite 400
Irvine, CA 92612
Attn: Eric L. Dunn, Esq.

To Developer: ParkWest Associates/East West Properties
235 Park Avenue South, 8th Floor
New York, NY 10003
Attn: Mickey Palin

With copy to: Hackman Capital Partners, LLC
11111 Santa Monica Boulevard, Suite 950
Los Angeles, CA 90025
Attn: Michael Hackman

And: Cox, Castle & Nicholson LLP
2049 Century Park East, Suite 2800
Los Angeles, CA 90067
Attn: Ronald L. Silverman, Esq.

9.23. **Non-liability of City Officials.** No officer, official, member, employee, agent, or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

9.24. **Limitation of Liability.** City hereby acknowledges and agrees that Developer's obligations under this Agreement are solely those of ParkWest and East West and in no event shall any present, past or future officer, director, shareholder, employee, partner, affiliate, manager, member, representative or agent of ParkWest and East West ("Related Parties") have any personal liability, directly or indirectly, under this Agreement and recourse shall not be available against any Related Party in connection with this Agreement or any other document or instrument heretofore or

hereafter executed in connection with this Agreement. The limitations of liability provided in this Section are in addition to, and not in limitation of, any limitation on liability applicable to ParkWest or East West or any Related Party provided by law or in any other contract, agreement or instrument.

9.25. No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorney's fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement arising out of agreements by the indemnifying party to pay any commission or finder's fee.

9.26. Joint and Several Liability. Subject to the provisions of Section 2.3 above, the obligations of ParkWest and East West under this Agreement shall be joint and several.

9.27. Business Days. In this Agreement, the term "business days" means days other than Saturdays, Sundays, and federal and state legal holidays, and "days" means calendar days. If the time for performance of an obligation under this Agreement falls on other than a business day, the time for performance shall be extended to the next business day.

9.28. Facsimile Signatures. Signatures delivered by facsimile shall be as binding as originals upon the Parties so signing and delivering.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

Dated:

City:

CITY OF PERRIS, a municipal corporation

By:


Daryl R. Busch
Mayor, City of Perris

ATTEST:

By:


Judy L. Haughney, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By:


Eric L. Dunn, City Attorney

Developer:

ParkWest Associates, a California general partnership

By:


Mickey Falin, Partner

East West Properties, a California general partnership

By:


Mickey Falin, Partner

[End of Signatures]

STATE OF CALIFORNIA New York)
COUNTY OF ~~RIVERSIDE~~ New York) ss

On March 20, 2007, before me, Gary Adelman (here insert name of the officer), Notary Public, personally appeared Michael Val... personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

GARY ADELMAN
Notary Public, State of New York
No. 30-4706660
Qualified in Nassau County
Commission Expires Oct 31, 2007

[Signature] N
Notary Public

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss

On _____, 200__, before me, _____ (here insert name of the officer), Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Perris, County of Riverside, State of California, described as follows:

PARCEL 1: APN: 310-180-047

ALL THAT PORTION OF LOT 2 AND THAT PORTION OF BOUNDARY ROAD, AS ABANDONED BY DOCUMENT RECORDED MAY 16, 1961 AS INSTRUMENT NO. 41798, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LYING NORTH OF THE RAILROAD RIGHT OF WAY IN SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP OF PERRIS VALLEY LAND AND WATER COMPANY'S TRACT ON FILE IN BOOK 7, PAGE(S) 38 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM THAT PORTION THEREOF PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE RIGHT OF WAY OF LAKE VIEW BRANCH OF SOUTHERN CALIFORNIA RAILROAD COMPANY WITH THE WESTERLY LINE OF RANCHO SAN JACINTO NUEVO;
THENCE EASTERLY ALONG SAID NORTHERLY LINE OF SAID RIGHT OF WAY, 296.9 FEET;
THENCE NORTHERLY AT RIGHT ANGLES TO SAID RIGHT OF WAY, 100 FEET;
THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF SAID RIGHT OF WAY TO THE WESTERLY LINE OF SAID RANCHO;
THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID RANCHO TO THE POINT OF BEGINNING;**

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING AT A POINT ON THE NORTH LINE OF SAID SECTION, 2054.5 FEET WEST OF THE NORTHEAST CORNER THEREOF;
THENCE SOUTH 00° 30' EAST, 750 FEET FOR THE POINT OF BEGINNING;
THENCE NORTH 84° 12' EAST, 75 FEET;
THENCE SOUTH 150 FEET TO THE NORTH LINE OF THE RIGHT OF WAY OF PERRIS AND LAKEVIEW RAILWAY COMPANY;
THENCE ALONG THE NORTHERLY LINE OF SAID RIGHT OF WAY SOUTH 84° 12' WEST, 150 FEET;
THENCE NORTH 150 FEET;
THENCE NORTH 84° 12' EAST, 75 FEET TO THE POINT OF BEGINNING;**

ALSO EXCEPTING THEREFROM THAT PORTION OF LOT 2, SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, AS SHOWN BY MAP OF PERRIS VALLEY LAND AND WATER COMPANY'S TRACT ON FILE IN BOOK 7, PAGE(S) 38 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF THE RANCHO SAN JACINTO NUEVO WITH THE CENTER LINE OF NUEVO ROAD;
THENCE EASTERLY ALONG THE SAID CENTER LINE, 626 FEET;
THENCE SOUTHERLY, AT RIGHT ANGLES, TO SAID CENTER LINE, 660 FEET;
THENCE WESTERLY, PARALLEL TO SAID CENTER LINE, 227.4 FEET TO THE WESTERLY LINE OF SAID RANCHO;
THENCE NORTHWEST ALONG SAID WESTERLY LINE, 770.8 FEET TO THE POINT OF BEGINNING.

PARCEL 2: APN: 310-180-008

GOVERNMENT LOT 1 IN FRACTIONAL SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY, LYING NORTHERLY OF THE RIGHT OF WAY OF THE PERRIS AND LAKEVIEW RAILWAY AS SET OUT IN DEED RECORDED IN BOOK 76, PAGE 83 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM THE WEST 20 ACRES OF SAID LOT 1;

ALSO EXCEPTING THEREFROM THAT PORTION OF GOVERNMENT LOT 1, FRACTIONAL SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST 20 ACRES OF SAID LOT 1;
THENCE EASTERLY ALONG THE CENTER LINE OF NUEVO ROAD, SAID CENTER LINE BEING ALSO THE NORTH LINE OF SECTION 28, 34 FEET, TO THE WESTERLY LINE OF THE RANCHO SAN JACINTO NUEVO; THENCE SOUTHEAST ALONG SAID WESTERLY LINE, 770.8 FEET TO A POINT DISTANT 660 FEET, MEASURED AT RIGHT ANGLES, FROM THE CENTER LINE OF SAID NUEVO ROAD;

THENCE WEST, PARALLEL TO SAID CENTER LINE, 472.1 FEET TO THE EAST LINE OF SAID 20 ACRES;
THENCE NORTH ALONG SAID EAST LINE, 660 FEET TO THE POINT OF BEGINNING.

PARCEL 3: APN: 310-210-001, 310-210-012 AND 310-200-006

THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE DISTRICT LAND OFFICE;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BY DEED RECORDED APRIL 8, 1955 AS INSTRUMENT NO. 23195 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM ANY PORTION INCLUDED IN THE EVERVIEW TRACT, AS SHOWN BY MAP ON FILE IN BOOK 16, PAGE(S) 64 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE DISTRICT LAND OFFICE;

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THE PERRIS PROPERTY PARTNERSHIP, A CALIFORNIA GENERAL PARTNERSHIP, BY DEED RECORDED JANUARY 12, 1989 AS INSTRUMENT NO. 11507 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 4: APN: 310-210-002 THRU 005, 007 THRU 009, 011 AND 013

LOTS 1 THROUGH 15 INCLUSIVE OF EVERVIEW TRACT, AS SHOWN BY MAP ON FILE IN BOOK 16 PAGE(S) 64 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 5: APN: 310-180-020 AND 310-180-021

LOTS 1 AND 2 OF THE PERRIS VALLEY LAND AND WATER COMPANY TRACT, IN SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 7 PAGE(S) 38 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, TOGETHER WITH ALL OF THE BOUNDARY ROAD, ADJOINING SAID LOT 2 ON THE WEST AS VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED JUNE 26, 1961 AS INSTRUMENT NO. 54693 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM THAT PORTION LYING NORTH OF THE NORTH LINE OF THAT CERTAIN 100 FOOT STRIP (FORMERLY THE CALIFORNIA; ARIZONA AND SANTA FE RAILWAY) AS DESCRIBED IN THE DEED RECORDED MAY 15, 1950 AS INSTRUMENT NO. 2125 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THAT PORTION DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF LOT 1 IN SECTION 28 AS SHOWN ON SAID MAP, SAID POINT BEING THE INTERSECTION OF THE CENTERLINES OF CENTRAL AVENUE AND DUNLAP DRIVE BEING THOSE UNNAMED STREETS SHOWN ON SAID MAP ADJOINING SAID LOT 1;
THENCE WEST ON THE SOUTH LINE OF LOT 1 AND THE CENTERLINE OF CENTRAL AVENUE TO THE EAST LINE OF THE WEST 30 ACRES OF SAID LOT 1;
THENCE NORTH PARALLEL WITH THE EAST LINE OF SAID LOT 1 TO THE SOUTH LINE OF THAT CERTAIN 100 FOOT STRIP AS DESCRIBED IN THE DEED RECORDED MAY 15, 1950 AS INSTRUMENT NO. 2125 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;
THENCE NORTH 84° 02' EAST AND ALONG SAID SOUTH LINE OF SAID 100 FOOT STRIP TO THE EAST LINE OF LOT 1 IN SECTION 28 BEING THE CENTERLINE OF DUNLAP DRIVE;
THENCE SOUTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

PARCEL 6: A PORTION OF 310-180-033, A PORTION OF 310-190-009

GOVERNMENT LOTS AND 2 AND 3 OF FRACTIONAL SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA;

ALSO THAT PORTION OF THE RIGHT OF WAY OF THE CALIFORNIA, ARIZONA AND SANTA FE RAILWAY COMPANY, 100 FEET IN WIDTH, NOW ABANDONED, INCLUDED IN THE FOLLOWING:

BEGINNING AT THE NORTH CORNER OF SAID GOVERNMENT LOT 2; THENCE SOUTHEASTERLY ON THE NORTHEASTERLY LINE OF SAID GOVERNMENT LOT 2, 36.27 FEET;

THENCE WESTERLY 19.1 FEET TO A POINT ON THE WEST LINE OF SAID GOVERNMENT LOT 2, 32.93 FEET SOUTH OF THE NORTH CORNER OF SAID LOT;

THENCE NORTH ON SAID WEST LINE, 32.93 FEET TO THE POINT OF BEGINNING.

PARCEL 7: A PORTION OF 310-190-009

GOVERNMENT LOT 4 AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF FRACTIONAL SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPTING THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF SAID SECTION 28, DISTANT NORTH $89^{\circ} 29' 31''$ WEST 435.00 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION;

THENCE NORTH $0^{\circ} 30' 29''$ EAST 390.00 FEET;

THENCE NORTH $89^{\circ} 29' 31''$ WEST 50.00 FEET;

THENCE SOUTH $0^{\circ} 30' 29''$ WEST 390.00 FEET TO SAID SOUTH LINE; THENCE SOUTH $89^{\circ} 29' 31''$ EAST 50.00 FEET TO THE POINT OF BEGINNING.

PARCEL 8: A PORTION OF 310-180-033

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF FRACTIONAL SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

PARCEL 9: A PORTION OF 310-180-033

THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LYING SOUTHERLY OF THE NORTHERLY LINE OF THE RIGHT OF WAY OF CALIFORNIA, ARIZONA AND SANTA FE RAILWAY COMPANY, 100 FEET IN WIDTH NOW ABANDONED.

EXCEPTING THEREFROM THE WESTERLY THEREOF.

PARCEL 10: A PORTION OF 310-190-009

THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, LYING EASTERLY OF THE EASTERLY LINE OF THE FLOOD CONTROL CHANNEL, 300 FEET IN WIDTH, DESCRIBED IN THE DEED TO RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT RECORDED AUGUST 25, 1955 AS INSTRUMENT NO. 55321 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 11: APN: 310-190-008

LOT 5 AND THOSE PORTIONS OF LOTS 3, 4, AND 6 OF BROCKMAN'S SUBDIVISION, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 15 PAGE(S) 700 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA, LYING EASTERLY OF THE FLOOD CONTROL CHANNEL, 300 FEET IN WIDTH, DESCRIBED IN THE DEED TO RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT RECORDED AUGUST 25, 1955 AS INSTRUMENT NO. 55321 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 12: APN: 310-190-015

A PORTION OF THE SOUTHEAST ONE-QUARTER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT FILED IN THE DISTRICT LAND OFFICE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF SAID SECTION 28 DISTANT NORTH 89° 29' 31" WEST 435.00 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION;
THENCE NORTH 0° 30' 29" EAST 390.00 FEET;
THENCE NORTH 89° 29' 31" WEST 50.00 FEET;
THENCE SOUTH 0° 30' 29" WEST 390.00 FEET TO SAID SOUTH LINE; THENCE SOUTH 89° 29' 31" EAST 50.00 FEET TO THE POINT OF BEGINNING.

PARCEL 13: APN: 310-180-048

ALL THAT PORTION OF LOT TWO (2) IN SECTION TWENTY-EIGHT (28) TOWNSHIP FOUR (4) SOUTH, RANGE THREE (3) WEST, SAN BERNARDINO BASE AND MERIDIAN AS SHOWN BY MAP OF THE LANDS OF THE PERRIS VALLEY LAND AND WATER COMPANY, ON FILE IN BOOK 7 PAGE 38 THEREOF, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, BY METES AND BOUNDS, BEGINNING AT A POINT SEVEN HUNDRED FIFTY (750) FEET SOUTH 0° 30' EAST, OF A POINT ON THE NORTH LINE OF SAID SECTION TWENTY-EIGHT (28), TWO THOUSAND FIFTY-FOUR AND FOUR TENTHS (2054.4) FEET WEST OF THE NORTHEAST CORNER OF SAID SECTION;
THENCE NORTH 84° 12' EAST, SEVENTY-FIVE (75) FEET;
THENCE SOUTH ONE HUNDRED FIFTY (150) FEET TO THE NORTH LINE OF THE RIGHT OF WAY OF THE PERRIS AND LAKEVIEW RAILWAY COMPANY;
THENCE WITH SAID RIGHT OF WAY SOUTH 84° 12' WEST, ONE HUNDRED FIFTY (150) FEET;
THENCE NORTH ONE HUNDRED FIFTY (150) FEET;
THENCE NORTH 84° 12' EAST, SEVENTY-FIVE (75) FEET TO THE POINT OF BEGINNING.

PARCEL 14: APN: 310-180-016

ALL THAT PORTION OF LOT 2 LYING NORTH OF THE RAILROAD RIGHT OF WAY IN SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP OF PERRIS VALLEY LAND AND WATER COMPANY'S TRACT ON FILE IN BOOK 7 PAGE(S) 39 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, TOGETHER WITH THAT PORTION OF SAID LAND KNOWN AS BOUNDARY ROAD VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY, A CERTIFIED COPY OF WHICH WAS RECORDED MAY 16, 1961, AS INSTRUMENT NO. 61-41798, OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

**BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE RIGHT OF WAY OF LAKE VIEW BRANCH OF SOUTHERN CALIFORNIA RAILROAD COMPANY WITH THE WESTERLY LINE OF RANCHO SAN JACINTO NUEVO;
THENCE EASTERLY ALONG SAID NORTHERLY LINE OF SAID RIGHT OF WAY 296.0 FEET;
THENCE NORTHERLY AT RIGHT ANGLES TO SAID RIGHT OF WAY, 100 FEET;
THENCE WESTERLY PARALLEL WITH THE NORTHERLY LINE OF SAID RIGHT OF WAY TO THE WESTERLY LINE OF SAID RANCHO;
THENCE SOUTHERLY ALONG THE WESTERLY LINE OF SAID RANCHO TO THE POINT OF BEGINNING.**

PARCEL 15: APN: 310-180-011

THE SOUTH ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE DISTRICT LAND OFFICE.

PARCEL 16: APN: 310-200-004

THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPT THAT PORTION LYING SOUTHWEST OF THE NORTHEAST LINE OF THE LAND CONVEYED TO THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT BY DEED RECORDED JULY 2, 1953 IN BOOK 1487 PAGE 541 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 17: APN: 310-190-010

LOT 3 OF PERRIS VALLEY LAND AND WATER COMPANY TRACT, IN SECTION 28, TOWNSHIP 4 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY MAP ON FILE IN BOOK 7 PAGE(S) 38 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, TOGETHER WITH ALL OF THE BOUNDARY ROAD, ADJOINING SAID LOT 3 ON THE WEST LINE AS VACATED BY RESOLUTION OF THE BOARD OF SUPERVISORS OF RIVERSIDE COUNTY, A CERTIFIED COPY OF WHICH WAS

RECORDED JUNE 26, 1961 AS INSTRUMENT NO. 54693 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 310-180-008-1 and 310-180-011-3 and 310-180-016-8 and 310-180-021-2 and 310-180-020-1 and 310-180-033-3 and 310-180-047-6 and 310-180-048-7 and 310-190-008-2 and 310-190-009-3 and 310-190-010-3 and 310-190-015-8 and 310-210-001-6 and 310-210-002-7 and 310-210-003-8 and 310-210-004-9 and 310-210-005-0 and 310-210-007-2 and 310-210-008-3 and 310-210-009-4 and 310-210-011-5 and 310-210-012-6 and 310-210-013-7 and 310-200-004-8 and 310-200-006-0

EXHIBIT "B"

ASSIGNMENT AND ASSUMPTION AGREEMENT

Recording Requested By and
When Recorded Mail To:

Cox, Castle & Nicholson, LLP
2049 Century Park East, Suite 2800
Los Angeles, California 90067
Attn: Ronald I. Silverman, Esq.

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into by and between [PARKWEST ASSOCIATES, a California general partnership and/or EAST WEST PROPERTIES, a California general partnership] ("Assignor"), and _____, a _____ ("Assignee").

RECITALS

A. The City of Perris ("City") and Assignor entered into that certain Development Agreement dated _____, 200__ (the "Development Agreement"), with respect to the real property located in the City of Perris, State of California more particularly described in Exhibit "A" attached hereto (the "Project Site"), and

B. Assignor has obtained from the City certain development approvals and permits with respect to the development of the Project Site, including without limitation, approval of ParkWest Specific Plan Amendment No. 2 and Tentative Tract Map 31157 and this Agreement for the Project Site (collectively, the "Project Approvals").

C. Assignor intends to sell, and Assignee intends to purchase that portion, of the Project Site more particularly described in Exhibit "B" attached hereto (the "Transferred Property").

D. In connection with such purchase and sale, Assignor desires to transfer all of the Assignor's right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Transferred Property. Assignee desires to accept such assignment from Assignor and assume the obligations of Assignor under the Development Agreement and the Project Approvals with respect to the Transferred Property.

THEREFORE, the parties agree as follows:

1. Assignment. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Transferred Property. Assignee hereby accepts such assignment from Assignor.

2. Assumption. Assignee expressly assumes and agrees to keep, perform, and fulfill all the terms, conditions, covenants, and obligations required to be kept, performed, and fulfilled by

Assignor under the Development Agreement and the Project Approvals with respect to the Transferred Property, including but not limited to those obligations specifically allocated to the Transferred Parcel as set forth on Exhibit "C" attached hereto.

3. Effective Date. The execution by City of the attached receipt for this Agreement shall be considered as conclusive proof of delivery of this Agreement and of the assignment and assumption contained herein. This Agreement shall be effective upon its recordation in the Official Records of Riverside County, California, provided that Assignee has closed the purchase and sale transaction and acquired legal title to the Transferred Property.

4. Remainder of Project. Any and all rights or obligations pertaining to such portion of the Project Site other than the Transferred Property are expressly excluded from the assignment and assumption provided in Sections 1 and 2 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their signatures below.

"ASSIGNOR" [Select Appropriate Assignors]

ParkWest Associates, a California general partnership

By: 
Mickey Palin, Partner

East West Properties, a California general partnership

By: 
Mickey Palin, Partner

"ASSIGNEE"

a _____

By: _____
Its: _____

Date: March 20, 2007

Date: _____

RECEIPT BY CITY

The attached ASSIGNMENT AND ASSUMPTION AGREEMENT is received by the City of Perris on this ___ day of _____, 200__.

CITY OF PERRIS

By: _____
City Manager or Designee

STATE OF CALIFORNIA New York)
COUNTY OF New York)

SS:

On March 20, 2007, before me, Gary Adelman (here insert name of the officer), Notary Public, personally appeared Michael Pal... personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

GARY ADELMAN
Notary Public, State of New York
No. 30-4706660
Qualified in Nassau County
Commission Expires Oct 31, 2009

Signature [Handwritten Signature]
(Seal)

STATE OF CALIFORNIA)
COUNTY OF _____)

SS:

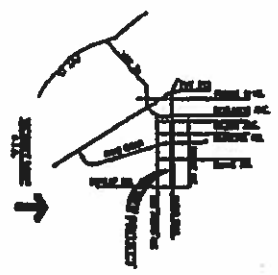
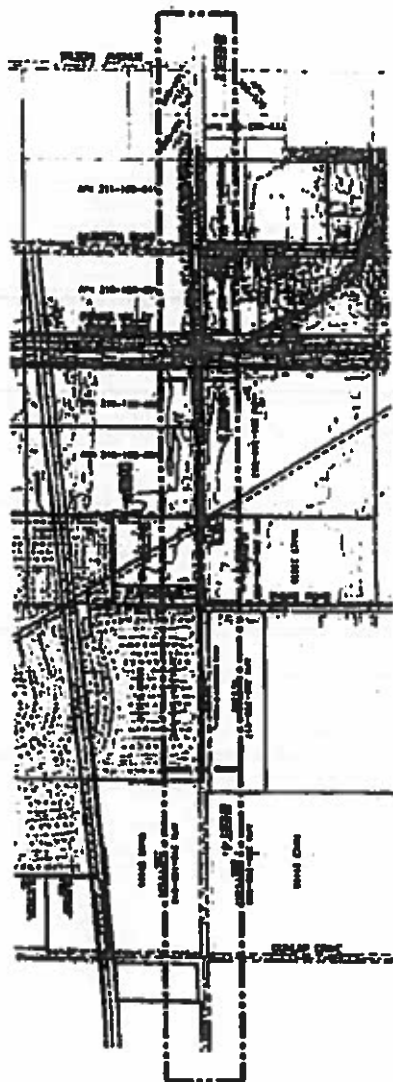
On _____, 200__, before me, _____ (here insert name of the officer), Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

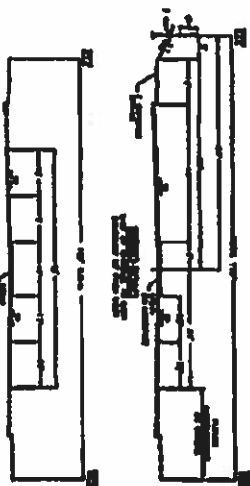
Signature _____
(Seal)

EXHIBIT "C"

**NUEVO ROAD
CONCEPTUAL ROAD STUDY PLAN
IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



INDEX MAP:



NO.	DATE	DESCRIPTION
1	10/1/00	PRELIMINARY PLAN
2	10/1/00	FINAL PLAN
3	10/1/00	CONCEPTUAL PLAN
4	10/1/00	CONCEPTUAL PLAN
5	10/1/00	CONCEPTUAL PLAN
6	10/1/00	CONCEPTUAL PLAN
7	10/1/00	CONCEPTUAL PLAN
8	10/1/00	CONCEPTUAL PLAN
9	10/1/00	CONCEPTUAL PLAN
10	10/1/00	CONCEPTUAL PLAN

DESIGNED BY: JAMES W. HARRIS, INC.
ENGINEER: JAMES W. HARRIS, INC.
DATE: 10/1/00

PROJECT: NUEVO ROAD
LOCATION: PERRIS, CALIFORNIA

SCALE: AS SHOWN

LEGEND:

- 1. 1" = 100'
- 2. 1" = 200'
- 3. 1" = 400'
- 4. 1" = 800'
- 5. 1" = 1600'
- 6. 1" = 3200'
- 7. 1" = 6400'
- 8. 1" = 12800'
- 9. 1" = 25600'
- 10. 1" = 51200'
- 11. 1" = 102400'
- 12. 1" = 204800'
- 13. 1" = 409600'
- 14. 1" = 819200'
- 15. 1" = 1638400'
- 16. 1" = 3276800'
- 17. 1" = 6553600'
- 18. 1" = 13107200'
- 19. 1" = 26214400'
- 20. 1" = 52428800'
- 21. 1" = 104857600'
- 22. 1" = 209715200'
- 23. 1" = 419430400'
- 24. 1" = 838860800'
- 25. 1" = 1677721600'
- 26. 1" = 3355443200'
- 27. 1" = 6710886400'
- 28. 1" = 13421772800'
- 29. 1" = 26843545600'
- 30. 1" = 53687091200'
- 31. 1" = 107374182400'
- 32. 1" = 214748364800'
- 33. 1" = 429496729600'
- 34. 1" = 858993459200'
- 35. 1" = 1717986918400'
- 36. 1" = 3435973836800'
- 37. 1" = 6871947673600'
- 38. 1" = 13743895347200'
- 39. 1" = 27487790694400'
- 40. 1" = 54975581388800'
- 41. 1" = 109951162777600'
- 42. 1" = 219902325555200'
- 43. 1" = 439804651110400'
- 44. 1" = 879609302220800'
- 45. 1" = 1759218604441600'
- 46. 1" = 3518437208883200'
- 47. 1" = 7036874417766400'
- 48. 1" = 14073748835532800'
- 49. 1" = 28147497671065600'
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- 54. 1" = 900719925474099200'
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- 97. 1" = 792281625142643376375244146470400'
- 98. 1" = 1584563250285286752750488292940800'
- 99. 1" = 3169126500570573505500976585881600'
- 100. 1" = 6338253001141147011001953171763200'

CITY OF PERRIS

PLANNING DEPARTMENT

CONCEPTUAL ROAD STUDY PLAN

NUEVO ROAD

DATE: 10/1/00

SCALE: AS SHOWN

PROJECT: NUEVO ROAD

LOCATION: PERRIS, CALIFORNIA

DESIGNED BY: JAMES W. HARRIS, INC.

ENGINEER: JAMES W. HARRIS, INC.

DATE: 10/1/00

PROJECT: NUEVO ROAD

LOCATION: PERRIS, CALIFORNIA

SCALE: AS SHOWN

 DIGITAL 1000 S. 10th St. Suite 200 Lincoln, NE 68502 Phone: (402) 441-1111 Fax: (402) 441-1112		1000 S. 10th St. Suite 200 Lincoln, NE 68502 Phone: (402) 441-1111 Fax: (402) 441-1112		CONTRACT NO. 2007-0001 DATE 11/19/07	
PROJECT NAME 1000 S. 10th St.		CLIENT 1000 S. 10th St.		SCALE 1" = 20'	
DATE 11/19/07		BY [Signature]		CHECKED [Signature]	
DESCRIPTION [Text]		REVISIONS [Table with 3 columns: No., Description, Date]		APPROVED [Signature]	
NOTES [List of notes]		LEGEND [Table with 2 columns: Symbol, Description]		INDEX [Table with 2 columns: Sheet No., Description]	
OWNER [Text]		DESIGNER [Text]		DATE [Text]	

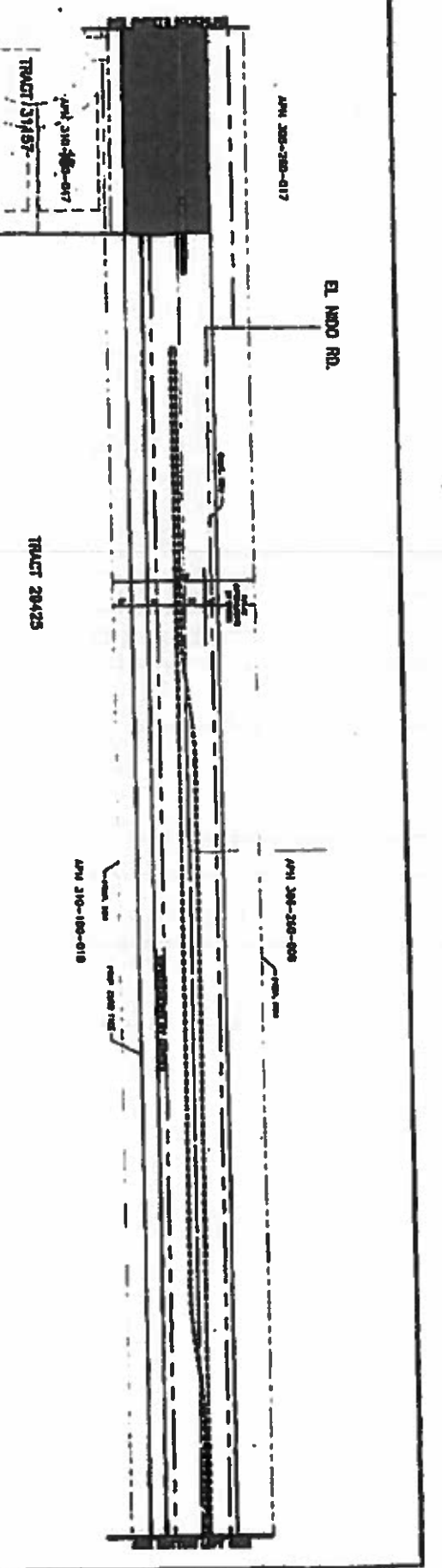
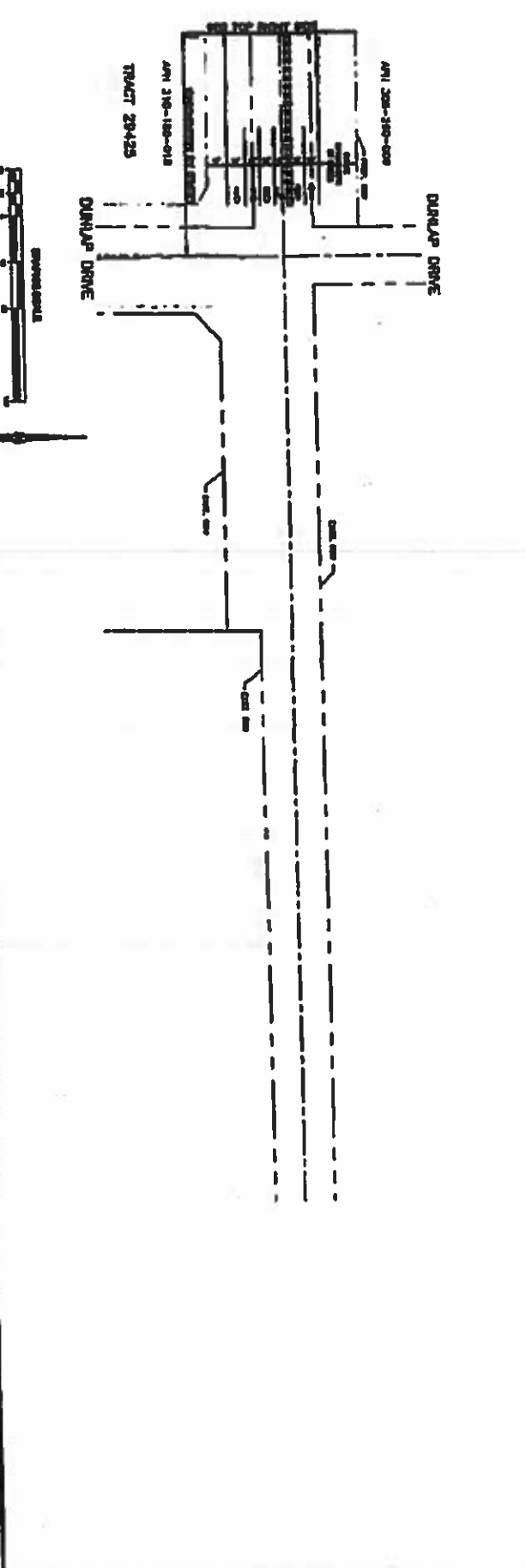
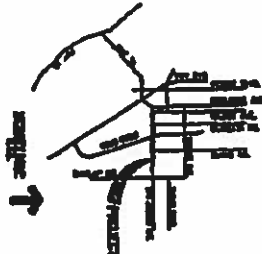
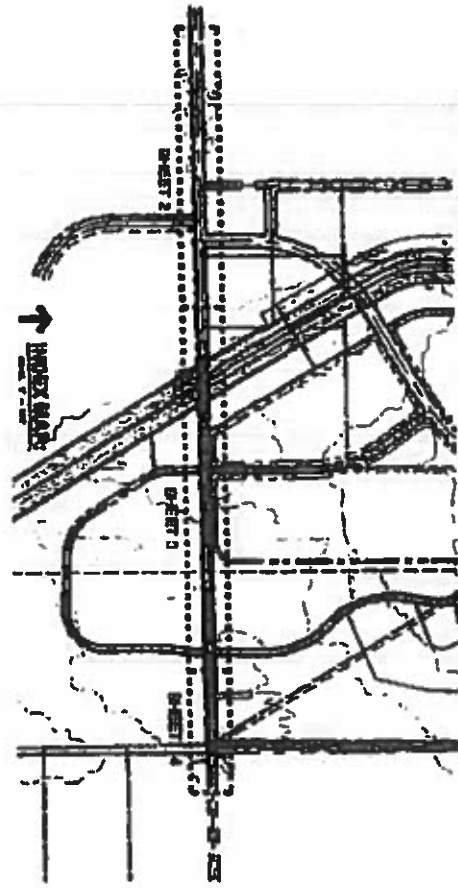


EXHIBIT "D"

**SAN JACINTO AVENUE ROAD
CONCEPTUAL ROAD STUDY
IN THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



DESIGNED BY:
 CIVIL ENGINEERING
 1400 WEST 10TH STREET, SUITE 100
 PERRIS, CALIFORNIA 92570
 (951) 221-1111

APPROVED BY:
 CIVIL ENGINEER
 1400 WEST 10TH STREET, SUITE 100
 PERRIS, CALIFORNIA 92570
 (951) 221-1111

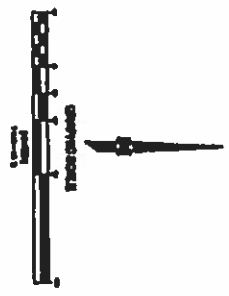
LEGEND

- Proposed Road
- Existing Road
- Proposed Lane
- Existing Lane
- Proposed Shoulder
- Existing Shoulder
- Proposed Median
- Existing Median
- Proposed Sidewalk
- Existing Sidewalk
- Proposed Utility
- Existing Utility
- Proposed Easement
- Existing Easement
- Proposed Right-of-Way
- Existing Right-of-Way
- Proposed Right-of-Way Extension
- Existing Right-of-Way Extension
- Proposed Right-of-Way Termination
- Existing Right-of-Way Termination
- Proposed Right-of-Way Boundary
- Existing Right-of-Way Boundary
- Proposed Right-of-Way Boundary Extension
- Existing Right-of-Way Boundary Extension
- Proposed Right-of-Way Boundary Termination
- Existing Right-of-Way Boundary Termination



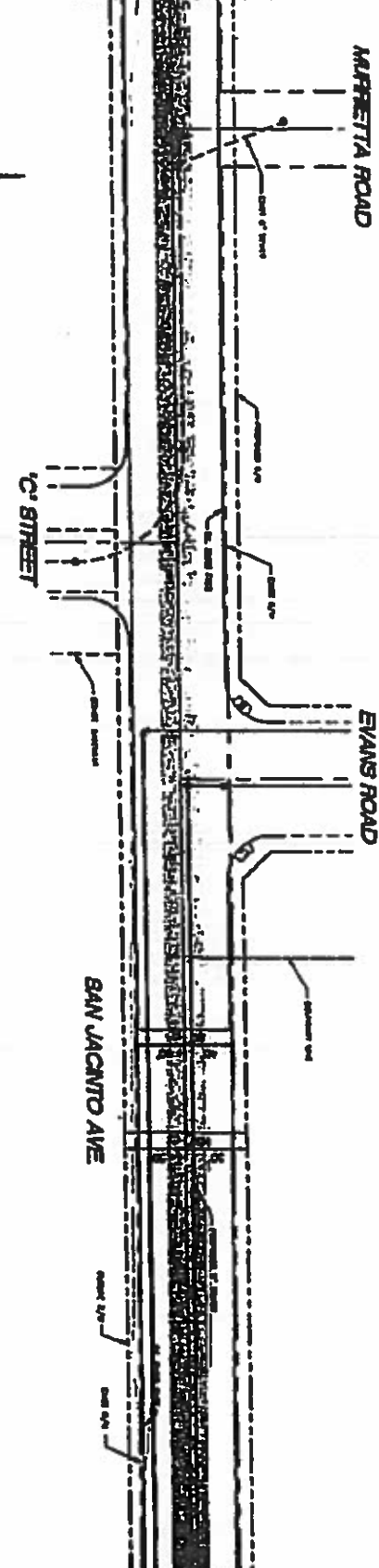
DATE: 04/23/2008	TIME: 1:15:01 PM	PROJECT: SAN JACINTO AVENUE ROAD	SHEET: 1
DESIGNED BY: CIVIL ENGINEERING	CHECKED BY: CIVIL ENGINEERING	APPROVED BY: CIVIL ENGINEERING	DATE: 04/23/2008
PROJECT LOCATION: PERRIS, CALIFORNIA	PROJECT NUMBER: 08-001	PROJECT TITLE: SAN JACINTO AVENUE ROAD	PROJECT CLIENT: CIVIL ENGINEERING
PROJECT DESCRIPTION: CONCEPTUAL ROAD STUDY	PROJECT PHASE: PRELIMINARY	PROJECT STATUS: FOR PLAN CHECK ONLY	PROJECT DATE: 04/23/2008

																			
PROJECT NO. 100000000 SHEET NO. 2 DATE: 04/28/2008		CONTRACT NO. 040000000 SHEET NO. 2 DATE: 04/28/2008		PROJECT NO. 100000000 SHEET NO. 2 DATE: 04/28/2008		CONTRACT NO. 040000000 SHEET NO. 2 DATE: 04/28/2008		PROJECT NO. 100000000 SHEET NO. 2 DATE: 04/28/2008		CONTRACT NO. 040000000 SHEET NO. 2 DATE: 04/28/2008		PROJECT NO. 100000000 SHEET NO. 2 DATE: 04/28/2008		CONTRACT NO. 040000000 SHEET NO. 2 DATE: 04/28/2008		PROJECT NO. 100000000 SHEET NO. 2 DATE: 04/28/2008		CONTRACT NO. 040000000 SHEET NO. 2 DATE: 04/28/2008	

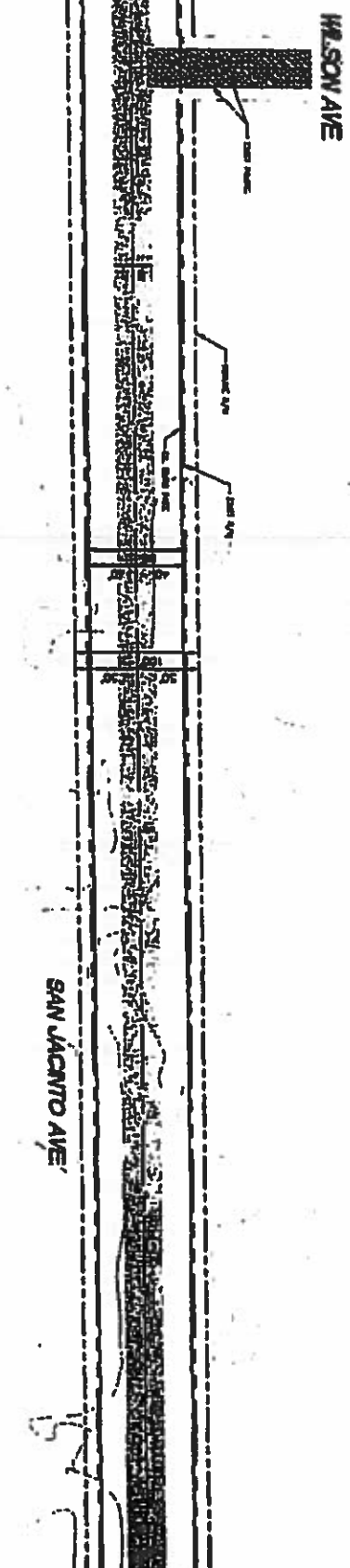


CONTRACT NO. 040000000
 SHEET NO. 2

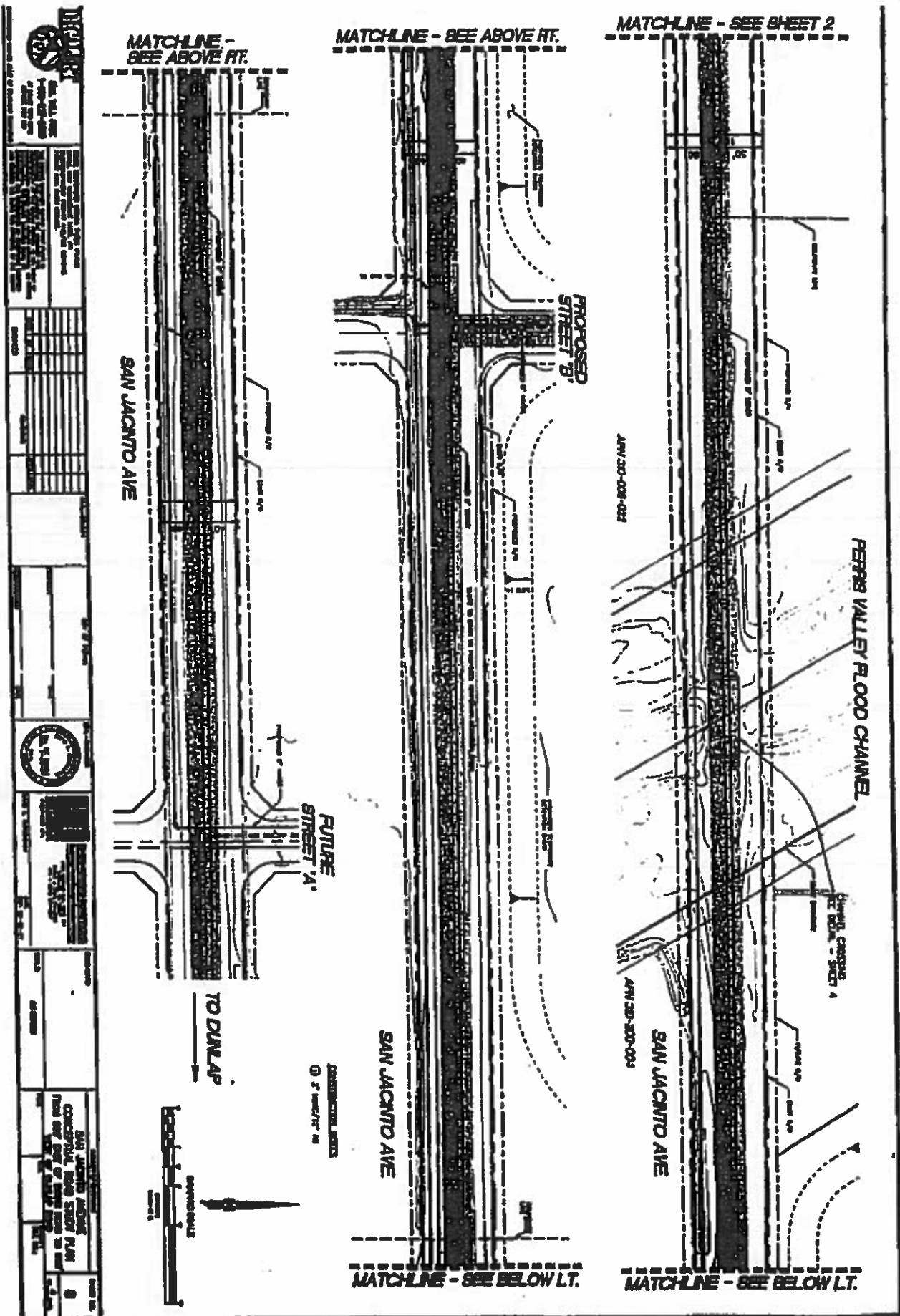
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MATCHLINE - SEE SHEET 3



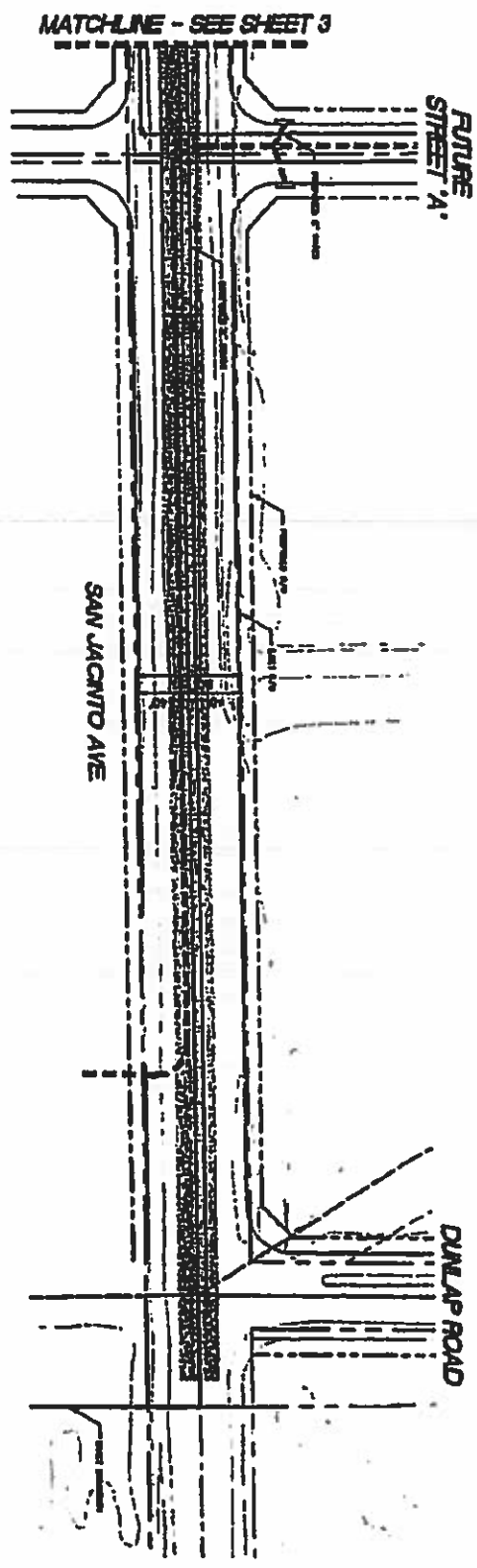
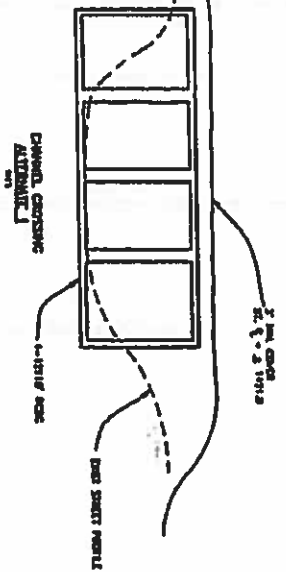
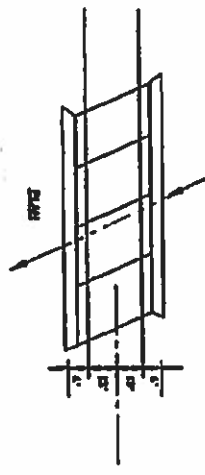
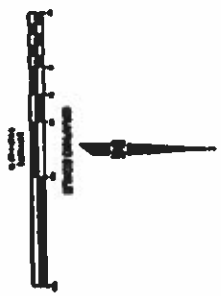
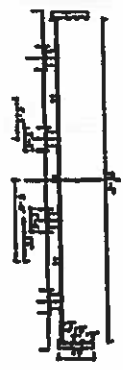
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FOR PLAN CHECK ONLY Friday April 20 2008 - 1:11:01 pm

Exhibit D-3

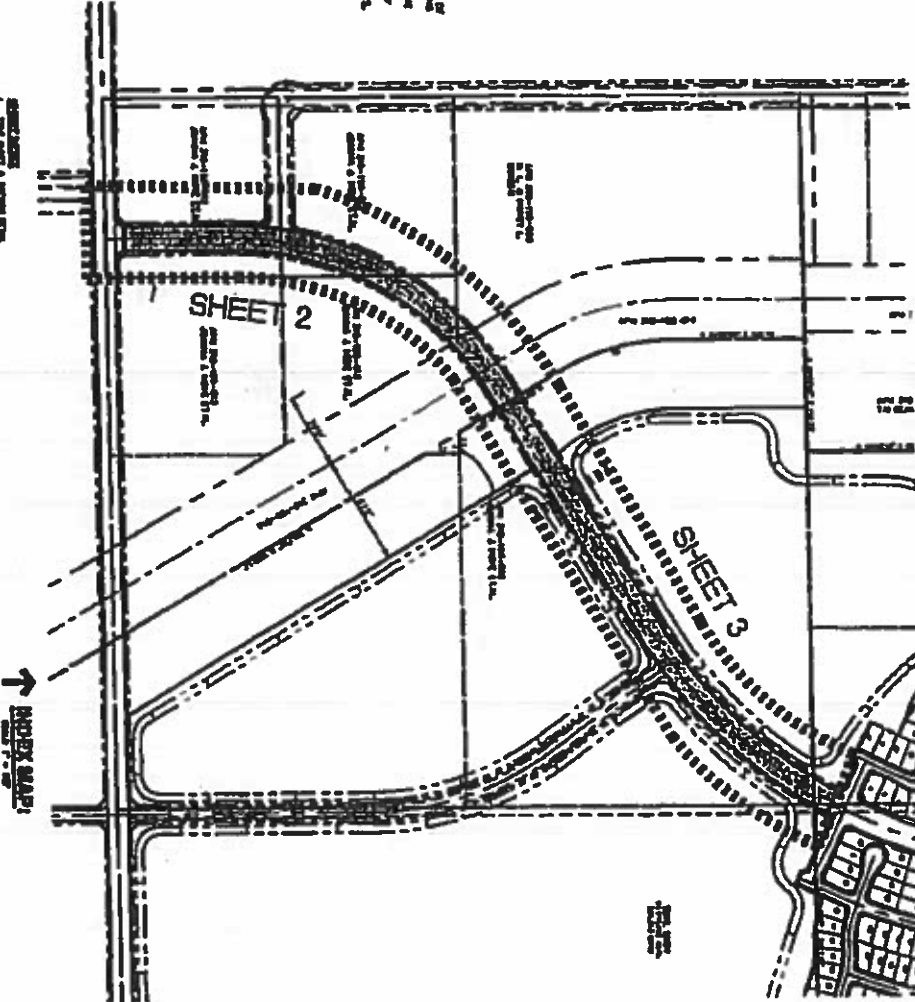
	
PROJECT: SAN JACINTO AVENUE SHEET NO.: 4 DATE: 11/11/11	
DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]	
CONTRACT NO.: [Number]	
SCALE: [Scale]	
SHEET NO. 4 OF 4	
PROJECT LOCATION: [Location]	
CONTRACTOR: [Name]	
DESIGNER: [Name]	
DATE: 11/11/11	
PROJECT NO.: [Number]	
SHEET NO.: 4	
DATE: 11/11/11	
PROJECT LOCATION: [Location]	
CONTRACTOR: [Name]	
DESIGNER: [Name]	
DATE: 11/11/11	
PROJECT NO.: [Number]	
SHEET NO.: 4	
DATE: 11/11/11	



CONSTRUCTION NOTES
① 2' ROADWAY

EXHIBIT "E"

**EVANS ROAD
CONCEPTUAL STUDY
IN THE CITY OF PERRIS, COUNTY OF INVERGORD, STATE OF CALIFORNIA**

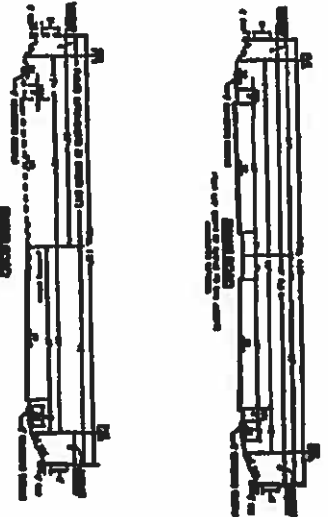


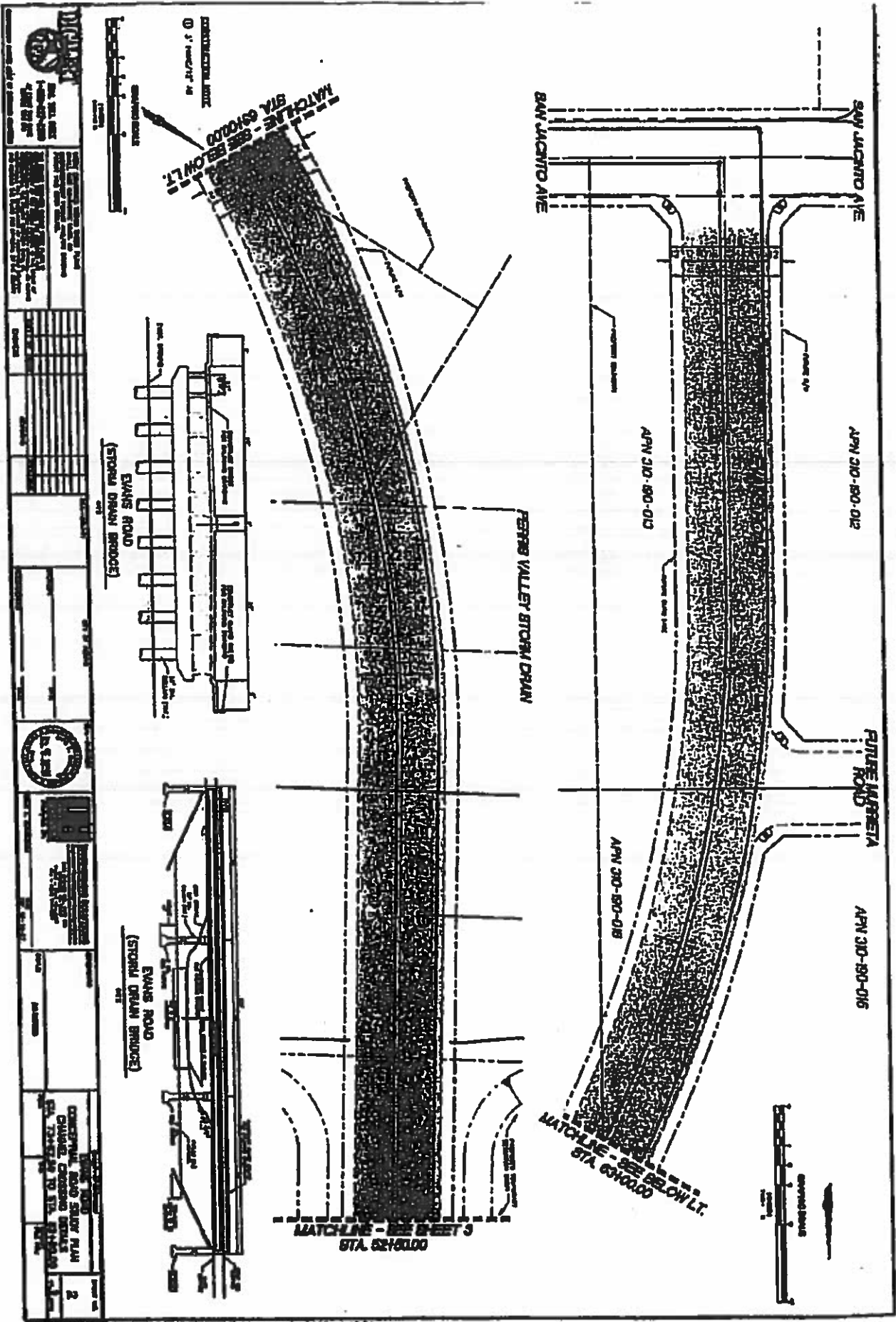
Legend

- Proposed Road
- Proposed Median
- Proposed Lane
- Proposed Shoulder
- Proposed Sidewalk
- Proposed Planting Area
- Proposed Utility
- Proposed Storm Drain
- Proposed Street Light
- Proposed Sign
- Proposed Utility Pole
- Proposed Utility Valve
- Proposed Utility Manhole
- Proposed Utility Access
- Proposed Utility Enclosure
- Proposed Utility Vault
- Proposed Utility Chamber
- Proposed Utility Box

Notes

1. See Part 1 of this study.
2. See Part 2 of this study.
3. See Part 3 of this study.
4. See Part 4 of this study.
5. See Part 5 of this study.
6. See Part 6 of this study.
7. See Part 7 of this study.
8. See Part 8 of this study.
9. See Part 9 of this study.
10. See Part 10 of this study.





<p>PROJECT INFORMATION</p> <p>PROJECT NO. 100-000000</p> <p>DATE: 10/15/00</p> <p>SCALE: AS SHOWN</p>	
<p>DESIGNER: [Logo]</p> <p>PROJECT MANAGER: [Name]</p> <p>DATE: 10/15/00</p>	
<p>CONTRACTOR: [Name]</p> <p>DATE: 10/15/00</p>	
<p>ENGINEER: [Name]</p> <p>DATE: 10/15/00</p>	
<p>PROJECT LOCATION: [Address]</p>	
<p>PROJECT DESCRIPTION: [Text]</p>	
<p>PROJECT STATUS: [Text]</p>	
<p>PROJECT BOUNDARIES: [Text]</p>	
<p>PROJECT NOTES: [Text]</p>	
<p>PROJECT CONTACT: [Text]</p>	
<p>PROJECT DRAWING NO. 2</p>	

CONTRACTOR'S OFFICE
 1400 14th St. N.W.
 WASHINGTON, D.C. 20005
 TEL: (202) 462-1000
 FAX: (202) 462-1001

PROJECT NO. 100-100-100
DATE 10/10/00
SCALE 1" = 40'

CONSTRUCTION NOTES

1	CONSTRUCT 10' WIDE SIDEWALK
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CONSTRUCTION ROAD STREET PLAN
 STA. 82+50.00 TO STA. 37+00.00

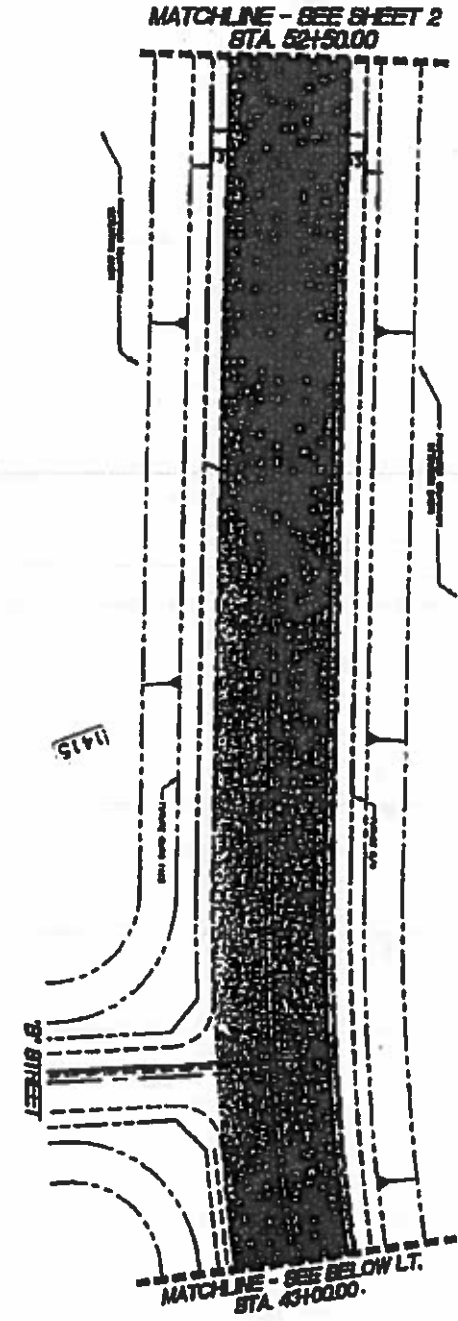
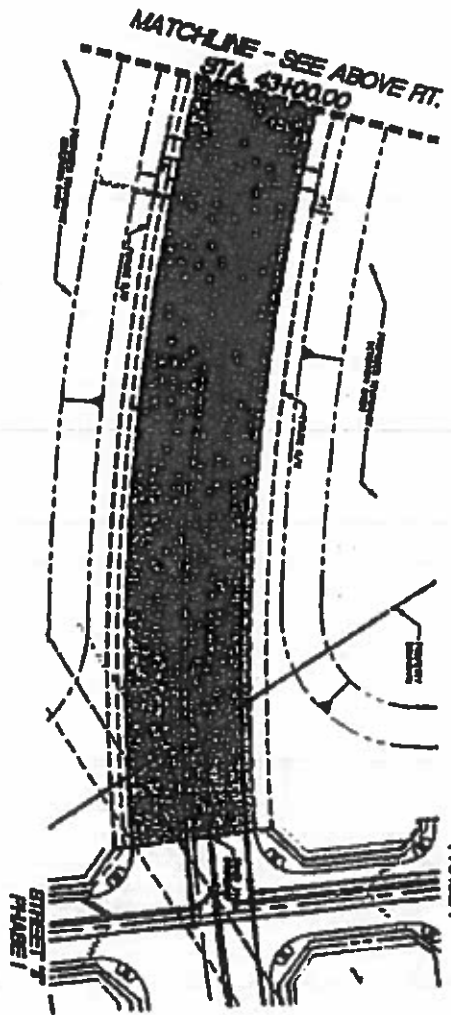


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Term	1.1.21
Transfer Factors	2.3
TUMF	3.12.5
TT 31157	1.1.6
WRCOG	3.8.2

CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: January 30, 2018

SUBJECT: **Amendment No. 1 to ParkWest Development Agreement – Consideration of a request to adopt an amendment to the Development Agreement for the ParkWest Specific Plan and Tentative Tract Map 31157. Applicant: Palin Enterprises**

REQUESTED ACTION: **Introduce First Reading of Ordinance No. (Next in order) to provide findings and approve Amendment No. 1 to the Development Agreement for the ParkWest Specific Plan and Tentative Tract Map 31157.**

CONTACT: **Dr. Grace Williams, Director of Planning and Economic Development**

BACKGROUND/DISCUSSION:

On January 3, 2018, the Planning Commission voted unanimously to extend the life of the Development Agreement (DA) between the City of Perris and ParkWest Associates (aka ParkWest Specific Plan) by an additional ten years from the date that was previously approved by the City Council in early 2007. Since the Planning Commission hearing the DA has been revised to clarify the timing and use of the \$2,000,000 contribution as part of the DA extension. However, the overall content of the DA remains the same. The ParkWest Specific Plan is located south of Nuevo Road and generally between Dunlap Road and the Perris Valley Storm Drain Channel, that will provide for development of 534 acres of vacant land into 1,533 single family dwellings and 474 townhome units, along with other facilities and open space amenities. The developer requested the DA extension to provide time for a possible amendment of the Specific Plan that was originally set to expire on March 21, 2017. Through an administrative process, the City previously granted relatively short extensions to consider possible changes to the Specific Plan and DA. The proposed Amendment is a formal extension of the DA until January 27, 2028.

Staff is recommending approval of the Development Agreement amendment. As a provision for the extension, the developer will dedicate right of way and contribute a \$2,000,000 Public Benefit Fee which the City may use toward improvements to Nuevo Road and the Nuevo Crossing over the Perris Valley Storm Drain Channel. These above mentioned improvements are expected to commence in 12 to 18 months.

BUDGET (or FISCAL) IMPACT: Costs for staff preparation of this item are borne by the applicant.

Prepared by: Kenneth Phung, Planning Manager

City Attorney: N/A
Assistant City Manager: Darren Madkin
Assistant City Manager: Clara Miramontes
Director of Finance: Jennifer Erwin

Public Hearing: **January 30, 2018**

Attachments:

1. Ordinance No. (Next in Order) to approved Amendment No. 1 to the ParkWest Specific Plan
2. Proposed Development Agreement
3. Approved 2007 Development Agreement
4. Approved ParkWest Specific Plan Land Use Map
5. Tract Map 31157
6. Planning Commission Staff Report dated January 3, 2018
7. PC Resolution 18-01

ATTACHMENT - 4

**CITY COUNCIL
AGENDA SUBMITTAL**

Meeting Date: February 13, 2018

SUBJECT: Contract Services Agreement for Julie Fonseca

REQUESTED ACTION: Authorize the City Manager to execute a Contract Services Agreement with Julie Fonseca for the preparation of a Community Economic Development Strategy, a Feasibility Study for a downtown Skills Training and Job Placement Center, and submit a Federal EDA grant application for construction grant funds for the Center.


CONTACT: Dr. Grace I. Williams, Director of Planning & Economic Development 

BACKGROUND/DISCUSSION:


The City of Perris Department of Planning & Economic Development wishes to compete for Federal Economic Development Agency grant funds for the construction of a Downtown Skills Training and Job Placement Center. The Center is to help meet growing workforce needs of new and existing businesses within the City and surrounding region. The Center will house equipment for skills training along with classrooms for certification programs, pre-apprenticeships, apprenticeships and internships. The Center will be a space that businesses can utilize to meet their workforce and employee skills training needs. Moreover, the Center is where the Riverside County Workforce Investment Board, local colleges and school districts can align their skills training programs and incentives to better support the business community and grow the local economy, while offering high school graduates and displaced workers opportunities for sustainable careers. Job creation and job placement are the Center's primary goals.

To successfully compete for the aforementioned Federal EDA grant, staff is recommending that the City contract for technical services with Julie Fonseca to develop a required Community Economic Development Strategy (CEDs) Plan, a feasibility study for the Center, and submit a Federal EDA grant application for required construction funds for the proposed Center. Ms. Fonseca has extensive experience in assisting public agencies compete for federal funds and has successfully obtained several Federal EDA grants for her clients. Due to time constraints and specialized technical experience necessary to complete this task, a sole source contract at a cost less than \$62,000 is acceptable. As such, staff is recommending that the City contract with Julie Fonseca for an amount not to exceed \$62,000.

FISCAL IMPACT: Costs for technical services by Julie Fonseca are budgeted in the 2017-2018 General Fund.

Prepared by: Dr. Grace I. Williams, Director of Planning & Economic Development 

Assistant City Manager: Clara Miramontes 

Assistant City Manager: Darren Madkin 

Director of Finance: Jennifer Erwin 

Attachments: Contract Services Agreement

Consent: February 13, 2018

CITY OF PERRIS
CONTRACT SERVICES AGREEMENT FOR
TECHNICAL AND GRANT WRITING SERVICES FOR FEDERAL GRANTS

This Contract Services Agreement ("Agreement") is made and entered into this ____ day of _____, 20__, by and between the City of Perris, a municipal corporation ("City"), and Julie Fonseca ("Consultant").

NOW, THEREFORE, the parties hereto agree as follows:

1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as *Exhibit "A"* and incorporated herein by reference. Consultant warrants that all work or services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

1.2 Compliance With Law. All work and 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 of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant 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.

2.0 COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as *Exhibit "A"* and incorporated herein by this reference, but not exceeding the maximum contract amount of Sixty Two Thousand Dollars and No Cents (\$62,000) ("Contract Sum").

2.2 Method of Payment. Provided that Consultant is not in default under the terms of this Agreement, Consultant shall be paid \$62,000.

3.0 COORDINATION OF WORK

3.1 Representative of Consultant. Julie Fonseca is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work or services specified herein and make all decisions in connection therewith.

3.2 Contract Officer. The City's City Manager is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City may designate another Contract Officer by providing written notice to Consultant.

3.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

3.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth on *Exhibit "A"*. Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

4.0 INSURANCE AND INDEMNIFICATION

4.1 Insurance. Consultant 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:

(a) Commercial General Liability Insurance. A policy of commercial general liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,00.00 per occurrence for all covered losses and no less than \$2,000,000.00 general aggregate.

(b) Workers' Compensation Insurance. A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

(c) Professional Liability or Error and Omissions Insurance. A policy of professional liability insurance in an amount not less than \$1,000,000.00 per claim with respect to loss arising from the actions of Consultant performing professional services hereunder on behalf of the City.

All of the above policies of insurance shall be primary insurance. The general liability policy shall name the City, its officers, employees and agents ("City Parties") as additional insureds and shall waive all rights of subrogation and contribution it may have against the City and the City's Parties and their respective insurers. All of said policies of insurance shall provide that said insurance may be not cancelled without providing ten (10) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled or amended, Consultant shall, prior to the cancellation or amendment date, submit new evidence of insurance in conformance with this Section 4.1 to the Contract Officer. No work or services under this Agreement shall commence until Consultant has provided City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by City.

Consultant agrees that the provisions of this Section 4.1 shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible.

The insurance 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 that the Consultant is authorized to subcontract any portion of the work or services provided pursuant to this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to this Section 4.1.

4.2 Indemnification.

(a) Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and the City's Parties from and against any and all losses, liabilities, damages, costs and expenses, including attorneys' fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees of subcontractors (or any entity or individual for which Consultant shall bear legal liability) in the performance of professional services under this Agreement.

(b) Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City and City's Parties from and against any liability (including liability for claims, suits, actions, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, defense costs and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any

individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

2. TERM

2.1 Term. Unless earlier terminated in accordance with Section 5.2 below, this Agreement shall continue in full force and effect until April 1, 2018.

2.2 Termination Prior to Expiration of Term. Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party. Upon receipt of the notice of termination, the Consultant shall immediately cease all work or services hereunder except as may be specifically approved by the Contract Officer. In the event of termination by the City, Consultant shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the Contract Officer and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

3. MISCELLANEOUS

3.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through it, 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. Consultant shall take affirmative action to ensure 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.

3.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, 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 Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

3.3 Conflict of Interest. No officer or employee of the City shall have any financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any state statute or regulation. The Consultant 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. When requested by the Contract Officer, prior to the City's execution of this Agreement, Consultant shall provide the City with an executed statement of economic interest.

3.4 Notice. Any notice or other communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, City of Perris, 101 North "D" Street, Perris, CA 92570, and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement.

3.5 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.

3.6 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and that 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 a writing signed by both parties.

3.7 Severability. In the event that part of 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 portions 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.

3.8 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.

3.9 Attorneys' Fees. If either party to this Agreement is required to initiate, 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, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

3.10 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.

[SIGNATURES ON NEXT PAGE]

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

ATTEST:

"CITY"
CITY OF PERRIS

By: _____
Nancy Salazar, City Clerk

By: _____
Michael M. Vargas, Mayor

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Eric L. Dunn, City Attorney

"CONSULTANT"
Julie Fonseca, dba Maxella Real Estate

By: _____
Signature

Print Name and Title

By: _____
Signature

Print Name and Title

(Corporations require two signatures; *one from each* of the following: A. Chairman of Board, President, any Vice President; *AND B.* Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer.)

[END OF SIGNATURES]

EXHIBIT "A"

SCOPE OF SERVICES / COMPENSATION

[Insert or Attach]

Quote

Julie Fonseca

DATE: 1/30/2018
INVOICE #: 15478
CUSTOMER ID:

BILL TO

Grace Williams
Director of Planning & Eco Dev
135 N. D Street
Perris, CA 92570
951.943.6100 ext. 277

SHIP TO

Julie Fonseca
PO BOX 83761
LA, CA 90083
323.896.8324

JOB

PAYMENT TERMS

City of Perris Skills Training Center and Job Placement Center

See Below

DESCRIPTION

AMOUNT

City of Perris Initial 5-Year CEDS Strategy for U.S. Department of Commerce

\$22,000

Project Feasibility Study for Skills Training Center and Job Placement Center

\$15,000

EDA Application for Skills Training Center and Job Placement Center

\$25,000

Includes application narrative, staff Q&A, application guidance on EDA requirements including Environmental and Engineering requirements.

*Client will submit final application via Grants Gov

*Client will prepare required environmental reports

*Client will prepare required engineering reports

*Client will gather necessary Exhibit A Forms

All work to be completed within 45 days of Quote Approval.

PAYMENT TERMS

20% Retainer

40% Upon 80% Draft

40% Upon Final Submittal

TOTAL

\$62,000

Make all checks payable to Julie Fonseca. Thank you for your business!

PO BOX 83761 Los Angeles, CA 90083

Tel: 323.896.8324

CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: February 13, 2018

SUBJECT: Settlement Agreement with BAI Investor, LLC, related to the acquisition of the McCanna Ranch Water Company by the Perris Public Utility Authority

REQUESTED ACTION: That the City Council and PPUA Board approve and authorize the Mayor and PPUA Chairman to execute the Settlement Agreement

CONTACT: Eric Dunn, City Attorney

BACKGROUND/DISCUSSION:

In December 2008, the City entered into a Purchase and Sale Agreement with McCanna Ranch Water Company ("MRWC") to purchase assets of MRWC used in providing water service to the area known generally as the Villages of Avalon (the "North Perris Water System"). The City assigned its rights and obligations under the Purchase and Sale Agreement to the Perris Public Utility Authority ("PPUA"). The PPUA subsequently acquired the North Perris Water System, making a down payment of \$2,000,000 and executing a promissory note in favor of MRWC in the amount of \$9,360,000 (the "Promissory Note").

The Promissory Note provided that a first payment of \$4,950,000 would be due when the State Water Resources Control Board ("SWRBC") issued a permit allowing the appropriation of water from an underground stream in the vicinity of the Perris Dam (the "First Permit") and the PPUA was in a position to pay the Promissory Note through net revenues of the North Perris Water System (the "First Payment"). A Second Payment of up to \$4,410,000 would be due when the SWRCB issued an amendment to the permit allowing appropriation of additional water from the underground stream and diversion of that water to other parts of the City (the "Second Permit").

In January 2010, BAI Investor, LLC ("BAI") acquired the Promissory Note from MRWC at a foreclosure sale and became the successor to MRWC. In January 2009, the SWRBC issued the First Permit. However, the PPUA was not able to implement rates adequate to fund the operation of the North Perris Water System and to pay the First Payment until July 2014. In July 2012, BAI filed a lawsuit against the City and the PPUA seeking payment under the Promissory Note related to the First Permit and First Payment (the "First BAI Lawsuit"). After extensive negotiations, on or about April 20, 2015 the parties entered into a settlement agreement in full satisfaction of the First Payment, and the First BAI Lawsuit was dismissed.

In September 2009, the City filed an application with the SWRCB for the Second Permit. As of this date the SWRCB has not issued the Second Permit. The respective staffs of the SWRCB, City, and Eastern Municipal Water District have been working on the proposed allocation of water from the subterranean stream and the approval of the Second Permit is pending. On or about September 18, 2017, BAI filed another lawsuit against the City and PPUA seeking, among other things, payment of the Second Payment (the "Second BAI Lawsuit"). The parties desire to settle the Second BAI Lawsuit and all related litigation. Under the terms of the proposed Settlement Agreement, the City and/or PPUA will pay to BAI the sum of \$2,079,000 in full satisfaction of the Second Payment, and BAI will dismiss the Second BAI Lawsuit with prejudice. The parties will also dismiss all related

claims.

BUDGET (or FISCAL) IMPACT:

The settlement payment is equal to the amount to be owed upon issuance of the Second Permit for the projected allocation of water anticipated to be approved by the SWRCB. The PPUA does not have sufficient cash on hand so the General Fund will be the source of the payment, to be reimbursed upon the sale of the water system.

Reviewed by:

City Attorney X

Assistant City Manager Darren Madkin DM

Finance Director Jennifer Erwin JE

Attachments: Settlement Agreement (without exhibits)

Consent: X

Public Hearing:

Business Item:

Other:

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is entered into by BAI Investor, LLC, a California limited liability company ("BAI"), the City of Perris, a California municipal corporation ("City"), and the Perris Public Utility Authority, a joint powers authority ("PPUA"), with reference to the following facts:

RECITALS

A. In December 2008, the City entered into an agreement (the "Purchase and Sale Agreement") with McCanna Ranch Water Company ("MRWC") to purchase assets of MRWC used in providing water service to the residents of a portion of the City (the "Water System Assets"). A signed copy of the Purchase and Sale Agreement is attached hereto as Exhibit 1. The City assigned its rights and obligations under the Purchase and Sale Agreement to PPUA. PPUA acquired the Water System Assets on December 16, 2008, making a down payment of \$2,000,000 and executing a promissory note in favor of MRWC in the amount of \$9,360,000 (the "Promissory Note").

B. The Promissory Note, a signed copy of which is attached hereto as Exhibit 2, provided that the first payment of \$4,950,000 would be due when the State Water Resources Control Board ("SWRCB") issued a permit pursuant to the SWRCB Application to Appropriate Water No. 30503, filed by MRWC, allowing the appropriation of water from an underground stream in the vicinity of Perris Dam and the PPUA was in a position to pay the Promissory Note through net revenues of the Water System Assets or by issuance of a bond (the "First Payment"). The second payment of up to \$4,410,000 would be due when the SWRCB issued an amendment to the permit (the "Permit Amendment") allowing appropriation of up to an additional 1,087 acre-feet of water from the underground stream and diversion of that water to other parts of the City (the "Second Payment"). (This Recital B is a general summary of certain terms of the Promissory Note. The actual terms of the Promissory Note control over any inconsistency resulting from the simplification of the terms for purposes of this Recital or this Settlement Agreement.)

C. On or about January 25, 2010, BAI acquired the Promissory Note at a foreclosure sale and is the successor in interest to MRWC and the current holder of the Promissory Note.

D. On July 26, 2012, BAI filed a lawsuit against the City and PPUA seeking, among other things, the first payment due under the Promissory Note. This action is identified as *BAI Investor, LLC v. City of Perris, et al.*, Orange County Superior Court Case No. 30-2012-00586704-CU-BC-CJC (the "First BAI Lawsuit").

E. On or about April 20, 2015, the parties entered into a settlement to resolve the First BAI Lawsuit whereby the PPUA paid BAI the sum of \$5,879,635. This settlement reserved to BAI its rights to continue to pursue the Second Payment when the conditions to the making of the Second Payment had been met.

F. On or about September 13, 2016, BAI filed a petition for writ of mandate to compel the production of public records. This action is identified as *BAI Investor, LLC v. City of Perris, et al.*, Riverside Superior Court Case No. RIC1611770 (the "PRA Lawsuit").

G. On or about September 18, 2017, BAI filed another lawsuit against the City and PPUA seeking, among other things, the Second Payment due under the Promissory Note. This action is identified as *BAI Investor, LLC v. City of Perris, et al.*, Orange County Superior Court Case No. 30-2017-00944362-CU-BC-CJC (the "Second BAI Lawsuit").

H. On or about October 25, 2017, the City and PPUA filed a cross-complaint against BAI in the Second BAI Lawsuit for breach of contract ("Cross-Complaint").

I. On or about December 29, 2017, BAI filed a special motion to strike the Cross-Complaint pursuant to Code of Civil Procedure section 425.16.

J. BAI, the City, and the PPUA desire to settle the PRA Lawsuit, the Second BAI Lawsuit, the Cross-Complaint and resolve all claims as between them.

AGREEMENT

1. Payment. The City and/or PPUA will pay BAI the sum of \$2,079,000.00 in full satisfaction of the Second Payment and all other amounts due with respect to the Promissory Note, including, but not limited to, principal, interest, and collection costs. Payment shall be made by wire to Comerica Bank, ABA No. 121137522, for credit to the account of BAI Investor, LLC, Account No. 1894721453.

2. Dismissal. Within five (5) court days following BAI's receipt of the settlement payment required by Paragraph 1 of this Settlement Agreement, BAI shall dismiss the PRA Lawsuit and Second BAI Lawsuit, with prejudice, and the City/PPUA will dismiss the Cross-Complaint, with prejudice. The original Promissory Note will then be endorsed to indicate that all sums due pursuant to the Promissory Note have been paid and the original Promissory Note will be delivered to counsel for the City and PPUA, addressed as follows: Eric L. Dunn, Aleshire & Wynder LLP, 3880 Lemon Street, Suite 520, Riverside, CA 92501.

3. Costs and Attorneys' Fees. BAI, the City and the PPUA shall each bear their own litigation expenses, attorneys' fees and costs incurred in connection with the PRA Lawsuit, the Second BAI Lawsuit and the Cross-Complaint. Notwithstanding the foregoing, the prevailing party on any claim(s) related to or arising out of this Settlement Agreement, shall be entitled to recover their reasonable litigation expenses, including attorney fees.

4. Mutual Release. Except as to the obligations arising out of or created by this Settlement Agreement, BAI, the City and the PPUA hereby release and discharge the other, and their heirs and assigns, shareholders, members, managers, officers, directors, employees, agents, successors and assigns as applicable, from any and all sums of money, accounts, rents, claims, demands, contracts, actions, debts, controversies, agreements, damages, and causes of action whatsoever or of whatever kind or nature related to the Purchase and Sale Agreement, the Promissory Note, and the public records requests that were the subject of the PRA Lawsuit, including, but not limited to, principal, interest, and collection costs, whether known or unknown, or suspected or unsuspected, which either of them now owns, holds, has or claims to have, or at any time hereto before owned, held, had or claimed to have had against the other, or which either of them may own, hold, have or claim to have in the future.

5. Waiver of Section 1542. BAI, the City and the PPUA each acknowledge that they are familiar with Section 1542 of the Civil Code, which provides as follows:

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

BAI, the City and the PPUA each waive and relinquish any right or benefit which they have or may have under Civil Code section 1542 to the full extent that such rights or benefits may lawfully be waived. In connection with such waiver and relinquishment, BAI, the City and the PPUA each acknowledge that they or their attorneys may hereafter discover claims or facts in addition to, or different from, those they now know or believe to exist with respect to the subject matter of this Settlement Agreement, but that it is their intention to settle and release the matters which are the subject of this Settlement Agreement fully, finally and forever.

6. Compromise Agreement. It is acknowledged by the parties that this Settlement Agreement is an agreement to compromise and settle claims, and that this Settlement Agreement is not, and shall not be used as, an admission by any party of liability for or the validity of any claims of any other party made in the Second BAI Lawsuit, the Cross-Complaint or the PRA Lawsuit.

7. Authority: Effective Date. The parties to this Settlement Agreement represent, with the intent that the other parties will rely thereon, that the parties to this Settlement Agreement are authorized to enter into this Settlement Agreement and all actions necessary to authorize execution of this Settlement Agreement have been taken. This Settlement Agreement shall be effective when it is signed by the last party to sign the Settlement Agreement.

8. Counterparts: Facsimile Signatures. This Settlement Agreement may be executed in any number of counterparts, at different times and locations, all of which taken together shall constitute one and the same instrument. Facsimile signatures, however delivered, will be sufficient as evidence of execution of the Settlement Agreement.

9. Effect of Headings. The subject headings of the sections of this Settlement Agreement are included for convenience only and will not affect the construction or interpretation of any of its provisions.

10. Word Usage. Unless the context clearly requires otherwise:
- (a) Plural and singular numbers will each be considered to include the other;
 - (b) The masculine, feminine, and neuter genders will each be considered to include the others;
 - (c) "Shall," "will," "must," "agree," and "covenants" are each mandatory;
 - (d) "May" is permissive;
 - (e) "Or" is not exclusive; and
 - (f) "Includes" and "including" are not limiting.

11. Amendments. No supplement, modification or amendment of any term, provision or condition of this Settlement Agreement shall be binding or enforceable unless executed in writing by the parties hereto.

12. Entire Agreement. This Settlement Agreement contains the entire understanding between the parties and supersedes all prior and contemporaneous agreements, arrangements, negotiations and understandings, statements, promises or inducements, oral or otherwise, contrary to the terms of this Settlement Agreement. No representations, warranties, covenants or conditions expressed or implied, whether by statute or otherwise, other than as set forth herein have been made by either party hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

DATED: February 2, 2018

BAI INVESTOR, LLC, a California limited liability company

By: 
Ariel Amir

DATED:

CITY OF PERRIS

By: _____
Michael M. Vargas
Mayor

ATTEST:

Nancy Salazar, City Clerk

APPROVED AS TO FORM

Eric L. Dunn, City Attorney

DATED:

PERRIS PUBLIC UTILITY AUTHORITY

By: _____
Michael M. Vargas
Chairman

ATTEST:

Nancy Salazar, Secretary

APPROVED AS TO FORM

Eric L. Dunn, General Counsel

CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: February 13, 2018

SUBJECT: Resolution approving a Three Party Tender Agreement and Mutual Final Release between the City of Perris, Argonaut Insurance Company, and Millsten Enterprises, Inc, for construction of the Perris Valley Storm Drain Trail

REQUESTED ACTION: That the City Council approve a resolution authorizing the City Manager to execute a Three Party Tender Agreement and Mutual Final Release between the City of Perris, Argonaut Insurance Company, and Millsten Enterprises, Inc, for construction of the Perris Valley Storm Drain Trail

CONTACT: Darren Madkin, Assistant City Manager 

BACKGROUND:

The City of Perris was awarded \$1.2 million in grant funds through the Active Transportation Program (ATP) to construct Phase I of a trail on the Perris Valley Storm Drain Channel, between the northerly border of Perris, south to Nuevo Street. This portion of the trail scope of work included construction of a 2.4 mile multi-purpose trail consisting of a bike and pedestrian path on the Perris Valley Storm Drain Channel with amenities including landscaping, irrigation, fencing, signage, and at grade crossings at Ramona Expressway, Rider, and Orange Avenue, and miscellaneous related improvements. The PVSD Trail construction was let out for public bid on October 26, 2016. On December 15, 2016, the City Council awarded a contract to Principles Contracting Inc. to construct Phase 1 of the PVSD Trail. Construction on the project started in March 2017 and was scheduled to be completed by September 2017. In June 2017, staff was notified of an order from the State of California Contractors State License Board revoking Principles Contracting Inc.'s contractors license effective July 14, 2017. As a result of their inability to provide a valid contractors license, Principles was no longer able to complete the project under the terms of their contract with the City. Staff notified Principles that they were no longer permitted to have their staff or any subcontractors on the job site and work on the project was stopped July 14, 2017. At the time of the work stoppage the trail was approximately 50% completed.

As is the case with all contractors bids for public work projects in the City of Perris, Principles Contracting was required to provide a separate performance bond and payment bond as a guarantee that all subcontractors are paid and that the public work project is completed. Immediately after work stopped on the PVSD Trail project, staff worked with the City Attorney's office and Argonaut Insurance Company, Principles Contracting's surety bond holder, to secure the services of another contractor to complete construction of the trail.

DISCUSSION:

The PVSD Trail project budget at the time work stopped, with change orders, totaled \$1.5 million. Principles Contracting Inc., had been paid \$844,554 for work that had been completed, leaving \$734,434 for the remaining work under the contract. Staff met with representatives from Argonaut Insurance Company (AIC) on the job site to develop a revised project scope to complete the PVSD Trail. Once an acceptable scope of work was developed, AIC requested bids from qualified contractors and secured the services of another contractor, Millsten Enterprises, Inc. (31051 11th Street, Nuevo, California) to

Resolution approving a Three Party Tender Agreement and Mutual Final Release

February 13, 2018

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complete construction of the trail for a total of \$497,590.98. Millsten is required to post payment and performance bonds naming the City Of Perris as the beneficiary in an amount equal to its price for completion of the base bid scope of work and any agreed change orders. Staff conducted a background check and verified that Millsten Enterprises, Inc. was properly licensed to work in the State of California and their record with the licensing board was found to be satisfactory.

With the replacement contractor selected to complete the PVSD Trail project, all that remained to be completed was a document memorializing the release by the City of Perris, of AIC, and an agreement to retain Millsten Enterprises to complete the work on the PVSD Trail. The attached resolution authorizes the City Manager or his designee to execute a Three Party Tender Agreement and Mutual Final Release between the City of Perris, Argonaut Insurance Company, and Millsten Enterprises, Inc, for construction of the Perris Valley Storm Drain Trail. In summary, the agreement provides that the City of Perris and AIC mutually Release each other from all claims which the City or AIC has or may ever claim to have, now or in the future, against the other under and/or by reason of the Performance Bond, the Contract and/or the Project. Within ten days of the effective date of the attached agreement the City of Perris will pay directly to AIC the sum of \$236,843.07 representing the payment for work that was completed pursuant to Principal Contracting's Invoice No. 5 which was not previously paid. This amount also represents the difference between the final agreement proceeds and the completion cost. The agreement also provides that Millsten has agreed to complete the scope of work included in the base bid of the project proposal according to the terms and conditions of the agreement and original contract for the PVSD Trail.

It is recommended that the City Council approve a resolution authorizing the City Manager to execute a Three Party Tender Agreement and Mutual Final Release between the City of Perris, Argonaut Insurance Company, and Millsten Enterprises, Inc, for construction of the Perris Valley Storm Drain Trail. It is also recommended that the City Council authorize a contract amendment with Pacific Code Compliance not to exceed \$39,000 for construction management/prevaling wage monitoring (proposal attached with this report); and that the City Council amend the contract with Community Works Design Group not to exceed \$4,875 for architectural construction coordination (proposal attached with this report). The total budget for completion of Phase I will be \$541,465. Staff further recommends that the City Council appropriate funding for project contingency in the amount of \$55,000 from General Fund reserves.

BUDGET (or FISCAL) IMPACT: Funding for this Project is included in the Fiscal Year 2017-2018 CIP budget totaling \$1.8 million in CIP #P007. To date, \$1 million has been expended leaving a fund balance of \$840,000. It is recommended that the City Council appropriate funding for project contingency in the amount of \$55,000 from General Fund reserves. With the previously mentioned appropriation there will be sufficient funding in this project budget to complete the construction of the PVSD Trail.

Reviewed by:

Assistant City Manager: _____

Finance Director  _____

Resolution approving a Three Party Tender Agreement and Mutual Final Release
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Attachments – Resolution

Three Party Tender Agreement and Mutual Final Release
Proposal from Pacific Code Compliance for construction management
Proposal from Community Works Design Group for construction observation

Consent: X
Public Hearing:
Business Item:

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF PERRIS, APPROVING A THREE PARTY TENDER AGREEMENT AND MUTUAL FINAL RELEASE BETWEEN THE CITY OF PERRIS, ARGONAUT INSURANCE COMPANY, AND MILLSTEN ENTERPRISES, INC, FOR CONSTRUCTION OF THE PERRIS VALLEY STORM DRAIN TRAIL PROJECT.

WHEREAS, on December 15, 2016 the City of Perris, awarded a contract to Principles Contracting, Inc., as contractor, for the performance of certain work on a construction project known more commonly as the PERRIS VALLEY STORM DRAIN CHANNEL TRAIL PROJECT; and

WHEREAS, Argonaut Insurance Company, a corporation organized and existing under the laws of the State of Illinois, as surety, issued separate Performance and Labor and Material Payment Bonds, each bearing bond number CMGP0000205 on behalf of Principles; and

WHEREAS, Principles Contracting, Inc., as contractor, for the performance of certain work on the PERRIS VALLEY STORM DRAIN CHANNEL TRAIL construction project is in default under the Contract; and

WHEREAS, in an effort to mitigate damages by expediting the progress and completion of Principal's obligations under the Contract, the Surety has obtained a proposal from Millsten Enterprises, Inc., a corporation organized and existing under the laws of the State of California, for the completion of all work necessary under the bonded scope of work; and

WHEREAS, Argonaut Insurance Company desires to tender the services of Millsten Enterprises, Inc. to the City of Perris in full settlement and satisfaction of any and all obligations under all of its performance bonds, subject to the terms of the Agreement; and

WHEREAS, the Parties wish to clarify their rights and responsibilities pursuant to the performance of the scope of work as set forth in the agreement in accordance with the original terms and conditions of the Contract.

NOW, THEREFORE, based on the evidence presented, including the written staff report and oral testimony on this matter, the City Council does hereby find, determine and resolve as follows:

Section 1. The above recitals are all true and correct and are hereby adopted as findings.

Section 2. Based on the information contained within the staff report and the accompanying attachments, the City Council hereby approves this Resolution authorizing a Three Party Tender Agreement and Mutual Final Release between the City of Perris, Argonaut Insurance Company, and Millsten Enterprises, Inc, for construction of the Perris Valley Storm Drain Trail.

Section 3. The City Manager is authorized and directed to take such actions and execute such documents as may be necessary to implement and effect this Resolution on behalf of the City of Perris.

Section 4. The City Clerk shall certify to the passage and adoption hereof.

ADOPTED, SIGNED and APPROVED this 13th day of February, 2018.

Michael Vargas, Mayor

ATTEST:

Nancy Salazar, City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF PERRIS)

I, _____, City Clerk of the City of Perris, California, do hereby certify that the foregoing Resolution Number _____ was duly and regularly adopted by the City of Perris City Council at a regular meeting thereof held on the 13th day of February, 2018, by the following called vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Nancy Salazar, City Clerk

**THREE PARTY TENDER AGREEMENT AND
MUTUAL FINAL RELEASE AS TO THE SURETY AND OBLIGEE**

Surety: Argonaut Insurance Company
Principal: Principles Contracting, Inc.
Obligee: City of Perris
Completion Contractor: Millsten Enterprises, Inc.
Project: Perris Valley Strom Drain Channel Trail Project
Bond No.: CMGP0000205

This *Three Party Tender Agreement and Mutual Final Release As To The Surety and Obligee* (the "Agreement") is made this ___ day of ___, 2018, (the "Effective Date") between:

The **CITY OF PERRIS** a municipal corporation organized and existing under the laws of the State of California having its principal place of operation located at 101 N. "D" Street, Perris California 92570 (hereinafter the "Obligee");

AND

ARGONAUT INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Illinois with its managing general agent Contractor Managing General Insurance Agency, Inc. having its principal place of business located at 20335 Ventura Blvd., Suite 426, Woodland Hills, California 91364 (hereinafter the "Surety");

AND

MILLSTEN ENTERPRISES, INC., a corporation organized and existing under the laws of the State of California and having its principal place of business located at 31051 11th Street, Nuevo, California (hereinafter "Completion Contractor") (the Obligee, Surety and Completion Contractor are sometime hereinafter referred to collectively as the "Parties" or each a "Party").

WITNESSETH

WHEREAS, on or about December 15, 2016 Obligee, as owner, awarded a contract to **PRINCIPLES CONTRACTING, INC.** ("Principal"), as contractor, for the performance of certain work on a construction project known more commonly as the **PERRIS VALLEY STROM DRAIN CHANNEL TRAIL PROJECT** (the "Project"); and

WHEREAS, Principal's scope of work on the Project is more particularly set out in the attached **Exhibit "A,"** including any documents, exhibits, or attachments referenced therein, (the "Contract") which is fully incorporated herein by reference; and

WHEREAS, in connection with the Contract, the Surety, as surety, issued separate Performance and Labor and Material Payment Bonds, each bearing bond number **CMGP0000205** in the penal sum of **ONE MILLION FOUR HUNDRED SEVENTY-NINE THOUSAND NINE HUNDRED THIRTY-TWO (\$1,479,932.00)** (collectively, the "Bonds"), on behalf of Principal, as principal, and in favor of Obligee, as obligee; and

WHEREAS, Principal is in default under the Contract; and

WHEREAS, Surety represents and warrants that Surety, as a performing surety, is independently empowered under the General Indemnity Agreement executed by Principal and others dated September 1, 2016, to determine for itself and Principal whether any claim, demand or suit brought against Surety in connection with the Bonds shall be paid, compromised, or settled and that Surety, as true and lawful attorney-in-fact of the Principal has full right and authority to execute in the name of the Principal any release, satisfaction or any other document necessary or desired by Surety to discharge its bonded obligations, including rights of termination over the Contract; and

WHEREAS, the Parties recognize that this Agreement is in furtherance of the Surety's obligations under the Performance Bond; and

WHEREAS, in an effort to mitigate damages by expediting the progress and completion of Principal's obligations under the Contract, the Surety has obtained a proposal for the completion of the work from the Completion Contractor ("Proposal"). A copy of the Proposal is attached hereto as **Exhibit "B";** and

WHEREAS, the Proposal provides a Base Bid in the lump sum amount of Four Hundred Ninety-Seven Thousand Five Hundred Ninety and 98/100 Dollars (\$497,590.98) for all work necessary for completion of the bonded scope of work (the “Base Bid”); Alternative 1 in the lump sum amount of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) for repair and remediation of irrigation work on the Project (“Alternative 1”); and Alternative 2 in the lump sum amount of Twenty-Two Thousand and 00/100 Dollars (\$22,000.00) for repair, remediation and maintenance of planting provided for in the Contract (“Alternative 2”).

WHEREAS, Completion Contractor has agreed to complete the scope of work included in the Base Bid of the Proposal according to the terms and conditions of the Contract, for a consideration in the amount of **Four Hundred Ninety-Seven Thousand Five Hundred Ninety and 98/100 Dollars (\$497,590.98)**, and to post payment and performance bonds in the form attached hereto as **Exhibit “C”** naming the **CITY OF PERRIS** as obligee in an amount equal to its price for completion of the Base Bid scope of work and any agreed adjustments thereto; and

WHEREAS, conditioned upon the Obligee’s issuance of a Change Order awarding the Completion Contractor Alternative 1, Completion Contractor has agreed to complete the scope of work included in Alternative 1, for a consideration in the amount of **Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00)**; and

WHEREAS, conditioned upon the Obligee’s issuance of a Change Order awarding the Completion Contractor Alternative 2, Completion Contractor has agreed to complete the scope of work included in Alternative 2, for a consideration in the amount of **Twenty-Two Thousand and 00/100 Dollars (\$22,000.00)**; and

WHEREAS, the Surety desires to tender the services of Completion Contractor to Obligee in full settlement and satisfaction of any and all obligations under its Performance Bond, subject to the terms of this Agreement; and

WHEREAS, the Parties wish to clarify their rights and responsibilities pursuant to the performance of the scope of work as set forth herein in accordance with the original terms and conditions of the Contract.

NOW THEREFORE, in consideration of the promises, and other good and valuable consideration, and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Terms and Conditions. All of the terms and conditions of the Contract shall remain in full force and effect, except as modified by this Agreement. The recitals set forth above are incorporated herein by this reference.

2. Contract Accounting. The original Contract price was for \$1,479,932.00. The original Contract price has been or is hereby agreed to have been amended by the following Change Orders, all of which have been considered by Completion Contractor in preparing its Proposal, resulting in a revised Contract price of \$1,578,989.00 ("Contract Price"):

Change Order 1:	Numerous Changes	\$ 0.00
Change Order 2:	Metal Pipe Culverts/Manhole Covers	\$ 37,188.00
Change Order 3:	Narrow Sidewalk on Ramona Exp Way for Safety	\$ (1,736.00)
Change Order 4:	Transmittal # 14 & # 9 – Partial Trail Deletion	\$(103,328.00)
Change Order 5:	Original Street Improvement Plans – Credit	\$(236,385.00)
Change Order 6:	New Street Improvement Plans – Add	\$ 344,323.00
Change Order 7:	Cut & Fill and Balance Trail	\$ 58,995.00.

Obligee has made payments in the amount of \$844,554.95 to Principal under the Contract ("Obligee Payments"). Accordingly, there remains an unpaid balance and/or amounts remaining available for use on the Agreement in the amount of \$734,434.05 ("Final Agreement Proceeds").

As of the Date of this Agreement, the Obligeo warrants and represents that, according to the records available to it, the Contract Price, Obligeo Payments and Final Agreement Proceeds as defined herein are accurate. The Surety may request information to verify the accuracy of the Contract Price, Obligeo Payments, and Final Agreement Proceeds. In the event of an inaccuracy in the Contract Price, Obligeo Payments, and/or Final Agreement Proceeds the Surety shall have the right to an administrative adjustment of the Contract Price, Obligeo Payments, and/or Final Agreement Proceeds and the Obligeo shall tender such additional funds due the Surety in excess of the Surety Funds Paid hereunder as defined in Paragraph 5 within ten (10) days of the Surety's written demand for payment of such amounts.

3. LA Signal Ratification. On October 23, 2017 the Surety entered into a Ratification Agreement (the "Ratification Agreement") with Los Angeles Signal Construction, Inc. ("LA Signal"), whereby LA Signal ratified and agreed to perform and complete its subcontract with Principal in accordance with the terms and provisions thereof for the same consideration and under the same terms and conditions as LA Signal would have been obligated to perform and complete for Principal. A copy of the Ratification Agreement is attached hereto as **Exhibit "D"**. In the Ratification Agreement, LA Signal agreed that the Surety may assign the Surety's rights under the Ratification Agreement to the Completion Contractor. By execution of this Agreement, Completion Contractor hereby accepts the assignment of LA Signal's Ratification Agreement, confirms that it has accounted for the assignment of the Ratification Agreement in its Proposal for completion of the work.

4. Availability of Final Agreement Proceeds for Completion. The Parties agree that the Final Agreement Proceeds are allocated for completion of Principal's scope of work and shall be preserved and dedicated solely and exclusively for use in completion of Principal's scope of work, and for no other purpose other than expressly provided for in this Agreement. The Parties agree that the Final Agreement Proceeds shall not be reduced by any claims not specifically addressed herein, including but not limited to claims for liquidated and/or delay damages arising out of the Agreement.

5. Tender of Completion Contractor. With the execution of this Agreement, Surety hereby tenders the Completion Contractor to Obligee to complete the remaining scope of work, exclusive of that work identified in Proposal Alternatives 1 and 2, as set forth in Completion Contractor's proposal dated January 3, 2018, previously incorporated herein and attached hereto as **Exhibit "B"** and hereby made a part of this Agreement, for a total "Base Bid" amount of **\$497,590.98** ("Completion Cost"). Completion Contractor agrees to accept the Completion Costs as full compensation for its performance of the Base Bid work. Completion Contractor shall perform all work in accordance with the terms and specifications of the Contract previously incorporated herein and attached hereto as **Exhibit "A"**. Completion Contractor agrees to complete, as change order work under the Contract, such additional work as requested by Obligee in accordance with the terms of the Contract and/or the Proposal. Payment shall be made to Completion Contractor by Obligee in accordance with the terms and conditions of the Contract.

Within ten (10) days of the Effective Date of this Agreement, Obligee shall pay directly to Surety the sum of **Two Hundred Thirty Six Thousand Eight Hundred Forty Three and 07/100 Dollars (\$236,843.07)** (the "Surety Funds"), representing full and complete payment for the work that has been satisfactorily completed pursuant to Principal's Invoice No. 5, which is the difference between the Final Agreement Proceeds and the Completion Cost. The parties agree that Surety shall have no responsibility for payment to Completion Contractor and that Completion Contractor will look solely and exclusively to Obligee for payment of any and all amounts due hereunder.

6. Release. Except as provided in this Agreement and for any breach of this Agreement, Obligee and Surety do hereby mutually **RELEASE, ACQUIT and FOREVER DISCHARGE** each other and their respective officers, directors, managers, members, shareholders, agents, partners, principals, successors and assigns of and from any and all claims, rights, demands and/or causes of action of whatsoever kind or nature which Obligee or Surety has or may ever claim to have, now or in the future, against the other under and/or by reason of the Performance Bond, the Contract and/or the Project.

7. The Surety's Continuing Obligations Under Contract Labor and Material Payment Bond. Nothing herein shall alter or affect the Surety's payment obligations to third party claimants, if any, under the Payment Bond issued on behalf of Principal in connection with the Project, provided however, that the Payment Bond shall not apply to or cover the Completion Contractor or any of its sub-subcontractor(s) and suppliers for any work performed and/or materials delivered in connection with the work performed by the Completion Contractor.

8. Reservation of Rights as Between the Surety and Principal. This Agreement shall in no way alter, affect, impair or prejudice any rights, claims, causes of action or defenses between the Surety and Principal and/or its individual indemnitors relating to the Contract, Bonds, or any other agreements between such parties, regardless of whether such claims arise under contract, statute or at common law.

9. No Admission of Liability. This Agreement does not constitute an admission of liability on the part of any of the Parties.

10. No Payment by Obligee Without Surety's Consent. Obligee further agrees that it will not acknowledge or honor any claims or charges against the unpaid contract funds by any creditors or transferees of Principal or any other parties making claim to any such proceeds or balances without the prior written consent of Surety or by order of a court of competent jurisdiction after due notice to Surety. It shall be implied that, upon full execution of this Agreement by the parties, the Surety consents to payment of Completion Contractor by the Obligee in accordance with the terms of the Contract and this Agreement.

11. No Waiver of Penal Amount. The parties agree that the Surety, by execution of this Agreement, does not in any way waive the penal limit of the Performance and Payment Bonds, and that in the event it becomes necessary for the Surety to expend its own funds under the Performance or Payment Bonds, it shall not be obligated to expend funds in excess of the penal limit of the Performance or Payment Bonds, in discharging its obligations thereunder.

12. Binding Agreement. This Agreement shall only extend to and be binding upon the Parties hereto and their respective successors and assigns. Nothing contained in this Agreement shall create any third-party beneficiaries under the Contract Performance Bond, nor confer any benefit or enforceable rights under this Agreement other than to the Parties hereto and their respective successors, assigns, and reinsurers.

13. Administration. Oblige will administer Completion Contractor, any subcontractors and others that may be designated by Completion Contractor to complete portions of the work on the same basis and to the same extent as Oblige was required by the Contract to administer the Contract with Principal.

14. No Modification Except as in Writing. This Agreement may not be modified unless in writing and executed by the Parties hereto. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the Party against whom it is sought to be enforced.

15. Interpretation of Agreement. The provisions of this Agreement shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and intent of the Parties, but, if for any reason any provision is unenforceable or invalid, such provision shall be deemed severed from this Agreement and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this Agreement.

16. Incorporation of All Prior Negotiations. This Agreement incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement. Accordingly, the Parties agree that no deviations from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

17. Acknowledgment of Release of Rights. The Parties acknowledge and agree that they are releasing certain rights and assuming certain duties and obligations which, but for this Agreement, would not have been released or assumed. Accordingly, the Parties agree that this

Agreement is fair and reasonable, that each of them has had an opportunity and have in fact consulted with such experts of their choice as they may have desired, and that they have had the opportunity and have in fact discussed this matter with counsel of their choice. The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.

18. Obligations of Further Execution. The Parties agree to execute all such further instruments, and to take all such further actions as may be reasonably required by any Party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

19. Event of Enforcement. In the event that it is necessary for any of the Parties to seek enforcement of this Agreement, the Parties agree that the Agreement will be interpreted and construed in accordance with and governed by the laws of the State of California, and such proceedings shall occur in a court of competent jurisdiction servicing California.

20. Notices. Any notices or other formal communications made under this Agreement shall be deemed to have been duly given if sent via United States Mail to the following:

TO ARGONAUT INSURANCE COMPANY:

Argonaut Insurance Company
c/o Krebs Farley, PLLC
Attn: Bryan A. Badeaux
2301 W. Plano Parkway, Suite 200
Plano, TX 75075

TO OBLIGEE:

City of Perris
Attn: Darren Madkin, Assistant City Manager
101 N. "D" Street
Perris, CA 92570

TO COMPLETION CONTRACTOR:

Millsten Enterprises, Inc.
Attn: Henrik Kristensen
31051 11th Street
Nuevo, CA 92567

or at such other address as each of the foregoing may designate in writing by registered or certified mail to the other.

21. Conditions to Effectiveness. This Agreement shall not be effective until (a) each party has received a fully executed copy of this Agreement in accordance with Paragraph 22 below; (b) Obligeo and Surety have received a current Certificate of Insurance from Completion Contractor, with all requisite coverage and limits as required by the Contract naming Obligeo and Surety as additional insureds; (c) Obligeo has received payment and performance bonds from a duly licensed and qualified surety satisfactory to Obligeo pertaining to the completion work, each in the amount of the Base Bid and any Alternatives awarded prior to procurement of the Bonds naming Completion Contractor, as principal, and **CITY OF PERRIS**, as Obligeo; and (d) the issuance of a notice to proceed from Obligeo to Completion Contractor. In the event Completion Contractor refuses or otherwise fails to so timely execute this Agreement or fails to provide Obligeo with acceptable performance and payment bonds and proof of insurance, all Parties hereto acknowledge and agree that this Agreement shall be a nullity, and the rights and obligations of the respective Parties shall remain as they were without this Agreement.

22. Execution in Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original document. A counterpart of this Agreement transmitted by a Party hereto to the other Party by facsimile transmission or by e-mail and bearing the signature of such Party shall be deemed an original hereof and may be relied upon by the recipient as duly executed and effective notwithstanding the fact that the recipient did not receive an original copy of the transmitter's signature.

IN WITNESS WHEREOF, the Parties hereto have affixed their hands and seals to this Agreement the day and year first set forth above, and the individuals who execute this

Agreement personally represent and warrant that they have full authority to execute this Agreement on behalf of the respective Parties.

[END OF DOCUMENT – SIGNATURE PAGES TO FOLLOW]

CITY OF PERRIS

By: _____

Title: _____

Date: _____

STATE OF: CALIFORNIA

COUNTY/CITY OF: _____

On this ___ day of _____, 20___, before me personally appeared _____, who is [] personally known to me or has [] produced as identification and who has stated that he/she is the _____ of **CITY OF PERRIS, OBLIGEE**, named in the foregoing **THREE PARTY TENDER AGREEMENT AND MUTAL FINAL RELEASE AS TO THE SURETY AND OBLIGEE**, that he/she executed the foregoing instrument on behalf of the Obligee with full authority to do so, and that he/she executed the foregoing instrument on behalf of the Obligee for the uses and purposes set forth therein.

Notary Public



Pacific Code Compliance

David Martinez
Principal

August 9, 2017

Mr. Darren Madkin
Deputy City Manager
101 North "D" Street
Perris, CA. 92570

Pacific Code Compliance

Proposal: For the Extended and Re-Start of the Perris Valley Storm Drain Channel Trail Project– Project Management Services and Davis Bacon Prevailing Wage Oversight

The recent Action by the State of California, State Contractor's License Board has caused the proposed Trail project to be delayed/slowed down while the City is dealing with the Bonding Company and working with the Bond Company to establish a New Contractor for the Project. These required actions have, unfortunately also extended the project timeline for an additional three months at least. With that in mind PCC is proposing an amendment to the current contract to provide Project Management Services and Prevailing Wage Services for the Storm Drain Trail Project to allow for the completion of the project.

Pacific Code Compliance (PCC) offers professional assistance in the form of Project Management Services, and Prevailing Wage Oversight for the proposed "Perris Valley Storm Drain Channel Project" for the City of Perris. The program services may include the assistance with the day to day Project Management efforts and Prevailing Wage Oversight for this project. This would include working closely with the Developer, the Architect of Record and with City staff to ensure the proposed project meets the minimum code standards, approved plans, bid documents and specifications as well as all project established deadlines.

Scope of Services – The scope of services for this project will include the following:

1. Project Management Services
2. Coordinate with City staff and Inspector as necessary during construction.
3. Attend pre-construction meeting with all parties and with the Architect of Record.
4. Assist with the interpretation and clarification of code related items if requested.
5. Review product submittals and shop drawings submitted by the contractor and coordinate with the Architect of record for these items...
6. Participate in the weekly or by-weekly construction meetings.

7. Coordinate with all parties by telephone, fax and e-mail as necessary.
8. Review, comment and process on all proposed progress payments submitted by the contractor.
9. Review, comment and process on all proposed change orders submitted by the contractor for this proposed project.
10. Assist with the processing of all the required third party testing materials, comment and process all proposed change orders and time extensions requested by the contractor.
11. Respond to the contractors Request for Information (RFI's) and other questions during the project construction and coordinate with the Architect of record.
12. Provide general direction to the contractor for the project construction.
13. Review and process all materials and field testing, i.e. concrete cylinders, compaction reports, etc.
14. Coordinate with City staff, County Flood Control, Water Company, SCE and the Gas Company as necessary.
15. Conduct substantial completion inspection, along with the Architect of record, at the request of the City and Contractor and prepare punch list.
16. Monitoring of the prevailing wage – Davis Bacon Issues on behalf of the City
17. Monitor and review certified payroll submitted by the contractor.
18. Perform on site interviews for prevailing wage compliance of all contract and sub-contract employees.

Program Design/ Implementation and City Council Approval – PCC will meet with City staff to assist with the implementation of this project. PCC will work towards goals which meets the specific needs of the community as well as maintaining City Council goals. PCC staff offers past experience working as a Project Manager for the City of Perris. PCC staff is available to present program information and guidelines for City Council's review and approval on an as needed basis.

Program Forms and Manuals – PCC will customize all necessary forms and documents such as program manuals, recordable instruments, Daily Logs and third party forms based on the individual agency needs and as required by the City.

Estimated Hours – PCC estimates that the *initial Re-Start* up of the program will take between 5 to 6 hours a day for the first couple of weeks of construction. After the initial start up of the construction project, then it is estimated that the weekly working hours to properly maintain the project will come down to on the average to about 20 hours a week or 4 to 5 hours per day Monday through Thursday as necessary to provide the Project Management services, and on Friday's if required. The total estimated cost to provide the Project Management Services for the **additional 90 day** period or Actual working days minus the weekends and approved Holidays is **estimated to be \$35,160.00**. PCC also understands and agrees to the limited amount of

monthly funds that are available to work on the program for the City. *Friday work days will only be utilized if necessary and as required for the project and only as approved by the City.*

The request to also review and monitor the prevailing wage – Davis Bacon payroll records is estimated to be around Two to Three (2 to 3) additional hours per week at a minimum. This will include the weekly interviews of the contract employees as well as attending any of the required weekly meetings, tracking all the payroll records and maintaining all the required files. The total estimated additional costs to provide the prevailing wage – Davis Bacon services for the 12 weeks, or 36 hours of construction is estimated to be an additional \$3,240.00 and is based on a charge of \$90.00 an hour (reduced rate) at Three (3) additional hours per week.

The new additional proposed total costs estimate for PCC to perform all the required services for the City of Perris is \$35,160.00 (Project Management Services) + \$3,240.00 (Prevailing Wage Services) = \$38,400.00 Plus Mileage charges at .59 cents per mile.

Hourly Rate - PCC's normal hourly rate for these services is \$100.00 an hour However for this specific project PCC is suggesting a reduced rate of \$90.00 an Hour.

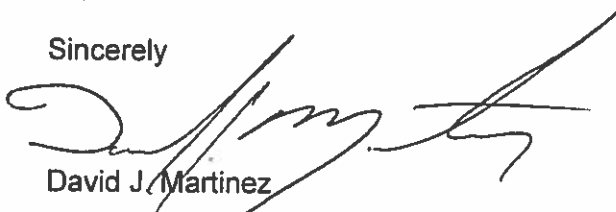
Mileage Rate – PCC's proposed Mileage rate for this project is .59 cents per mile for those miles driven that are directly related to this project.

Estimated Construction Time Period – PCC understands that the estimated additional construction time frame for this project is another 90 working days excluding weekends and approved Holidays. PCC also understand that this project is a prevailing wage project for the City of Perris.

Proposed Starting Dates: PCC understands that the proposed dates are flexible and will continue to work on the project through the Take Over Agreement process and the establishment of the new Contractor and will of course work on the project until it's completion.

If you have any questions or require any additional information, please feel free to contact me at anytime at 909-583-1579.

Sincerely



David J. Martinez

Principal
P. O. Box 8713
Redlands, CA. 92375



WORK AUTHORIZATION

LANDSCAPE ARCHITECTURE

CLIENT: City of Perris
101 N. D Street
Perris, CA 92570

DATE: August 9, 2017
JOB NUMBER: 141139
AMENDMENT NUMBER: 1

4849 Brockton Avenue

PROJECT: Perris Valley Storm Drain Channel Trail

SECTION A: Consultant agrees to perform the following professional services:

DESCRIPTION OF WORK: This letter confirms the conversation/agreement of August 8, 2017 between David Martinez and COMMUNITY WORKS DESIGN GROUP wherein the Landscape Architect was instructed to perform the following work on the above described project:

Riverside, CA 92506

Provide additional coordination throughout transfer of project to new contractor, including but not limited to reviewing product submittals, responding to Requests for Information, and meeting with City Staff and bonding company representatives.

(951) 369-0700

SECTION B: COMPENSATION WILL BE:

_____ Time and Materials
_____ Fixed Price + Materials
XXX Time not to Exceed \$ 4,875 +Materials
Field Services (Hourly) - Initial: _____

Fax (951) 369-4039

PAYMENT WILL BE:

_____ Upon Satisfactory Completion of Work
XXX Progressively as Work is Satisfactorily Done
_____ In Accordance with Contract

http://www.comworksdesign.com

The parties hereto have accepted, made and executed this Agreement upon the terms, conditions and provisions stated above which are incorporated hereinto and made part of this Agreement.

CA License #2110

CLIENT:
BY: _____

COMMUNITY WORKS DESIGN GROUP
BY: 
Timothy I. Maloney, ASLA

IV License #389

DATE: _____

DATE: August 9, 2017

Please return signed copy to our office and keep one for your files.

CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: February 13, 2018

SUBJECT: Resolution approving an application submittal for Local Government Partnership Program funding through the Mobile Source Air Pollution Reduction Review Committee and acknowledgment of receipt of the MSRC-provided PowerPoint Presentation

REQUESTED ACTION: **ADOPT a Resolution** (next in order) authorizing the submittal of an application for Local Government Partnership Program


CONTACT: Sabrina Chavez, Director of Housing and Community Services 

BACKGROUND:

On September 1, 2017 The Mobile Source Air Pollution Reduction Review Committee (MSRC) announced the availability of funding for its Land Government Partnership Program. Funding for this program is allocated to local cities and counties to assist in implementing priority programs that will improve air quality by enhancing mobility strategies to transition to zero emission vehicles.


The City of Perris is eligible to participate in this grant program. The grant application is due March 2, 2018 and awards will be announced in Fall of 2018. At this time, staff is requesting your consideration of approval for the authorization to submit a Local Government Partnership Program grant application and acknowledging the receipt of the MSRC-provided PowerPoint Presentation. If awarded, the grant will allow for the purchase of a zero emission vehicle and construction of an electric vehicle charging station.

FISCAL IMPACT: This grant requires a match of the total project cost. The costs for preparation of the grant application are provided for in the Internal Services budget for Fiscal Year 2018-201.

Prepared by: Rebecca Miranda, Project Manager 

City Attorney: N/A

Assistant City Manager: Darren Madkin 

Director of Finance: Jennifer Erwin 

Attachments: Resolution 
MSRC PowerPoint Presentation

Consent: x

Public Hearing:

Business Item:

Workshop:

RESOLUTION NUMBER ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, APPROVING PARTICIPATION IN THE MOBILE SOURCE AIR POLLUTION REDUCTION REVIEW COMMITTEE "LOCAL GOVERNMENT PARTNERSHIP PROGRAM."

WHEREAS, The Mobile Source Air Pollution Reduction Review Committee (MSRC) has established the "Local Government Partnership Program" to partner with local cities and counties within the South Coast region to 'jumpstart' implementation of the South Coast AQMD's 2016 Air Quality Management Plan (AQMP). The 2016 AQMP relies in part on incentive-based programs and initiatives, in addition to regulatory approaches, to foster air pollution reductions within the regional air basin. The Local Government Partnership Program represents one of the incentive-based solutions included in the 2016 AQMP; and

WHEREAS, The Local Government Partnership Program provides additional funding, beyond funding provided through AB 2766 Subvention Fund Program, to assist local agencies in implementing high priority clean air programs that are consistent with the stated goals in the 2016 AQMP. The program emphasizes an accelerated transition to zero and near zero vehicles along with essential supporting infrastructure. Funding is provided on a reserved basis for all local agencies that participate in the AB 2766 program; and

WHEREAS, In addition to direct air quality benefits that will be achieved through participation in the MSRC Local Government Partnership Program, MSRC also wants to use this opportunity as a means of educate local government on the MSRC mission; and

NOW, THEREFORE, BE IT RESOLVED that City Council of the City of Perris hereby:

Section 1. Approves the filing of an APPLICATION for the MSRC Local Government Partnership Program for the purpose of purchasing a zero emission vehicle and constructing an electric vehicle charging station.

Section 2. Acknowledges the receipt of the MSRC-provided PowerPoint Presentation.

Section 3. Certifies that the City of Perris has MATHCING funds for eligible source(s) and can finance for the project.

ADOPTED, SIGNED and APPROVED this 13^h day of February, 2018.

Michael Vargas, Mayor

ATTEST:

Nancy Salazar, City Clerk

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I Nancy Salazar, duly elected City Clerk of the City of Perris do hereby certify that the foregoing Resolution Number _____ was duly and regularly adopted by the City Council of the City of Perris at a regular meeting thereof held on the 13th day of February 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Nancy Salazar, City Clerk



Clean Transportation

Funding from the MSRC

Mobile Source Air Pollution Reduction Review Committee

LOCAL GOVERNMENT PARTNERSHIP PROGRAM

**A Funding Opportunity to Improve Air Quality
in Your Community**

Mobile Source Air Pollution Reduction Review Committee, aka “The MSRC”

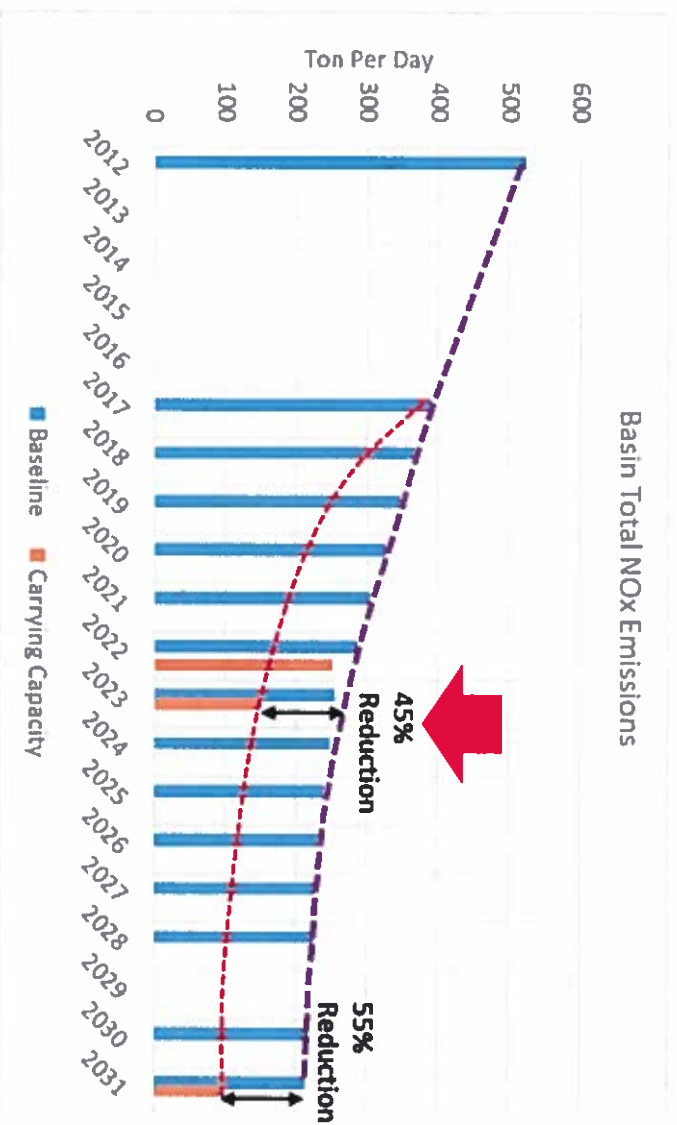
- The MSRC was Established by the California Legislature in 1990
- Sole Mission is to Invest Funds to Reduce Air Pollution Generated by Mobile Sources (i.e., cars, trucks, buses, etc.)
 - ⇒ *Funds Generated by Surcharge on Motor Vehicle Registrations*
- The MSRC Works Closely with the South Coast Air Quality Management District; However, the MSRC is NOT a Regulatory Agency
 - ⇒ *The MSRC Invests in Clean Air Projects that Support SCAQMD Objectives & Priorities*

SIGNIFICANT AIR QUALITY CHALLENGES IN OUR REGION...

Standard	Concentration	Classification	Latest Attainment Year
2008 8-hour Ozone	75 ppb	Extreme	2031
2012 Annual PM2.5	12 µg/m ³	Moderate	2021
2006 24-hour PM2.5	35 µg/m ³	Serious	2025
1997 8-hour Ozone	80 ppb	Serious	2019
1979 1-hour Ozone	120 ppb	Extreme	2023
		Extreme	2022

- **ACCORDING TO THE SOUTH COAST AQMD...**
 - South Coast Region is **EXTREME NON-ATTAINMENT** for OZONE
 - Ozone Causes **RESPIRATORY AILMENTS** and is a Primary Component of **SMOG**

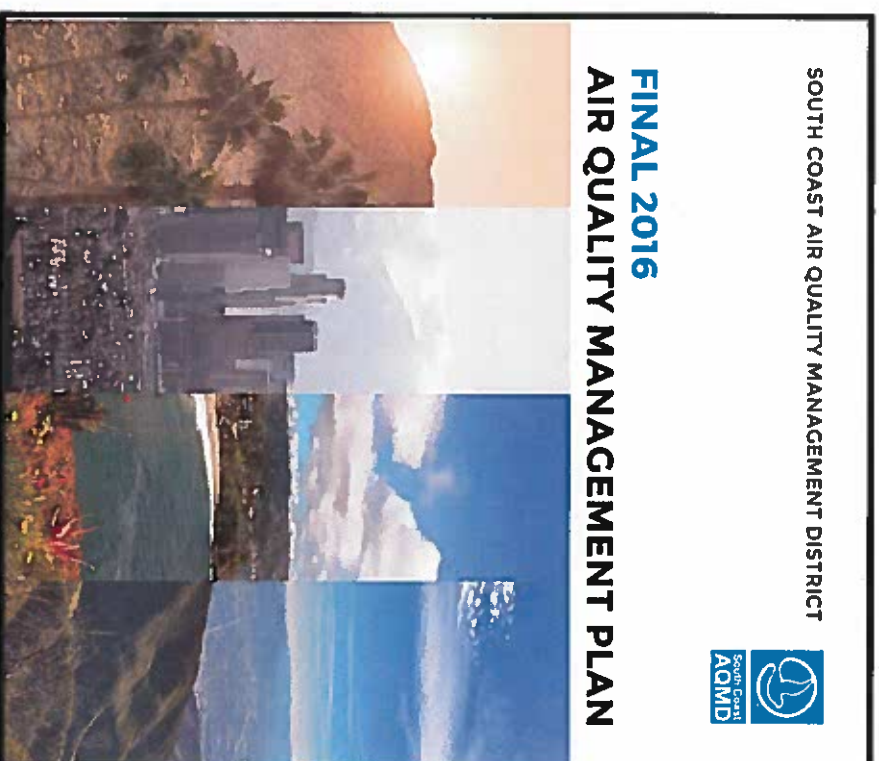
MANDATORY AIR POLLUTION REDUCTIONS ARE NEEDED NOW...



- **NOx** is a Precursor to Ozone (SMOG) Formation...
- *From Today's Levels – NOx Emissions Need to be Reduced 45% by 2023 – That's Only a Few Years Away...*

HOW DO WE REDUCE NOX EMISSIONS BY 45%?

By Implementing the
Clean Air Measures
Outlined in the South Coast
AQMD's 2016 Air Quality
Management Plan



- **The AQMP is the Roadmap for How to Meet Our Mandated Clean Air Obligations**

Clean Transportation
Funding from the MSRC

THE MSRC IS PARTNERING WITH THE SOUTH COAST AQMD AND WANTS TO PARTNER WITH YOU...

...To Implement High Priority AQMP Strategies

- ✓ AQMP includes Traditional Regulatory Measures & Incentive-based Strategies
- ✓ Incentive-Based Programs will Accelerate the Introduction of Key AQMP Technologies including Zero & Near-Zero Emission Vehicles

**The MSRC Has Reserved Incentive Funding for Your
Jurisdiction under the Local Government Partnership
Program**

This is a great opportunity to receive funding to implement projects your jurisdiction needs to be part of our clean air future

Participation is 100% voluntary

Funding is already reserved for your jurisdiction

Please ask your staff to work with the MSRC to develop projects that jumpstart implementation of the AQMP & help improve air quality for all residents

**CITY COUNCIL
AGENDA SUBMITTAL**

February 13, 2018

SUBJECT: Ordinance Amendment 17-05214 – Proposal to amend the Zoning Code Chapter 19.69 “Parking and Loading Standards” of the Perris Municipal Code to update the Multi-Family Residential parking ratios for guest parking, studios, one-bedroom, two-bedroom, and three-bedroom parking requirements.

REQUESTED ACTION: **INTRODUCE First Reading of Ordinance No. (next in order)** to find the Ordinance Amendment categorically exempt from the California Environmental Quality Act (CEQA) guidelines pursuant to Section 15061(b)(3), approve Ordinance Amendment 17-05214, based on the findings contained in the Ordinance and attached exhibits.

CONTACT: Dr. Grace Williams, Director of Planning and Economic Development *KP for GW*

On January 17, 2018, the Planning Commission unanimously recommended approval of Ordinance Amendment 17-05124 to the City Council to increase the parking requirements for multi-family residential properties. The changes to the parking requirements are summarized in the table below:

	Parking Average Per Survey	Existing Parking	Proposed Parking Ratio
Studio/One bedroom	1.5 parking spaces	1 parking space	1.5 parking spaces
Two bedrooms	2 parking spaces	1.5 parking spaces	2 parking spaces
Three bedrooms	2.5 parking spaces	1.75 parking spaces	2.5 parking spaces
Guest Parking	1 parking space per 5 units	None	1 parking space per 5 units

In summary, the proposed parking requirements are based upon a regional multi-family parking survey from surrounding jurisdictions consisting of the County of Riverside and fifteen (15) surrounding cities. The goal of the update is to address concerns with parking overflow onto the street, and to correspond with regional average multi-family parking requirements. Due to recent multi-family residential projects, it was determined that the current parking code did not provide for adequate parking for today’s apartment households.

This Ordinance Amendment would not amend the *Downtown Perris Specific Plan* requirements for multi-family residential parking. The *Downtown Perris Specific Plan* provides its own parking requirements for multi-family residential in association with mixed-use designations that encourage walkability and Transit Oriented Development (TOD).

On November 9, 2017, the Riverside County Airport Land Use Commission (ALUC) Director determined that Ordinance Amendment is consistent with the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan. Per the Riverside County Airport Land Use Compatibility Plan (ACLUP), all General Plan Amendments, Specific Plan Amendments, and Ordinance Amendments require ALUC review.

Staff is recommending that the City Council approve the proposed Ordinance Amendment. The project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines pursuant to Section 15061(b)(3).

BUDGET (or FISCAL) IMPACT: The cost for staff preparation of this item is included in the 2017-2018 General Fund.

Prepared by: Nathan G. Perez, Associate Planner 
Reviewed by: Kenneth Phung, Planning Manager 

Public Hearing: February 13, 2018

Assistant City Manager: Darren Madkin 
Assistant City Manager: Clara Miramontes 
Director of Finance: Jennifer Erwin 

- Attachments:**
1. City Council Ordinance (next in order)
 2. Redlined Zoning Code Chapter 19.69 "Parking and Loading Standards"
 3. Regional Multi-Family Parking Survey
 4. ALUC letter dated Nov 9, 2017
 5. Planning Commission Staff Report and Resolution dated January 17, 2018

ORDINANCE NUMBER (next in order)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, FINDING THE PROPOSED PROJECT EXEMPT FROM CEQA PURSUANT TO SECTION 15061(B)(3), AND APPROVING ORDINANCE AMENDMENT 17-05214 TO AMEND CHAPTER 19.69 "PARKING AND LOADING STANDARDS," AND MAKE FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Perris recognizes the need to amend 19.69, "Parking and Loading Standards," to prevent multi-family parking overflow onto the street, and to correspond with regional average multi-family parking requirements; and

WHEREAS, on November 9, 2017, the Riverside County Airport Land Use Commission (ALUC) Director determined that project is consistent with the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan; and

WHEREAS, on January 17, 2018, the Planning Commission conducted a regularly scheduled and legally noticed public hearing for Ordinance Amendment 17-05214, and recommended approval of the project after considering public testimony and accompanying documents; and

WHEREAS, all legal prerequisites for the adoption of this resolution have occurred.

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

Section 1. The above recitals are all true and correct.

Section 2. The City Council hereby determines that the project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines pursuant to Section 15061(b)(3), the City Council hereby adopts a Categorical Exemption in accordance with the provisions of the California Environmental Quality Act.

Section 3. Based on the information contained in the supporting exhibits, this City Council finds, regarding the proposed amendment to Chapter 19.69 as it pertains to off-street parking, as follows:

Ordinance Amendment 17-05214

- A. The proposed Ordinance Amendment will not result in a significant adverse effect on the environment.
- B. The proposed Ordinance Amendment will not conflict with the goals, policies, and implementation measures set forth in the General Plan and Zoning Ordinance.

- C. The proposed Ordinance Amendment will not have a negative effect on public health, safety, or the general welfare of the community.

Section 4. The City Council therefore finds the proposed project exempt from California Environmental Quality Act pursuant to section 15061(b)(3), and approve Ordinance Amendment 17-05214 to amend chapter 19.69, Parking and Loading Standards, to the Zoning Code, based on the findings presented herein.

Section 5. The City Council declares that should any provision, section, paragraph, sentence, or word of this Resolution be rendered or declared invalid by any court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, and words of this Resolution shall remain in full force and effect.

Section 6. The Mayor shall sign and the Secretary shall certify to the passage and adoption of this Resolution.

ADOPTED, SIGNED, and APPROVED this ____ day of _____.

Mayor, Michael M. Vargas

Attest:

City Clerk, Nancy Salazar

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, **Nancy Salazar**, CITY CLERK OF THE CITY OF PERRIS, CALIFORNIA, DO HEREBY CERTIFY that the foregoing Ordinance Number ____ was duly and regularly adopted by the City Council of the City of Perris at a regular meeting held on _____, by the following called vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

City Clerk, Nancy Salazar

Attachment: Revised Zoning Code Chapter 19.69

CHAPTER 19.69 (DRAFT)

PARKING AND LOADING STANDARDS

Section:

- 19.69.010 PURPOSE
- 19.69.020 RESIDENTIAL REGULATIONS
- 19.69.030 NON-RESIDENTIAL REGULATIONS
- 19.69.040 LOADING REQUIREMENTS

19.69.010 PURPOSE

Regulations shall be established for parking and loading, in order to assure adequate parking facilities are properly designed and located in order to meet the parking needs created by specific uses, and ensure their usefulness, protect the public safety, and where appropriate, buffer and transition surrounding land uses from their impact.

19.69.20 RESIDENTIAL REGULATIONS

A. *General Provisions*

1. Amount of Facilities Required. Any dwelling unit constructed or located after the effective date of the Chapter, or any subsequent amendment thereto, shall be required to provide off-street parking facilities in accordance with the provisions of this Chapter.
2. Non-Conforming Uses. Any dwelling unit or group of dwelling units which, on the effective date of this Chapter, or any subsequent amendment thereto, is nonconforming as to the regulations relating to off-street parking facilities, may be continued in the same manner as if the parking facilities were conforming. However, any existing dwelling unit that is enlarged by 25 percent of the gross living area shall be required to provide off-street parking facilities in accordance with the provisions of this Chapter.
3. Voluntary Establishment. Nothing in this Chapter shall be deemed to prevent the voluntary establishment of off-street parking facilities in excess of those required by this Chapter, provided that all regulations governing the location, design, and operation of such facilities are met.
4. Provision is a Continuing Obligation. The required off-street parking shall be a continuing obligation. It is unlawful to discontinue or dispense with the required vehicle parking facilities without providing other vehicle-parking facilities which meet the requirements of this Chapter.

5. Relocation of Facilities. Whenever existing parking facilities are removed or converted to a permissible non-parking use, the following regulations shall apply:
 - a. Any driveway approach that no longer provides access to a covered parking facility shall be removed and replaced with standard curb and gutter, in accordance with City standards.
 - b. All paved surfaces in the front yard area that no longer provide access to a covered parking facility shall be removed and the areas landscaped.
6. Access.
 - a. Access to a parking facility shall be paved, unless said facility is located greater than 100 feet from public right-of-way. If more than 100 feet from a public right-of-way, access shall be on an all-weather surface acceptable to the City Engineer.
 - b. Driveways shall utilize concrete material, unless said driveway is greater than 45 feet in length. If more than 45 feet in length, asphaltic material may be used, subject to approval by the City Engineer.

B. General Regulations

1. Number of Spaces Required.
 - a. Single Family
 - 1) Light Agricultural Zone: 2 spaces, one within a garage.
 - 2) Rural Residential/Agricultural Zone: 2 spaces, one within a garage.
 - 3) Detached Residential, R4 Zone: 2 garage spaces.
 - 4) Detached Residential, R7 Zone: 2 garage spaces.
 - b. Multi-Family
 - 1) Attached Residential, R7, R14, R22 Zones: 2 spaces per unit, one within a garage; **1 guest parking space per 5 units.**
 - 2) Apartments: One space per unit shall be within a carport or an enclosed garage.
 - (a) Studio Unit: ~~1-space/unit.~~ 1.5 spaces
 - (b) One Bedroom Unit: ~~1-space/unit.~~ 1.5 spaces
 - (c) Two Bedroom Unit: ~~1.5 spaces/unit.~~ 2 spaces
 - ~~(d) Three Bedroom Unit or more: 2.5 spaces~~
~~Each additional bedroom: 0.25 spaces/unit up to 10 spaces, and 0.010 spaces/unit exceeding 10 spaces. Shall be distributed throughout development.~~
 - (e) 1 guest parking space per 5 units.



CITIES MULTI-FAMILY PARKING REQUIREMENTS

City	Studio	1 Bed	2 Bed	3 Bed or more	Guest
1 Temecula (12 units or less)					
2-5 units:	2 covered	2 covered	2 covered	2 covered	3 covered
6-12 units:	2 covered	2 covered	2 covered	2 covered	3 covered
2 Temecula (13 units or more)					
13-↑ units	1 covered and 0.5 uncovered	1 covered and 0.5 uncovered	1 covered and 1 uncovered	2 covered and 0.5 uncovered	1 guest space/6 units w/ min. 4 guest spaces
3 Hemet					
	1 enclosed if ≤ 500sq ft.	1 enclosed if ≤ 700sq ft. or 2 enclosed if > 700sq ft.	2 enclosed	2 enclosed	1 guest uncovered/5 units
4 Redlands					
	1 covered	1 covered	1.5 covered	2 covered	1 off street uncovered/ 2 units*
5 San Jacinto					
	1.5 per unit, 1 of which shall be enclosed	1.5 per unit, 1 of which shall be enclosed	1.75 per unit, 1.5 of which shall be enclosed	2 per unit, 1.5 of which shall be enclosed	0-10: None required 11-30: 0.25 per unit 31-60: 0.20 per unit 61 and over: 0.166 per unit
6 Fontana					
	1.5 per unit, 1 of which shall be enclosed	1.5 per unit, 1 of which shall be enclosed	2 per unit, 1 of which shall be covered	2.5 per unit, 1 of which shall be covered	1 per 3 units w/ min. 3 guest space
7 Moreno Valley					
	1.25 enclosed	1.5 enclosed	2.0 enclosed	2.5 enclosed	0.25 spaces per unit
8 Banning					
	1 covered	1 covered	2 covered	3 covered	1 uncovered/4 units
9 Jurupa Valley					
	1.25 enclosed/covered	1.25 enclosed/covered	2.25 enclosed/covered	2.75 enclosed/covered	Not specified
10 Riverside County					
	1.25 enclosed/covered	1.25 enclosed/covered	2.25 enclosed/covered	2.75 enclosed/covered	1 space/employee**
11 Corona					
	1.5 covered	1.5 covered	2 covered	2.5 covered	1 uncovered/5 units
12 Murrieta					
	1.5 per unit, 1 of which shall be enclosed	1.5 per unit, 1 of which shall be enclosed	2 per unit, 1 of which shall be enclosed	2 enclosed per unit + 0.5 space for every room over 2, with one enclosed per unit	25% of the total number of units.
13 Lake Elsinore					
	1 covered + 2/3 open space per unit	1 covered + 2/3 open space per unit	1 covered + 1/3 open space per unit	1 covered + 1/3 open space per unit	Not specified
14 Riverside					
	Not specified	1.5 per unit, 1 of which shall be enclosed	1.5 per unit, 1 of which shall be enclosed	1.5 per unit, 1 of which shall be enclosed	Not specified
15 Rancho Cucamonga					
	1.3 enclosed	1.5 enclosed	2 enclosed	2 enclosed if more than 3, 2.5 enclosed	1 per 3 units
16 Beaumont					
	1.25 may be uncovered	1.25 may be uncovered	2.5, 1 which shall be covered	2.5, 1 which shall be covered	Not specified
17 Menifee					
	1.25 enclosed/covered	1.25 enclosed/covered	2.25 enclosed/covered	2.75 enclosed/covered	1 space/employee**

AIRPORT LAND USE COMMISSION RIVERSIDE COUNTY



November 9, 2017

Mr. Nathan Perez, Project Planner
City of Perris Planning Department
135 North D Street
Perris CA 92570

CHAIR
Rod Ballance
Riverside

VICE CHAIRMAN
Steve Manos
Lake Elsinore

COMMISSIONERS

Arthur Butler
Riverside

John Lyon
Riverside

Glen Holmes
Hemet

Russell Betts
Desert Hot Springs

Steven Stewart
Palm Springs

STAFF

Director
Simon A. Housman

John Guerin
Paul Rull
Barbara Santos

County Administrative Center
4080 Lorton St., 14th Floor
Riverside, CA 92501
(951) 955-5132

www.rcaluc.org

RE: AIRPORT LAND USE COMMISSION (ALUC) DEVELOPMENT REVIEW – DIRECTOR'S DETERMINATION

File No.: ZAP1025RG17
Related File No.: OA 17-05214 (Ordinance Amendment)
APN: Citywide

Dear Mr. Perez:

As authorized by the Riverside County Airport Land Use Commission (ALUC) pursuant to its Resolution No. 2011-02, as ALUC Director, I have reviewed City of Perris Case No. 17-05214 (Ordinance Amendment), a proposal to amend Chapter 19.69 of the City's Zoning Code (a portion of the Perris Municipal Code), which addresses Parking and Loading Standards. Specifically, the proposed amendment updates required parking ratios for multi-family housing (apartments and attached residential units), raising the number of required parking spaces from 1.0 to 1.5 spaces per unit for studio and one-bedroom units and from 1.5 to 2.0 spaces per unit for two-bedroom units. 2.5 spaces per unit would be required for units with three or more bedrooms. Additionally, one guest parking space would be required per five dwelling units.

For airport land use compatibility purposes, the density of residential development is evaluated on the basis of the numbers of dwelling units per acre, not on the basis of the number of parking spaces. The number of parking spaces is one method of evaluating the density of development. As this ordinance amendment does not in itself increase density of residential uses or introduce new uses within any zoning classification, this amendment has no impact on the safety of air navigation within airport influence areas located within the City of Perris.

As ALUC Director, I hereby find the above-referenced project **CONSISTENT** with the 2004 Riverside County Airport Land Use Compatibility Plan, the 2011 Perris Valley Airport Land Use Compatibility Plan, and the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan.

If you have any questions, please contact Paul Rull, ALUC Urban Regional Planner IV, at (951) 955-6893 or John Guerin, ALUC Principal Planner, at (951) 955-0982.

AIRPORT LAND USE COMMISSION

Sincerely,
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION



Simon A. Housman, ALUC Director

Attachments: Proposed Ordinance Amendment (redline copy)

cc: Gary Gosliga, Airport Manager, March Inland Port Airport Authority
Daniel Rockholt or Denise Hauser, March Air Reserve Base
Pat Conatser, Airport Manager, Perris Valley Airport

Y:\AIRPORT CASE FILES\Regional\ZAP1025RG17\ZAP1025RG17.LTR.doc

**PLANNING COMMISSION
AGENDA SUBMITTAL**

January 17, 2018

SUBJECT: **Ordinance Amendment 17-05214 – Proposal to amend the Zoning Code Chapter 19.69 “Parking and Loading Standards” of the Perris Municipal Code to update the Multi-Family Residential parking ratios for guest parking, studios, one-bedroom, two-bedroom, and three bed-room parking requirements.**

REQUESTED ACTION: **Adopt Resolution No. 18-04 recommending that City Council find the Ordinance Amendment categorically exempt from the California Environmental Quality Act (CEQA) guidelines pursuant to Section 15061(b)(3), and approve Ordinance Amendment 17-05214, based on the findings contained in the Resolution and attached exhibits.**

CONTACT: **Kenneth Phung, Planning Manager**

On August 29, 2017, the Perris City Council directed staff to review and update the off-street parking requirements for multi-family residential to include: guest parking, studios, one-bedroom, two-bedroom, and three-bedroom units. The goal of the update is to address concerns with parking overflow onto the street, and to correspond with regional average multi-family parking requirements. The current parking standards require: 1 parking space for a studio/one-bedroom unit, 1.5 parking spaces for two-bedroom units, 1.75 parking spaces for three-bedroom units, and no guest parking.

Per Council’s direction, staff conducted a regional multi-family parking survey and reviewed parking requirements from surrounding jurisdictions and surveyed the County of Riverside and fifteen (15) cities: Temecula, Hemet, Redlands, San Jacinto, Fontana, Moreno Valley, Banning, Jurupa Valley, Corona, Murrieta, Lake Elsinore, Riverside, Rancho Cucamonga, Beaumont, and Menifee. The survey results (Exhibit B) indicated that, on average, a minimum of 1.5 parking spaces are required for a studio/one-bedroom unit, 2 parking spaces are required for a two-bedroom unit, 2.5 parking spaces are required for three-bedroom units, and one (1) guest parking space is required for every five (5) units. Staff is recommending that parking requirements for multi-family residential be updated to be consistent with regional multi-family averages.

	Parking Average Per Survey	Existing Parking	Proposed Parking Ratio
Studio/One bedroom	1.5 parking spaces	1 parking space	1.5 parking spaces
Two bedrooms	2 parking spaces	1.5 parking spaces	2 parking spaces
Three bedrooms	2.5 parking spaces	1.75 parking spaces	2.5 parking spaces
Guest Parking	1 parking space per 5 units	None	1 parking space per 5 units

In summary, the proposed parking ratio will increase the parking ratio requirements by 0.5 spaces for studios/one bedrooms and two bedrooms, 0.75 spaces for three bedrooms, and require 1 guest parking space per 5 units, whereas no guest parking spaces were previously required. Also, the draft Ordinance will preserve the requirement of providing either: one (1) carport parking space, or an enclosed garage per multi-family dwelling unit.

This Ordinance Amendment would not amend the *Downtown Perris Specific Plan* requirements for multi-family residential parking. The *Downtown Perris Specific Plan* provides its own parking requirements for multi-family residential in association mixed use designations that encourages walkability and Transit Oriented Development (TOD).

On November 9, 2017, the Riverside County Airport Land Use Commission (ALUC) Director determined that Ordinance Amendment is consistent with the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan. Per the Riverside County Airport Land Use Compatibility Plan (ACLUP), all General Plan Amendments, Specific Plan Amendments, and Ordinance Amendments require ALUC review.

Staff is recommending that the Planning Commission recommend to the City Council approval of the proposed Ordinance Amendment. The project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines pursuant to Section 15061(b)(3).

BUDGET (or FISCAL) IMPACT: The cost for staff preparation of this item is included in the existing 2017-2018 General Fund.

Prepared by: Nathan G. Perez, Associate Planner

Public Hearing: January 17, 2018

Exhibits:

- A – Redlined Zoning Code Chapter 19.69 “Parking and Loading Standards”
- B – Regional Multi-Family Parking Survey
- C – ALUC letter dated Nov 9, 2017
- D – Planning Commission Resolution No. 18-04
- E - City Council Ordinance (next in order)

RESOLUTION NUMBER 18-04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PERRIS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL FIND THE PROPOSED PROJECT EXEMPT FROM CEQA PURSUANT TO SECTION 15061(B)(3), AND APPROVE ORDINANCE AMENDMENT 17-05214 TO AMEND CHAPTER 19.69 "PARKING AND LOADING STANDARDS," AND MAKE FINDINGS IN SUPPORT THEREOF.

WHEREAS, the City of Perris recognizes the need to amend 19.69, "Parking and Loading Standards," to prevent multi-family parking overflow onto the street, and to correspond with regional average multi-family parking requirements; and

WHEREAS, on January 17, 2018, the Planning Commission conducted a regularly scheduled and legally noticed public hearing for Ordinance Amendment 17-05214, and recommended approval of the project after considering public testimony and accompanying documents; and

WHEREAS, on November 9, 2017, the Riverside County Airport Land Use Commission (ALUC) Director determined that project is consistent with the 2014 March Air Reserve Base/Inland Port Airport Land Use Compatibility Plan; and

WHEREAS, all legal prerequisites for the adoption of this resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Perris as follows:

Section 1. The above recitals are all true and correct.

Section 2. The Planning Commission hereby determines that the project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines pursuant to Section 15061(b)(3), the Planning Commission hereby recommends that the City Council adopt a Categorical Exemption in accordance with the provisions of the California Environmental Quality Act.

Section 3. Based on the information contained in the supporting exhibits, this Commission finds, regarding the proposed amendment to Chapter 19.69 as it pertains to off-street parking, as follows:

Ordinance Amendment 17-05214

- A. The proposed Ordinance Amendment will not result in a significant adverse effect on the environment.
- B. The proposed Ordinance Amendment will not

policies, and implementation measures set forth in the General Plan and Zoning Ordinance.

- C. The proposed Ordinance Amendment will not have a negative effect on public health, safety, or the general welfare of the community.

Section 4. The Planning Commission hereby recommends that the City Council find the proposed project exempt from California Environmental Quality Act pursuant to section 15061(b)(3), and approve Ordinance Amendment 17-05214 to amend chapter 19.69, Parking and Loading Standards, to the Zoning Code, based on the findings presented herein.

Section 5. The Planning Commission declares that should any provision, section, paragraph, sentence, or word of this Resolution be rendered or declared invalid by any court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, and words of this Resolution shall remain in full force and effect.

Section 6. The Chairperson shall sign and the Secretary shall certify to the passage and adoption of this Resolution.

ADOPTED, SIGNED, and APPROVED this 17th day of January 2018.

CHAIRPERSON, PLANNING COMMISSION

Attest:

Secretary, Planning Commission

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) §
CITY OF PERRIS)

I, Kenneth Phung, Designee Secretary of the Planning Commission of the City of Perris, do hereby certify that the foregoing Resolution Number 18-04 was duly adopted by the Planning Commission of the City of Perris at a regular meeting thereof held on the 17th day of January 2018, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Designee Secretary of the Planning Commission

Attachment: Revised Zoning Code Chapter 19.69

Verbal Presentation

CITY COUNCIL
AGENDA SUBMITTAL

Meeting Date: February 13, 2018

SUBJECT: Review and Consider a Report by the Campaign Transparency Ad Hoc Sub-Committee Concerning Council Term Limits

REQUESTED ACTION: Provide direction to City staff.

CONTACT: Eric Dunn, City Attorney

BACKGROUND:

On January 31, 2017, the City Council established the Campaign Transparency Ad Hoc Sub-Committee ("Committee"). The purpose of the Committee was to examine the potential adoption of term limits and campaign/financial interest disclosures (beyond what is required under State law). The Committee's members are Mayor Pro Tem Rabb and Council Member Corona. On December 12, 2017 the Committee made its report to the City Council. After some discussion, the City Council directed staff to bring back the term limit issue for further consideration. The report below is from the December 12 staff report.

DISCUSSION:

1. Term Limits

The City of Perris does not currently have term limits for the offices of the mayor and council member. Under Government Code Section 36502(b), cities have the authority to send a measure to the voters establishing term limits for the offices of the mayor and council members. The election must be a regularly scheduled city election, such as the General Municipal Election to be held in November of 2018. The term limits would be part of an ordinance submitted to the voters like any other ballot measure (*i.e.*, the City Council would have to adopt a resolution calling the election, requesting consolidation, and authorizing arguments, City Attorney impartial analysis, and rebuttals).

Government Code Section 36502 also provides that "Any proposal to limit the number of terms a member of the city council may serve on the city council, or the number of terms an elected mayor may serve, shall apply prospectively only." This means past and current terms would not be counted toward the limit.

In terms of what term limits to impose and how to impose them, there are many options available to the City. The Committee examined the following options:

- Option 1:** Two consecutive terms with at least a two year break after the second term.
- Option 2:** Two consecutive terms with at least a four year break after the second term.
- Option 3:** Maximum of three terms.
- Option 4:** Three consecutive terms with at least four year break after the third term.

Because the City has a directly elected mayor, each of these options have at least two variations. First, all of the terms for each office occupied could be aggregated and counted towards the limit. For example, using Option 1, an individual could serve a term as mayor, then serve a term as a council member. At the end of their term as council member, they would be prohibited from serving again for at least two years (*i.e.*, both terms as mayor and council member count towards the term limit). A second variation would be to not aggregate the terms between offices. For example, an individual could serve two terms as mayor, then two terms as a council member, then two terms again as mayor.

It is recommended that the City Council discuss, consider, and provide direction to City staff concerning city council term limits.

BUDGET (or FISCAL) IMPACT:

If the City Council directs city staff to begin the process of adopting term limits for the City Council, then the City will have to pay for the costs of the election in November of 2018, or a future election.

Reviewed by:

City Attorney x

Assistant City Manager Darren Madkin DM

Finance Director Jennifer Erwin JE

Attachments: None

Consent:

Public Hearing:

Business Item: X

Other: