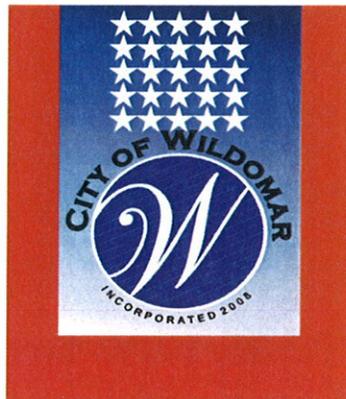


CITY OF WILDOMAR  
CITY COUNCIL

AGENDA

7:00 P.M.

JUNE 10, 2009  
Council Chambers  
23873 Clinton Keith Road



Scott Farnam, Mayor  
Bridgette Moore, Mayor Pro Tem  
Sheryl Ade, Council Member  
Bob Cashman, Council Member  
Marsha Swanson, Council Member

City Manager  
John Danielson

City Attorney  
Julie Hayward Biggs

**WILDOMAR CITY COUNCIL  
REGULAR MEETING AGENDA  
JUNE 10, 2009**

**ORDER OF BUSINESS:** Public sessions of all regular meetings of the City Council begin at 7:00 P.M. Closed Sessions begin at 6:00 P.M. or such other time as noted.

**REPORTS:** All agenda items and reports are available for review at Wildomar City Hall, 23873 Clinton Keith Road and at the Mission Trail Library, 34303 Mission Trail Blvd., Wildomar, CA. Any writings or documents provided to a majority of the City Council regarding any item on this agenda (other than writings legally exempt from public disclosure) will be made available for public inspection at City Hall during regular business hours. If you wish to be added to the regular mail list to receive a copy of the agenda, a request must be made through the City Clerk's office in writing or by e-mail.

**PUBLIC COMMENTS:** Prior to the business portion of the agenda, the City Council will receive public comments regarding any agenda items or matters within the jurisdiction of the governing body. This is the only opportunity for public input except for scheduled public hearing items. The Mayor or chairperson will separately call for testimony at the time of each public hearing. If you wish to speak, please complete a "Public Speaker/Comment Card" available at the door. The completed form is to be submitted to the Mayor prior to an individual being heard. Lengthy testimony should be presented to the Council in writing (8 copies) and only pertinent points presented orally. The time limit established for public comments is three minutes per speaker.

**ADDITIONS/DELETIONS:** Items of business may be added to the agenda upon a motion adopted by a minimum 2/3 vote finding that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the agenda being posted. Items may be deleted from the agenda upon request of staff or upon action of the Council.

**CONSENT CALENDAR:** Consent Calendar items will be acted on by one roll call vote unless members, staff or the public request the item be discussed and/or removed from the Consent Calendar for separate action.

**7:00 P.M.**

Convene the regular meeting of June 10, 2009.

**Roll Call:**

**Flag Salute:**

**Presentations:** School District Update

Temecula Valley Astronomers – John Garrett

**Oral Communications:** This is the time for any citizen to comment on any item listed or not listed on the agenda. Comments relative to noticed public hearing items will be heard at that time the public hearing is conducted. Under the provisions of the Brown Act, the legislative body is prohibited from discussing or taking action on items not listed on the agenda. The City Council encourages members of the public to address them at this time so that your questions and/or concerns can be heard.

**PUBLIC COMMENTS:**

**1. CONSENT CALENDAR:**

All matters listed under the Consent Calendar are considered routine and will be enacted by one roll call vote. There will be no separate discussion of these items unless members of the Council, the public or staff request specific items be removed from the Consent Calendar for separate action.

- 1 A. Approve the reading by title only of all ordinances.
- 1 B. Approve the special and regular meeting minutes dated May 27, 2009.
- 1 C. Approve Warrant Register dated May 28, 2009 in the amount of \$261,915.49; Approve Warrant Register dated June 4, 2009 in the amount of \$50.00; Approve Warrant Register dated June 10, 2009 in the amount of \$24,476.02; and Approve Payroll Warrant Register dated May 29, 2009 in the amount of \$1,418.67.

- 1 D. Adopt Resolution No. 09-31 authorizing the Mayor to execute an Amendment of the Western Riverside Council of Government Joint Powers Agreement to include the Eastern and Western Water Districts as voting members of the Executive Committee and General Assembly.

RESOLUTION NO. 09-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE JOINT POWERS AGREEMENT OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENT (WRCOG) TO INCLUDE THE EASTERN AND WESTERN MUNICIPAL WATER DISTRICTS AS VOTING MEMBERS OF THE GOVERNING BOARD

- 1 E. Sale of remnant road Right of Way – Renaissance Plaza
- 1 F. Franchise Agreements with CR&R and Waste Management for solid waste collection services.
- 1 G. Resolution of Intention to grant gas franchise to the Southern California Gas Company.

RESOLUTION NO. 09-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DECLARING ITS INTENTION TO GRANT A GAS FRANCHISE TO THE SOUTHERN CALIFORNIA GAS COMPANY

**2. PUBLIC HEARINGS:**

- 2 A. Appeal of the Planning Commission's denial of Variance No. 08-0072 - Applicant: David Horenstein, D.H. Holdings, Inc.

RESOLUTION NO. 09-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DENYING VARIANCE APPLICATION NO. 08-0072 TO INCREASE THE HEIGHT OF FREE-STANDING SIGN "A-1" TO 85 FEET AT WILDOMAR SQUARE SHOPPING CENTER LOCATED SOUTH OF CLINTON KEITH ROAD, EAST OF HIDDEN SPRINGS ROAD, AND WEST OF INTERSTATE 15 AND KNOWN AS ASSESSORS PARCEL NUMBER 380-110-039

**3. GENERAL BUSINESS ITEMS:**

- 3 A. Authorization of additional fees related to commercial solid waste collection services and annual rate adjustment.

**RESOLUTION NO. 09-34**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE COLLECTION OF ADDITIONAL FEES RELATED TO COMMERCIAL SOLID WASTE COLLECTION SERVICES AND ANNUAL RATE ADJUSTMENT

- 3 B. Transient Occupancy Tax encouragement program
- 3 C. Proposed City Logo discussion and direction.

**CITY MANAGER REPORT, John Danielson**

**CITY ATTORNEY REPORT, Julie Hayward Biggs:**

**COUNCIL COMMUNICATIONS:**

**FUTURE AGENDA ITEMS:**

**ADJOURNMENT:**

The next regular meeting is scheduled for June 24, 2009.

If requested, the agenda and backup materials will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans With Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the City Clerk either in person or by telephone at (951) 677-7751, no later than 10:00 A.M. on the day preceding the schedule meeting.

**POSTING STATEMENT:** On June 5, 2009, by 5:00 p.m., a true and correct copy of this agenda was posted at the three designated posting places: Wildomar City Hall, 23873 Clinton Keith Road; U.S. Post Office, 21392 Palomar Street; and Mission Trail Library, 34303 Mission Trail Blvd.

**CITY OF WILDOMAR  
CITY COUNCIL MEETING MINUTES  
MAY 27, 2009**

The regular meeting of May 27, 2009, of the Wildomar City Council was called to order by Mayor Farnam at 6:00 p.m. for a presentation by Buxton regarding retail economic development program.

Roll Call showed the following Council Members in attendance: Mayor Farnam, Mayor Pro Tem Moore, Council Members Cashman and Swanson. Council Member Ade was not present.

Staff in attendance: City Manager Danielson, Assistant City Attorney Jax, Finance Director Nordquist and City Clerk Lee.

Mary Lou Jacobs, Buxton Company, gave a presentation of her company regarding retail economic development and retention strategy. She detailed how the company matches potential retailers to the City's demographics. The company outlines how to define the trade area, identify and profile customers, matching customers to retailers and the tools to execute the strategy for the City. She also spoke about the support they give to their clients at the ICSC shows. Included in her presentation were various cities they have assisted.

At 7:02 p.m. Mayor Farnam reconvened the regular meeting of May 27, 2009.

Roll Call showed the following Council Members in attendance: Mayor Farnam, Mayor Pro Tem Moore, Council Members Ade, Cashman and Swanson.

Staff in attendance: City Manager Danielson, Assistant City Manager Fitzwater, Assistant City Attorney Jax, Public Works Director Kashiwagi, Supervising Engineer Crawford, Assistant Planning Director Hogan, Finance Director Nordquist, Fire Chief Beach, Police Chief Cleary and City Clerk Lee.

**Flag Salute:** Council Member Ade led the flag salute.

**Presentations:** Charlie Pate from Wishes for Children gave a brief presentation. He invited the Council to an event on June 13 from 8:30 a.m. – 12:30 p.m.

Mayor Farnam introduced the new City Clerk, Debbie Lee who is the City's first employee. He presented City Clerk Lee with a crystal business card holder from the City.

Mayor Farnam presented outgoing Interim City Clerk Schroeder with a Proclamation from the City and thanked her for her outstanding service to the new City.

**PUBLIC COMMENTS:** There were no public comments.

City Manager Danielson stated an item needs to be added regarding the trail along Rancho Mirlo Road alignment. This is an urgency item that has just come to the City's attention. This is hindering the County's ability to amend their General Plan and Staff is asking this item be added to the agenda for action.

A motion was made by Council Member Swanson, seconded by Council Member Ade, to add the urgency item to the agenda.

Roll call vote: Ayes - 5; Nays - 0. Motion carried to add the item as 3 E.

**1. CONSENT CALENDAR:**

Council Member Cashman requested further information on item 1 F.

Public Works Director Kashiwagi stated this is required in order for the City to receive the Measure A funds. This plan sets forth how the City plans to spend the funds, however it is a flexible plan should something arise. This will come forward every year to the City Council.

A motion was made by Council Member Swanson, seconded by Mayor Pro Tem Moore, to approve the Consent Calendar as presented.

Roll call vote: Ayes - 5; Nays - 0. Motion carried.

- 1 A. Approved the reading by title only of all ordinances.
- 1 B. Approved regular meeting Minutes dated May 13, 2009.
- 1 C. Approved Warrant Register dated May 13, 2009 in the amount of \$246,189.30 and Warrant Register dated May 27, 2009 in the amount of \$19,241.40.
- 1 D. Received and filed Treasurer's Report for April 2009.

1 E. ORDINANCE NO. 30 (Second reading and adoption) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING SECTION 1.03.080 TO THE WILDOMAR MUNICIPAL CODE PROVIDING AN ADMINISTRATIVE CITATION PROCEDURE. (Introduction and first reading held May 13, 2009, Item 3 B)

1 F. Approved the Measure A Capital Improvement Plan for Local Streets and Roads (also known as Expenditure Plans) and authorize the Public Works Director to submit the plans to Riverside County Transportation Commission. Authorized the Public Works Directors to make adjustments to the Measure A Expenditure Plans, if needed, to reflect more current Measure A projections when the forecasted figures become available by RCTC.

RESOLUTION NO. 09-26 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR APPROVING THE MEASURE A EXPENDITURE PLANS

1 G. Authorized execution of a professional services agreement with MuniServices LLC for sales tax audit and information services and adopted Resolution No. 09-27.

RESOLUTION NO. 09-27 A RESOLUTION AUTHORIZING THE EXAMINATION OF SALES, USE AND TRANSACTION TAX RECORDS, PURSUANT TO SECTION 7056 OF THE STATE OF CALIFORNIA REVENUE AND TAXATION CODE, BY MUNISERVICES LLC AND DESIGNATED BY CITY OFFICERS AND EMPLOYEES

1 H. Adopted Resolution No. 09-28, proposed by the League of California Cities, regarding "borrowing" of property tax by the State of California in order to help balance the State's budget.

RESOLUTION NO. 09-28 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, FINDING A SEVERE FISCAL HARDSHIP WILL EXIST IF ADDITIONAL LOCAL PROPERTY TAX FUNDS ARE SEIZED AND ADDITIONAL UNFUNDED MANDATES ARE ADOPTED BY THE STATE OF CALIFORNIA

2. **PUBLIC HEARINGS:** None

**3. GENERAL BUSINESS ITEMS:**

- 3 A. Council consider and discuss the establishment of a Higher Education Subcommittee.

Mayor Farnam stated he sees this as a benefit as he read it is possible for Mt. San Jacinto College's ability to come to the City.

Council Member Cashman and Swanson stated the need to look at all possible avenues of higher education.

Council consensus for this committee to gather information and bring it forward to the Council with guidelines.

A motion was made by Council Member Cashman, seconded by Council Member Swanson, to form a Higher Education Ad Hoc Subcommittee.

Roll call vote: Ayes – 5; Nays – 0. Motion carried.

A motion was made by Mayor Farnam, seconded by Council Member Ade, to nominate Council Member Cashman and Mayor Pro Tem Moore to sit on the Ad Hoc Subcommittee.

Roll call vote: Ayes – 5; Nays – 0. Motion carried.

- 3 B. Council consider and discuss the proposed Capital Improvement Program for Fiscal Years 2009/10 through 2013/14.

Public Works Director Kashiwagi presented the staff report outlining the programs outlined in Table 1. He stated this is a flexible document and can be amended should something arise during the year.

Discussion ensued regarding the slurry seal program and the Clinton Keith/I-15 Interchange.

- 3 C. Review and consider authorizing the City Manager to execute a contract with Temeka, Incorporated, for the directional sign program for the City of Wildomar.

Finance Director Nordquist presented the staff report.

Council Member Ade inquired if the design of the kiosk signs will be brought to the City Council for approval.

Finance Director Nordquist answered yes.

Discussion ensued regarding garage sale signs, which was determined that is part of the sign ordinance and not part of this issue. Also, the revenue back to the City would be a desired 50%, which is what the City will pursue.

Council Member Cashman stated he has concerns and would like to hold off on this until there is more information on the design and a review of the Ordinances as it applied to this program.

Assistant City Attorney Jax advised this program cannot change the existing sign ordinance already in place. The kiosks must adhere to that ordinance.

A motion was made by Council Member Swanson, seconded by Mayor Pro Tem Moore, to authorize the City Manager to execute a contract with Temeka, Incorporated, for the directional sign program for the City of Wildomar.

Roll call vote: Ayes – 4; Nays – 1 (Cashman). Motion carried.

- 3 D. Review and consider a Resolution establishing a fee for the registration of abandoned or distressed properties.

RESOLUTION NO. 09-29 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ESTABLISHING A FEE FOR THE REGISTRATION OF ABANDONED OR DISTRESSED PROPERTIES

City Manager Danielson advised we do have an ordinance in place, however we need to adopt the fee itself, which was not part of the County Code we adopted. We have not done a fiscal analysis on this and the fee appears to be

low, therefore Staff will perform a fiscal analysis and bring this back for consideration.

Discussion ensued regarding the fee amount which appears to be about half of what it should be.

A motion was made by Council Member Swanson, seconded by Mayor Pro Tem Moore, to adopt a Resolution establishing a fee for the registration of abandoned or distressed properties.

Roll call vote: Ayes – 5; Nays – 0. Motion carried.

- 3 E. Review and consider a Resolution redesignating the trail along the Rancho Mirlo Road alignment from a Community Trail to a Regional Trail.

RESOLUTION NO. 09-30 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, REDESIGNATING THE TRAIL ALONG THE RANCHO MIRLO ROAD ALIGNMENT FROM A COMMUNITY TRAIL TO A REGIONAL TRAIL

Assistant Planning Director Hogan presented the staff report. He stated the trail segment to be redesignated begins at the intersection of Clinton Keith Road and Grand Avenue, runs south along Rancho Mirlo Road, and connects with other trails in the City of Murrieta. This Resolution informs the County that in the future the City will look at this as part of the City's General Plan update.

Gary Andre, speaker, stated Rancho Mirlo Road is in Murrieta and along the creek there are several issues. There would be a bridge installed to mitigate these issues and connect with Murrieta. Grand Avenue would eventually connect to Rancho Mirlo Road. We also need to resolve whether our trails will be community trails or regional trails.

A motion was made by Council Member Ade, seconded by Council Member Swanson, to adopt Resolution No. 09-30 redesignating the trail along the Rancho Mirlo Road alignment from a Community Trail to a Regional Trail.

Roll call vote: Ayes – 5; Nays – 0. Motion carried.

**CITY MANAGER REPORT:**

City Manager Danielson reported May 28 at 7:00 p.m. is the next Districting Meeting. Additionally, he thanked the RDA as the City presented the proposal for the community surveys.

**CITY ATTORNEY REPORT:**

Assistant City Attorney Jax had no report.

**COUNCIL COMMUNICATIONS:**

Council Member Swanson reported she attended the David Brown Career Day which the City had a booth at. She would like to see City information put together to take to events such as this.

**FUTURE AGENDA ITEMS:**

- \*Formation of a City Beautification Committee consisting of citizens
- \*Grant funding
- \*City Logo selection
- \*Presentation of Green Street Scene

**ADJOURNMENT:**

There being no further business, Mayor Farnam declared the meeting adjourned at 8:10 p.m.

Respectfully submitted:



Debbie A. Lee, CMC  
City Clerk

**CITY OF WILDOMAR – CITY COUNCIL**  
**Agenda Item 1 C.**  
**CONSENT CALENDAR ITEM**  
**Meeting Date: June 10, 2009**

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**TO:** Mayor and Members of the City Council  
**FROM:** Gary Nordquist, Director of Finance  
**SUBJECT:** Warrant Registers dated May 28, June 4, June 10, 2009 and Payroll Register dated May 29, 2009.

**STAFF REPORT**

**RECOMMENDATION:**

1. Approve Warrant Register dated May 28, 2009 in the amount of \$261,915.49.
2. Approve Warrant Register dated June 4, 2009 in the amount of \$50.00.
3. Approve Warrant Register dated June 10, 2009 in the amount of \$24,476.02.
4. Approve Payroll Warrant Register dated May 29, 2009 in the amount of \$1,418.67.

**BACKGROUND:**

The City of Wildomar City requires that the City Council audit payments of demands and direct the City Manager to issue checks. The Warrant and Payroll Registers are submitted for approval.

**DISCUSSION:**

None.

**FISCAL IMPACTS:**

These Warrant and Payroll Registers will have a budgetary impact in the amount noted in the recommendation section of this report. These costs are included in the FY08-09 Budget.

**ALTERNATIVES:**

1. Take no action
2. Provide staff with further direction.

Submitted by:

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Gary Nordquist  
Director of Finance

Approved by:

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John Danielson  
City Manager

Reviewed by:

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Julie Hayward Biggs  
City Attorney

**City of Wildomar  
Warrant Register  
May 28, 2009**

10 1000 1 Cash - Wells Fargo

Date	Type	Number	Vendor	Description	Amount
5/28/2009	Bill Payment (Check)	1708	Aetna	City Council Benefits for May 2009	\$ 4,116.00
5/28/2009	Bill Payment (Check)	1709	AFLAC	City Council Benefits for May 2009	\$ 441.41
5/28/2009	Bill Payment (Check)	1710	Naples Plaza Ltd.-Oak Creek II	2/1-5/1/2009 Ten't. Improvement Reimbursement	\$ 2,606.87
5/28/2009	Bill Payment (Check)	1711	Edison	Electrical Services 4/14-5/14/09	\$ 947.15
5/28/2009	Bill Payment (Check)	1712	Office Depot	Shredder (\$177.78) Dry Erase Board - 36x48	\$ 285.51
5/28/2009	Bill Payment (Check)	1713	The Press-Enterprise	Public Hearing Notices; Notice of Intent/Negative Declaration Proj. - 08-0179	\$ 467.20
5/28/2009	Bill Payment (Check)	1714	The Sign Center	Magnetic Signs for Trucks	\$ 78.38
5/28/2009	Bill Payment (Check)	1715	FedEx	FedEx Services for Planning Department	\$ 43.10
5/28/2009	Bill Payment (Check)	1716	Guardian	June 2009 Insurance Premium	\$ 1,627.32
5/28/2009	Bill Payment (Check)	1717	Interwest Consulting Group	Municipal Services for April 2009	\$ 227,641.26
5/28/2009	Bill Payment (Check)	1718	Terry Fitzwater	ACW Administrative Consulting Services for May 2009	\$ 10,371.29
5/28/2009	Bill Payment (Check)	1719	Gary Nordquist	Financial Director Services for April 2009	\$ 12,500.00
5/28/2009	Bill Payment (Check)	1720	Temecula Valley Chamber	2009 Economic Forecast Corp Sponsor (6/4/09)	\$ 500.00
5/28/2009	Bill Payment (Check)	1721	Wildomar Chamber of Commerce	Business Networking Meeting	\$ 40.00
5/28/2009	Bill Payment (P-Check)	1722	League of California Cities	2009 Executive Forum Registration - J Danielson	\$ 250.00
<b>Sub-total:</b>					<b>\$ 261,915.49</b>

**Warrant Register  
June 4, 2009**

6/4/2009	Bill Payment (P-Check)	1723	Wildomar Rotary Club	Rotary Club Meeting - 5 Members	\$ 50.00
<b>Sub-total:</b>					<b>\$ 50.00</b>

**Warrant Register  
June 10, 2009**

6/10/2009	Bill Payment (Check)	1724	AT&T	Council Mobile Phones - May 2009	\$ 324.03
6/10/2009	Bill Payment (Check)	1725	Image Printing System	Business Cards, Single Sheet Proclamation, Flag	\$ 860.50
6/10/2009	Bill Payment (Check)	1726	International Institute of Municipal Clerks	2009 Membership Dues	\$ 165.00
6/10/2009	Bill Payment (Check)	1727	FedEx	FedEx Services for Planning Department	\$ 26.60
6/10/2009	Bill Payment (Check)	1728	Crystal Clean Maintenance	Janitorial Services - April, May, 2009	\$ 800.22
6/10/2009	Bill Payment (Check)	1729	California Building Standards Commission	1st Quarter - Revolving Fund Fees (pass through payment)	\$ 273.60
6/10/2009	Bill Payment (Check)	1730	North County Times	Notice of Public Hearing - 5/23/09	\$ 93.20
6/10/2009	Bill Payment (Check)	1731	OnTrac	Overnight Delivery Services	\$ 59.50
6/10/2009	Bill Payment (Check)	1732	Scott Farnam	Expense Report - League of CA Cities Meeting	\$ 94.70
6/10/2009	Bill Payment (Check)	1733	Diamond W Events	Community Services for May 2009	\$ 3,835.17
6/10/2009	Bill Payment (Check)	1734	Danielson Associates, Inc.	Interim City Manager Services- May 2009	\$ 17,821.50
6/10/2009	Bill Payment (Check)	1735	City Clerks Association of California	Annual Membership Dues - 2008-2009	\$ 120.00
<b>Sub-total:</b>					<b>\$ 24,476.02</b>
<b>Grand Total:</b>					<b>\$ 286,441.51</b>

## Payroll Register of May 29, 2009

<u>Check No.</u>	<u>Date</u>	<u>Amount</u>	<u>Description</u>
5046	05-29-2009	\$1, 418.67	Payroll period 10

**CITY OF WILDOMAR – CITY COUNCIL**  
**Agenda Item 1 D.**  
**CONSENT CALENDAR ITEM**  
**Meeting Date: June 10, 2009**

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**TO:** Council Members

**FROM:** Michael Kashiwagi, Development Services

**SUBJECT:** Adopt Resolution Authorizing the Mayor to Execute an Amendment of the Western Riverside Council of Government Joint Powers Agreement to include the Eastern and Western Water Districts as voting members of the Executive Committee and General Assembly

**STAFF REPORT**

**RECOMMENDATION:**

Adopt Resolution 09-31 authorizing the Mayor to execute an amendment of the Western Riverside Council of Governments' Joint Powers Agreement to include the Eastern and Western Municipal Water Districts as voting members on the Executive Committee and General Assembly.

**BACKGROUND:**

In 1990 Western Riverside Council of Governments (WRCOG) was formed as a joint powers agency to provide cooperative, long-range planning on issues of mutual concern that cross jurisdictional boundaries, providing regional perspective to its member agencies while respecting local control.

On March 3, 2008, the WRCOG Executive Committee expanded its membership for the first time since its inception to include non-jurisdictional members as it voted to include the Western Municipal Water District and the Eastern Municipal Water District. Each water district was able to appoint a representative to the WRCOG Executive committee. The water districts' representatives held ex-officio positions per the parameters of the membership arrangement. An ex-officio position is a non-voting member.

Currently, the Western Riverside Council of Governments' members include sixteen (16) cities, the County of Riverside, and the Eastern and Western Municipal Water Districts.

On May 11, 2009, the WRCOG Executive Committee approved an action to formally revise WRCOG's Joint Powers Agreement to include the Eastern and Western Municipal Water Districts as full voting members of the Executive Committee and

General Assembly. As members of WRCOG's Governing Boards, the water districts will have the right to cast formal votes on matters presented to these bodies, with exception of Transportation Uniform Mitigation Fee (TUMF) Program activities. Since July 1, 2008, representatives from the two districts have acted as ex officio (non-voting) members of the Executive Committee.

In order to implement these changes, the WRCOG member agencies will need to approve and sign an amendment to the WRCOG Joint Powers Agreement (JPA) to include the Water District members as voting members on the Executive Committee and General Assembly.

**DISCUSSION:**

Through partnerships and other innovative efforts, these Eastern and Western Municipal Water Districts have a number of tools they can use when it comes to managing water resources.

Some of those tools include managing existing potable water storage, reclaiming and reusing recycled water, minimizing unnecessary water usage on outdoor landscaping and indoor plumbing, and removing salt from briny water to make it useful on crops and other vegetation.

The Eastern and Water Districts membership with WRCOG will facilitate a variety of regional joint goals and interest, including:

- improved coordination on major infrastructure planning;
- improved and consistent implementation of landscape water conservation ordinance;
- improved coordination of shared legislative and regulatory strategies;
- better positioning to overcome resource management challenges; and
- improved regional response and compliance with a merging case law tightening the connection between land use and water resources;

Only through an amendment of the JPA can the Water Districts' status change from a non-voting to a voting member.

**FISCAL IMPACTS:**

None.

**ATTACHMENTS:**

1. Resolution No. 09-31
2. WRCOG Joint Powers Agreement Amendment

Submitted by:

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Michael Kashiwagi  
Development Services

Approved by:

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John Danielson  
Interim City Manager

**RESOLUTION NO. 09 - 31**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA,  
AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE JOINT POWERS  
AGREEMENT OF THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG) TO  
INCLUDE THE EASTERN AND WESTERN MUNICIPAL WATER DISTRICTS AS VOTING  
MEMBERS OF THE GOVERNING BOARD**

WHEREAS, the City of Wildomar ("City") has entered into a Joint Powers Agreement with the Western Riverside Council of Governments ("WRCOG"), along with fifteen other cities within the Western Riverside County, and the County of Riverside; and

WHEREAS, WRCOG has expressed to its member agencies that the Western Municipal Water District and the Eastern Municipal Water District (the "Water Districts") would be beneficial to its member agencies and the Water Districts; and

WHEREAS, the Water Districts cooperation with WRCOG will create synergies which will facilitate a variety of joint goals, including (1) improved coordination on major infrastructure planning; (2) improved and consistent implementation of landscape water conservation ordinance; (3) improved coordination of shared legislative and regulatory strategies; (4) better positioning to overcome resource management challenges; and (5) improved regional response and compliance with a merging case law tightening the connection between land use and water resources; and

WHEREAS, the City agrees to support amending the WRCOG Joint Powers Agreement ("JPA") to include the Water Districts as voting members to WRCOG Governing Board.

NOW, THEREFORE, the City Council of Wildomar, California, does resolve as follows:

1. The City Council authorizes the Mayor to execute an amendment to the JPA of the WRCOG to add the Water Districts to the Governing Board.

PASSED, APPROVED, AND ADOPTED this 10th day of June 2009.

\_\_\_\_\_  
Scott Farnam  
Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Julie Hayward Biggs  
City Attorney

\_\_\_\_\_  
Debbie A. Lee, CMC  
City Clerk

**AMENDMENT TO THE JOINT POWERS AGREEMENT OF  
THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS  
TO ADD WATER DISTRICTS TO THE WRCOG GOVERNING BOARD**

This Amendment to the Joint Powers Agreement (“Amended Agreement”) is made and entered into on the 11th day of May, 2009, by and between sixteen cities located within western Riverside County and the County of Riverside (collectively the “Parties”).

RECITALS

WHEREAS, sixteen cities located within western Riverside County and the County of Riverside have entered into a Joint Powers Agreement on April 1, 1991, and through subsequent amendments thereto (the “JPA”), to form the Western Riverside Council of Governments (“WRCOG”); and

WHEREAS, the Western Municipal Water District and the Eastern Municipal Water District (the “Water Districts”) have approached WRCOG to express that their involvement in WRCOG will be beneficial to both WRCOG member agencies and the Water Districts; and

WHEREAS, the Water Districts believe that cooperation with WRCOG will create synergies which will facilitate a variety of joint goals, including (1) improved coordination on major infrastructure planning; (2) improved and consistent implementation of landscape water conservation ordinances; (3) improved coordination of shared legislative and regulatory strategies; (4) better positioning to overcome resource management challenges; and (5) improved regional response and compliance with a merging case law tightening the connection between land use and water resources; and

WHEREAS, WRCOG agrees and strongly supports coordination with the Water Districts, and believes that permitting the Water Districts membership on the WRCOG Governing Body is the best manner which would most efficaciously serve the interests of the WRCOG member agencies and the Water Districts; and

WHEREAS, pursuant to Government Code sections 6500 *et seq.*, the parties to the JPA desire to amend the JPA to add the Water Districts to the Governing Body of WRCOG.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

Section 1: Section 2.1 to the JPA is hereby amended to read as follows:

2.1 Parties.

The parties to WRCOG shall be the County of Riverside and each city located within western Riverside County which has executed or hereafter executes this Agreement, or any addenda, amendment, or supplement thereto and agrees to such become a member upon such terms and conditions as established by the general counsel or Executive Committee, and which has not, pursuant to provisions hereof, withdrawn therefrom. Only the parties identified in this section shall be considered contracting parties to the JPA under Government Code section 6502.

Section 2: Section 2.4 to the JPA is hereby amended to read as follows:

2.4 Governing Body.

2.4.1. WRCOG shall be governed by a General Assembly with membership consisting of the appropriate representatives from the County of Riverside, each city which is a signatory to this Agreement, Western Municipal Water District, and Eastern Municipal Water District, the number of which shall be determined as hereinafter set forth. The General Assembly shall meet at least once annually, preferably scheduled in the evening. Each member agency of the General Assembly shall have one vote for each mayor, council member, county supervisor, and water district board member present at the General Assembly. The General Assembly shall act only upon a majority of a quorum. A quorum shall consist of a majority of the total authorized representatives, provided that members representing a majority of the member agencies are present. The General Assembly shall adopt and amend by-laws for the administration and management of this Agreement, which when adopted and approved shall be an integral part of this Agreement. Such by-laws may provide for the management and administration of this Agreement.

2.4.2. There shall be an Executive Committee which exercises the powers of this Agreement between sessions of the General Assembly. Members of the Executive Committee shall be the Mayor from each of the member cities, four members of the Riverside County Board of Supervisors and the President of each Water District, the remaining member of the Board of Supervisors shall serve as an alternate, except any City Council, at its discretion, can appoint a Mayor Pro Tem or other city council member in place of the Mayor and each water district board, at its discretion, can appoint another board member in place of the President. The Executive Committee shall act only upon a majority of a quorum. A quorum shall consist of a majority of the member agencies. Membership of the Water Districts on the General Assembly and Executive Committee of WRCOG shall be conditioned on the Water Districts entering into a separate Memorandums of Understanding with WRCOG.

Section 3: Section 2.18 is hereby added to the JPA to read as follows:

2.18 Water Districts and TUMF Matters.

Pursuant to this Joint Powers Agreement, WRCOG administers the Transportation Mitigation Fee (“TUMF”) for cities in western Riverside County. The fee was established prior to the Water District’s involvement with WRCOG and will fund transportation improvements for the benefit of the County of Riverside and the cities in western Riverside County. As such, the Western Municipal Water District and the Eastern Municipal Water District General Assembly and Executive Committee Members shall not vote on any matter related to the administration of the TUMF program or the expenditure of TUMF revenues.

Section 4: Section 3.5 is hereby added to the JPA to read as follows:

3.5 Contributions from Water Districts.

The provisions of section 3.4 above shall be inapplicable to the Western Municipal Water District and the Eastern Municipal Water District. The amount of contributions from these water districts shall be through the WRCOG budget process.

Section 5: This amendment is to become effective upon execution by all of the parties that are currently signatories to the JPA.

Section 6: All other provisions and terms of the JPA are to remain unchanged.

Section 7: This Amendment may be executed in counterparts.

IN WITNESS WHEREOF, the Parties hereto have caused this Amended Agreement to be executed and attested by their officers thereunto duly authorized as of the date first above written.

[SIGNATURES ON FOLLOWING PAGES]

ATTEST:

City Clerk  
City of Banning

CITY OF BANNING

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Beaumont

CITY OF BEAUMONT

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Calimesa

CITY OF CALIMESA

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Canyon Lake

CITY OF CANYON LAKE

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Corona

CITY OF CORONA

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Hemet

CITY OF HEMET

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

By \_\_\_\_\_  
Mayo

Dated: \_\_\_\_\_

r

ATTEST:

City Clerk  
City of Lake Elsinore

CITY OF LAKE ELSINORE

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Meniffee

CITY OF MENIFEE

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Moreno Valley

CITY OF MORENO VALLEY

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Murrieta

CITY OF MURRIETA

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Norco

CITY OF NORCO

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Perris

CITY OF PERRIS

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Riverside

CITY OF RIVERSIDE

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of San Jacinto

CITY OF SAN JACINTO

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Temecula

CITY OF TEMECULA

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

City Clerk  
City of Wildomar

CITY OF WILDOMAR

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

By \_\_\_\_\_  
Mayor

Dated: \_\_\_\_\_

ATTEST:

County Clerk  
County of Riverside

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

Dated: \_\_\_\_\_

COUNTY OF RIVERSIDE

By \_\_\_\_\_  
Chairman

**CITY OF WILDOMAR – CITY COUNCIL**  
**Agenda Item 1 E.**  
**CONSENT CALENDAR ITEM**  
**Meeting Date: June 10, 2009**

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**TO:** Council Members  
**FROM:** Michael Kashiwagi, Development Services  
**SUBJECT:** Sale of Remnant Road Right of Way

**STAFF REPORT**

**RECOMMENDATION:**

Authorize the City Manager, or designee, to execute an Agreement for Sale of Real Property between the City of Wildomar and A&S Properties at Clinton Keith, LLC for 3,691 square feet of remnant right-of-way identified as a portion of Assessor Parcel Number 380-130-015, and direct staff to coordinate the implementation of the agreement, the collection of funds from the sale and the closing of escrow.

**BACKGROUND:**

The developers of Renaissance Plaza approached the City of Wildomar to purchase a strip of excess road right-of-way along Clinton Keith Road that abuts their present development. The 3,691 square foot strip of land lies within the proposed development and pad site, slated for the Yellow Basket Restaurant. The remnant right of way falls within the proposed "drive-through" lane as demonstrated on the attached Exhibit A. A&S Properties is seeking to purchase permanent rights (fee simple interest) to merge with their adjoining development.

Riverside County purchased the road right-of-way along Clinton Keith Road in 1998. Development Services has determined the remnant right of way will not be utilized for any present or future widening of Clinton Keith Road. The remnant right of way does not have independent utility and is only useful to the adjoining owner.

The proposed terms of the sale are as follows:

- A&S Properties has agreed to a proposed purchase price of \$27,700 for 3,691 square feet of land.
- A&S Properties will pay all fees associated with the transaction including staff time to process the sale, engineering related costs, preparation of legal and plat descriptions, title and escrow fees.

The purchase a price was derived from an appraisal provided A&S Properties.

**FISCAL IMPACTS:**

The proceeds from the sale of the remnant road right of way shall be deposited in the General Fund.

**ATTACHMENTS:**

1. Exhibit A – Description of Remnant Road Right-of-Way
2. Agreement for Sale of Real Property

Submitted by:

Approved by:

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Michael Kashiwagi  
Development Services

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John Danielson  
Interim City Manager

# AGREEMENT FOR SALE OF REAL PROPERTY

File No.: 09-08-01  
Project: Sale of Remnant ROW  
Parcel No.: Ptn of 380-130-015  
Escrow Number: NHRV-3292853 (tc)  
Title Company: First American Title  
Date of Preliminary Title Report: May 1, 2009

## PREAMBLE

This Agreement for Sale of Real Property ("Agreement") is entered into on \_\_\_\_\_, 200\_\_\_\_\_, by and between **A&S PROPERTIES AT CLINTON KEITH, LLC**, a California limited liability company ("Buyer"), and **CITY OF WILDOMAR**, a municipal corporation ("Seller").

## RECITALS

WHEREAS, Seller desires to sell and convey and Buyer desires to purchase certain real property (hereinafter, the "Property") situated in the City of Wildomar known as a Portion of APN: 380-130-015 consisting of approximately 3,691 square feet, on the terms and conditions contained in this Agreement. The Property is more particularly described in **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto and incorporated herein by this reference.

NOW THEREFORE, the parties agree as follows:

## ARTICLE 1. PURCHASE PRICE

### Amount and Terms of Payment

**Section 1.01.** The total purchase price of the Property is Twenty Seven Thousand Seven Hundred Dollars (\$27,700) payable by Buyer as follows:

The total purchase price of the Property is Twenty Seven Thousand Seven Hundred Dollars,(\$27,700) payable by Buyer on Buyer's execution of this Agreement. Payment shall be made by certified check or cashier's check drawn to the order of the Escrow Holder named in **Section 2.01**. Solely for purposes of **Sections 1.02** and **5.02** of this Agreement, a portion of this sum in the amount of \$2,700 shall be deemed to constitute Buyer's "Deposit".

### Consequence of Buyer Default

**Section 1.02.** If Buyer defaults in the performance of this Agreement, the Deposit described in **Section 1.01** shall be distributed in accordance with **Section 5.02**. In the event this Agreement is terminated for any other reason, the Deposit shall be refunded to Buyer less Seller's expenses of escrow.

## ARTICLE 2. ESCROW

### Opening of Escrow

**Section 2.01.** An escrow shall be opened to consummate the sale of the Property according to the terms of this Agreement at the office of First American Title Company ("Escrow Holder") within three (3) days of the execution of this Agreement by Seller. This Agreement shall constitute instructions to Escrow Holder of the consummation of the Agreement through the escrow. Buyer and Seller shall also deposit

## **AGREEMENT FOR SALE OF REAL PROPERTY**

with the Escrow Holder all instruments, documents, and other items reasonably required by the Escrow Holder to close the sale on the closing date specified below.

### **Closing Date**

**Section 2.02.** The escrow shall be closed and Buyer shall be entitled to possession of the Property on the date that a grant deed conveying the Property from Seller to Buyer (hereinafter, "Grant Deed") is recorded. The Grant Deed, **Exhibit "C"**, is attached hereto and incorporated herein by this reference. The escrow shall be considered to be in a condition to close when the Escrow Holder is authorized under this Agreement, and when the Escrow Holder is otherwise able, to record the Grant Deed. Unless the parties mutually agree to an extension of time, or to an earlier date, close of escrow shall be within thirty (30) days of opening of the escrow.

### **Escrow Costs and Fees**

**Section 2.03.** Buyer shall pay all of the Escrow Holder's charges including, without limitation, escrow fees, recording fees from the documents produced on the parties' behalf, and any required documentary transfer taxes. All cost to obtain a CLTA policy of title insurance, any special endorsements or ALTA coverage, if desired, shall be borne solely by Buyer.

## **ARTICLE 3. ADDITIONAL TERMS AND CONDITIONS**

### **Preliminary Report**

**Section 3.01.** Buyer obtained a preliminary report on the Property. Within five (5) business days from receipt of a fully executed Agreement, Buyer shall notify Seller in writing of an objection to any title exceptions listed in the preliminary title report. If Buyer makes a timely objection to any item and the item is not eliminated within five (5) business days of the Seller's receipt of the objection, then Buyer, at Buyer's election, may do either of the following:

- (1) Terminate the Agreement without any liability on the part of either party and with Buyer receiving a refund of any sum already paid pursuant to **Section 1.01** ; provided, however, that Buyer shall pay the escrow expenses incurred to the date of termination; or
- (2) Purchase the Property without a reduction in the purchase price and without any liability on the part of Seller for the item or items.

Buyer's failure to object in this manner to any item shall constitute an approval by Buyer of that item. Time is of the essence in performance of the obligations set forth in this section.

### **Entitlements**

**Section 3.02.** Buyer shall at its sole and exclusive expense, obtain all necessary local land use entitlements, building permits, and any local, County, State or Federal permits and approvals required for Buyer's current or future use of the Property hereunder. This Agreement shall not be construed as a waiver of any requirement, fee, or procedure required to obtain such entitlement or permit.

### **Seller's Election to Remedy Defects**

**Section 3.03.** Notwithstanding any provision of this Agreement to the contrary, Seller shall have the right to remedy certain violations of this Agreement prior to the close of escrow. This right to remedy shall be subject to the following requirements and restrictions:

## **AGREEMENT FOR SALE OF REAL PROPERTY**

- (a) Buyer shall immediately notify Seller in writing of Buyer's discovery, prior to the close of escrow, of a violation of any of the provisions of this Agreement. For these purposes, violations shall be referred to as "defects."
- (b) If Buyer fails to give written notice of a defect discovered by Buyer prior to the close of escrow, Buyer shall be deemed to have waived the defect and the defect shall not be a violation of this Agreement. If Buyer gives notice, Seller may elect to remedy the defect by giving Buyer written notice of this election within five (5) days of receiving Buyer's notice. Seller's notice of election to remedy shall specify the number of days (if any), up to a maximum of thirty (30), that escrow shall be postponed so that Seller may remedy the defect. If Seller fails to provide a timely notice of election or fails to remedy the defect prior to the close of escrow (including any extension of escrow made pursuant to this section), then Buyer, at Buyer's election, may do either of the following:
  - (1) Terminate this Agreement without any liability on the part of either party and Buyer receiving a refund of any sum already paid pursuant to **Section 1.01**; or
  - (2) Purchase the Property without a reduction in the purchase price and without any liability on the part of Seller for the unremedied defect or defects.

The failure by Buyer to provide such a notice of election to Seller shall be deemed an election of option (2) above.

### **ARTICLE 4. RIGHTS AND WARRANTIES**

#### **Right of Buyer to Enter Property**

**Section 4.01.** Seller grants to Buyer or Buyer's agents the right, prior to close of escrow, to enter onto the Property to conduct tests or investigations (collectively referred to hereafter as the "Buyer's Tests") provided that:

- (a) The Buyer's Tests shall be conducted at the sole cost and expense of Buyer;
- (b) Buyer shall provide Seller with prior written notice that must be received by Seller not less than 24 hours in advance of any entry on the Property for purposes of conducting the Buyer's Tests;
- (c) The Buyer's Tests shall not unreasonably interfere with Seller's possession;
- (d) Buyer shall comply with any limitations or conditions reasonably specified by Seller;
- (e) Buyer, at Buyer's sole cost and expense, shall repair any property damage occurring as a result of the Buyer's Tests; and
- (f) Buyer shall fully defend, indemnify and hold Seller harmless from any and all damages, costs or liability of any kind resulting from the Buyer's Tests.

#### **Release and Indemnification of Seller**

**Section 4.02.**

- (a) Buyer acknowledges that it is being afforded access to the Property and to any non-privileged information the Seller has relating to the Property. Buyer will continue to

## AGREEMENT FOR SALE OF REAL PROPERTY

have the right to make on-site inspections and the right to examine non-privileged documents relating to the Property and will otherwise investigate the Property to Buyer's satisfaction. Buyer shall perform and rely upon its own independent investigation of the physical condition of the Property. Buyer hereby waives and releases any and all claims, and agrees to completely defend, indemnify and hold harmless Seller, Seller's officers, directors, agents and employees from and against any and all claims, actions, damages, costs or other liability, arising directly or indirectly from the condition (including, but not limited to, the condition of the soil, presence of toxic or hazardous materials or contaminants and all other physical characteristics) and valuation or utility of the Property, regardless of any rights or remedies Buyer may have either now or in the future under any State or Federal law or regulation. It is specifically the intention of the parties that as to the presence of toxic or hazardous materials, Buyer is assuming sole and complete responsibility for all costs associated with cleanup requirements for the Property, and any associated damages or other costs and expenses, that Buyer is waiving and releasing any claims against Seller therefor, and that Seller shall have no liability whatsoever therefor. The foregoing waiver and release shall include any and all claims arising under Section 1542 of the California Civil Code, which provides that:

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

Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the parties expressly acknowledge that this Agreement is intended to release and extinguish, without limitation, all claims as described in this Section 4.02 that the parties do not know or suspect to exist.

- (b) Buyer hereby acknowledges that Buyer is purchasing the Property "AS-IS" in its existing condition. In addition, Buyer acknowledges and agrees that, except as set forth in Section 4.02 (c), Seller (and Seller's agents and employees) has not and does not hereby make any representation or warranty to Buyer concerning the Property, including, without limitation, the suitability of the Property for Buyer's intended use, or its compliance with hazardous waste laws or any other statutes, ordinances, rules or regulations, or need for land use entitlements. Buyer also understands and agrees that any responsibility to obtain land use entitlements, and the cost thereof, is solely the responsibility of Buyer, and Seller makes no commitment or representation with respect thereto, and reserves all of its land use authority and discretion in reviewing any application for such entitlements. Buyer shall perform and rely solely upon its own independent investigation concerning the Property and the Property's compliance with any applicable law. Buyer acknowledges that it is acquiring the Property subject to all existing laws, ordinances, rules and regulations, and that neither Seller nor any of Seller's agents or employees have made any warranties, representations, or statements regarding any laws, ordinances, rules, or regulations of any governmental or quasi-governmental body, entity, district, or agency having authority with respect to the use, condition, or occupancy of the Property.
- (c) Notwithstanding anything to the contrary contained in this Agreement, Seller represents and warrants that it has no actual knowledge of any pending or threatened proceedings in eminent domain or otherwise with respect to the Property that would materially,

# AGREEMENT FOR SALE OF REAL PROPERTY

adversely affect Seller's ability to convey the Property or Buyer's intended use and/or improvement of the Property, or any portion thereof.

## Survival of Warranties

**Section 4.03.** All warranties, covenants, releases and other obligations described in this Article and elsewhere in this Agreement shall survive recording and delivery of the Grant Deed.

## ARTICLE 5. MISCELLANEOUS PROVISIONS

### Loss & Destruction

**Section 5.01.** The parties agree that the Uniform Vendor and Purchaser Risk Act set forth in Civil Code Section 1662 and its provisions governing the allocation of risk of loss shall govern this transaction, except where a contrary result is specified herein.

### Default

**Section 5.02.** If Buyer defaults in the performance of this Agreement, the parties agree that Seller will be damaged by Buyer's breach of this Agreement and entitled to compensation therefore, although such damage and compensation are extremely difficult and impracticable to ascertain at this time. Therefore, in addition to Seller being released from any obligation to sell the Property to Buyer, Buyer and Seller agree that Buyer's Deposit, made pursuant to **Section 1.01**, shall be deemed to constitute a reasonable estimate of Seller's damages. Accordingly, Seller may retain, in case of Buyer's breach of this Agreement, the Deposit paid by Buyer on execution of this Agreement as liquidated damages.

Initialed by Buyer:  \_\_\_\_\_  
Initialed by Seller: \_\_\_\_\_

### Assignment

**Section 5.03.** Buyer may not assign this Agreement without Seller's prior written consent, and any purported assignment without Seller's consent shall be void. The valid assignment of this Agreement shall not relieve Buyer of liability under this Agreement.

### Time of Essence

**Section 5.04.** Time is of the essence in this Agreement.

### Notices

**Section 5.05.** Any notice, tender, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered, mailed, or sent by wire or other telegraphic communication in the manner provided in this section to the following persons:

- |   |  |
|---|--|
| <b>(a) If to Buyer:</b><br>A&S Properties at Clinton Keith, LLC<br>David Esoldi<br>11512 El Camino Real, Suite 200<br>San Diego, CA 92130 | <b>(b) If to Seller:</b><br>City of Wildomar<br>Real Estate Services<br>23873 Clinton Keith Rd., Ste. 201<br>Wildomar, CA 92595<br>Attn: Real Property Manager |
|---|--|

## **AGREEMENT FOR SALE OF REAL PROPERTY**

Either party may change that party's address for these purposes by giving written notice of the change to the other party. Any notice to any of the parties required or permitted under this Agreement shall be deemed to have been duly given on the date it is served personally on the other party or on the third day after mailing if mailed by registered or certified mail, postage prepaid and addressed as set forth above or as modified according to this section.

### **Entire Agreement**

**Section 5.06.** This Agreement and the attached Exhibit(s) constitute the entire agreement between the parties relating to the sale of the Property. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by Buyer and Seller.

### **Attorneys' Fees**

**Section 5.07.** If any action, proceeding, or arbitration arising out of, or relating to, this Agreement, including an action for injunctive relief, is commenced by either party to this Agreement, then as between Buyer and Seller, the prevailing party shall be entitled to receive, from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action, proceeding, or arbitration by the prevailing party.

### **Binding Effect**

**Section 5.08.** This Agreement shall be binding on and inure to the benefit of the parties to this Agreement and their heirs, personal representatives, successors, and assigns, except as otherwise provided in this Agreement.

### **Governing Law**

**Section 5.09.** This Agreement shall be construed and interpreted in accordance with, and the validity of this Agreement shall be adjudged by, the laws of the State of California. The place of this Agreement and its situs or forum is at all times in the County of Riverside, State of California, in which county and state all matters, whether sounding in contract or in tort relating to the validity, construction, interpretation, and enforcement of this Agreement, shall be determined.

### **Headings**

**Section 5.10.** The headings of the articles and sections of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

### **Waiver**

**Section 5.11.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

### **Drafting Agreement**

**Section 5.12.** This Agreement is the result of the joint efforts and negotiations of parties hereto, and no single party is the author or drafter hereof. All of the parties assume joint responsibility for the form and position of each and all of the contents of this Agreement, and they agree that this Agreement shall be

**AGREEMENT FOR SALE OF REAL PROPERTY**

interpreted as though each of the parties participated equally in the composition of this Agreement and each and every part hereof.

**Special Provisions**

**Section 5.13.** The Special Provisions attached hereto as **Exhibit "D,"** if any, are hereby incorporated and made a part of this Agreement by this reference. In the event of any conflict or inconsistency between this Agreement and the Special Provisions, the terms of the Special Provisions shall prevail.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the dates set forth below.

**BUYER:**  
**A&S PROPERTIES AT CLINTON KEITH, LLC, a California limited liability company**

**SELLER:**  
**CITY OF WILDOMAR, a municipal corporation**

Date: : June 4 2009

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

By: David J. Esoldi

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

Print Name: David J. Esoldi

John Danielson, City Manager

Title: Chief Operating Officer

**RECOMMENDED FOR APPROVAL:**

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

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

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

Julie D. Cline, Real Property Manager

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

**APPROVED AS TO FORM:**

Print Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

Julie Hayward Biggs, City Attorney

**ATTEST:**

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

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

Sheryll Schroeder, City Clerk

*\*Note: If Grantor is a corporation, the following two signatures are required: (1) the first signature by either the Chairman of the Board, the President, or any Vice President of the corporation; and (2) the second signature by the Secretary, any Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer of*

**Attachment 1**

**Salary and Compensation Study  
Assistant City Manager/Finance Director**

	Hemet Pop 74,361	Lake Elsinore Pop. 50,267	Murrieta Pop. 100,714	San Jacinto Pop. 36,477	Temecula Pop. 102,604
Assistant City Manager	141,016	Contract	200,979	139,596	171,220
Finance Director	131,256	134,566	176,592	117,826	152,734

**Average Salary:**

Assistant City Manager    163,202  
Finance Director            142,594

**Recommended Salary Range:**

142,594-171,592

**The City of Wildomar**  
**CLASSIFICATION DESCRIPTION**

<b>Class Title:</b> Assistant City Manager of Finance and Administration	<b>Department:</b> City Manager
<b>Effective:</b> July 8, 2009	<b>Date:</b> July 8, 2009

**GENERAL PURPOSE**

The Assistant City Manager of Finance and Administration, ACM-FA, provides leadership and direction to several major functional areas/departments of the City to include, Human Resources, Risk Management, Contract Compliance, Financial Management and Information Technology. The position provides highly responsible and complex support to the City Manager, City Council and is a key member of the City Manager's Executive team.

**ESSENTIAL DUTIES AND RESPONSIBILITIES**

*(The following is used as a partial description and is not restrictive to duties required.)*

The ACM-FA is charged with the responsibility for oversight of city-wide policy development, program planning and implementation of related policies and procedures. Ensures that the objectives set forth by the City Council and City Manager are carried out. Makes oral and written presentations to the City Council on all related matters. Ensures that City policies are followed, contracts are updated and enforced, fiscally sound programs are in place and that all departments within the City have adequate resources to maintain levels of service. The incumbent is responsible for accomplishing and/or furthering city administrative goals and objectives.

The ACM-FA prepares and recommends long-range plans for City services and programs; develops specific proposals for action on current City needs. The ACM-FA ensures the implementation of all activities throughout the City related to the broad functions of human resources, information technology and accounting and finance and provides expert professional assistance to City management staff and City Council in human resources and financial related matters.

The ACM-FA is responsible for the overall direction and implementation of the Risk Management program for the City's liability, general insurance, and casualty and property program; analyzes, develops and recommends new and improved procedures and programs. Ensures that all insurance requirements protect the fiscal stability of the City.

Performs other duties as assigned by the City Manager.

## **EMPLOYMENT STANDARDS**

### **Knowledge of:**

Principles and practices of public financial management, human resource management, information technology, risk management, contract management and exceptionally strong leadership abilities. Administrative principles and methods, including developing and implementing goals, objectives, policies, procedures, work standards, and internal controls. Effective resolution techniques for complex technical and personnel issues, evaluating alternative solutions and adopting effective courses of action. strong understanding of accounting technical disciplines, procedures and applicable City, State and Federal laws affecting the administration of the above specialized areas.

### **Ability to:**

Work collaboratively across all City departments and disciplines. Must have superior team and consensus building skills as well as communication skills.

## **DESIRED MINIMUM QUALIFICATIONS**

### **Education and Experience**

Graduation from an accredited four-year college or university with a (4)-year degree in public administration, accounting and/or finance, organizational development, business administration or related field. Master's Degree is preferred and ten (10) years of demonstrated leadership experience in a highly visible management or leadership position; or any equivalent combination of education and experience that would likely provide the required knowledge and abilities.

### **Special Requirements**

Must possess and maintain a valid California driver's license and acceptable driving record.

## **TOOLS AND EQUIPMENT USED**

Personal computer including word processing and Excel spreadsheet software; 10-key calculator; telephone; email; copy machine; fax machine and other office devices that the City may provide or acquire in the future.

## **PHYSICAL DEMANDS**

*Level A 1:* Basically, an indoor desk job. The job may require traveling by car. Physical demands include occasional lifting up to 25 pounds, walking, some

bending, stooping and squatting. Environment is generally clean with limited exposure to conditions such as dust, fumes, odors, or noise

Approval: \_\_\_\_\_  
Human Resources Manager

## EXHIBIT "A"

THOSE PORTIONS OF THE RIGHT-OF-WAY OF CLINTON KEITH ROAD AS SHOWN ON PARCEL MAP 35219, CITY OF WILDOMAR, FILED IN BOOK 228 OF PARCEL MAPS AT PAGES 19 THROUGH 23, INCLUSIVE, OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

LOT A

BEGINNING AT THE MOST NORTHERLY CORNER OF PARCEL 3 OF SAID PARCEL MAP, SAID CORNER BEING A POINT THE CURVED RIGHT-OF-WAY OF CLINTON KEITH ROAD AS SHOWN ON SAID MAP, SAID CURVE BEING CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1,710.00 FEET, A RADIAL TO SAID CORNER BEARS NORTH 44°40'59" WEST;

THENCE ALONG THE NORTHWESTERLY PROLONGATION OF THE NORTH-EASTERLY LINE OF SAID PARCEL 3, NORTH 43°02'38" WEST A DISTANCE OF 14.01 FEET TO A POINT ON A CURVE, SAID CURVE BEING CONCENTRIC WITH THE AFOREMENTIONED CURVE AND HAVING A RADIUS OF 1,724.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 44°40'11" WEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05°08'01" AND AN ARC LENGTH OF 154.47 FEET TO A POINT ON THE BOUNDARY OF SAID PARCEL 3, SAID POINT IS ALONG THE CURVED RIGHT-OF-WAY OF SAID CLINTON KEITH ROAD AS SHOWN ON SAID MAP;

THENCE LEAVING SAID CURVE, ALONG THE BOUNDARY OF SAID PARCEL 3, SAID COURSE BEING RADIAL TO SAID AFOREMENTIONED CURVES, SOUTH 49°48'12" EAST A DISTANCE OF 14.00 FEET TO THE BEGINNING OF THE AFOREMENTIONED CURVE ON THE BOUNDARY OF SAID PARCEL 3 HAVING A RADIUS OF 1,710.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 05°07'13" AND AN ARC LENGTH OF 152.82 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 2,151 SQUARE FEET.

LOT B

BEGINNING AT THE MOST NORTHERLY CORNER OF PARCEL 3 OF SAID PARCEL MAP, SAID CORNER BEING A POINT ON A CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1,710.00 FEET, A RADIAL TO SAID CORNER BEARS NORTH 44°40'59" WEST;

THENCE ALONG THE NORTHWESTERLY PROLONGATION OF THE NORTH-EASTERLY LINE OF SAID PARCEL 3, NORTH 43°02'38" WEST A DISTANCE OF 14.01 FEET TO A POINT ON A CURVE, SAID CURVE BEING CONCENTRIC WITH THE AFOREMENTIONED CURVE AND HAVING A RADIUS OF 1,724.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 44°40'11" WEST;

SHEET 1 OF 2 SHEETS

## EXHIBIT "A" – CONTINUED

THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°38'30" AND AN ARC LENGTH OF 49.39 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 22°09'28" AND AN ARC LENGTH OF 19.34 FEET TO THE BEGINNING OF A REVERSE TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 50.00 FEET;

THENCE ALONG SAID REVERSE CURVE, THROUGH A CENTRAL ANGLE OF 25°35'19" AND AN ARC LENGTH OF 22.33 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 135.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°36'48" AND AN ARC LENGTH OF 25.01 FEET TO THE BEGINNING OF A TANGENT REVERSE CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 55.00 FEET;

THENCE NORTHEASTERLY ALONG SAID REVERSE CURVE, THROUGH A CENTRAL ANGLE OF 16°44'53" AND AN ARC LENGTH OF 16.08 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1,724.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°00'24" AND AN ARC LENGTH OF 0.20 FEET TO AN ANGLE POINT IN BOUNDARY OF PARCEL 4 OF SAID PARCEL MAP, SAID ANGLE POINT BEING A POINT ON THE RIGHT-OF-WAY OF CLINTON KEITH ROAD;

THENCE ALONG THE BOUNDARY OF SAID PARCEL 4, SAID BOUNDARY COURSE BEING RADIAL TO SAID LAST MENTIONED CURVE, SOUTH 40°19'03 EAST A DISTANCE OF 14.00 FEET TO THE BEGINNING OF A CURVE ALONG THE BOUNDARY OF SAID PARCEL 4, SAID CURVE BEING CONCENTRIC WITH SAID LAST MENTIONED CURVE AND HAVING A RADIUS OF 1,710.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVED BOUNDARY OF PARCEL 4, THROUGH A CENTRAL ANGLE OF 04°21'56" AND AN ARC LENGTH OF 130.29 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 1,540 SQUARE FEET.

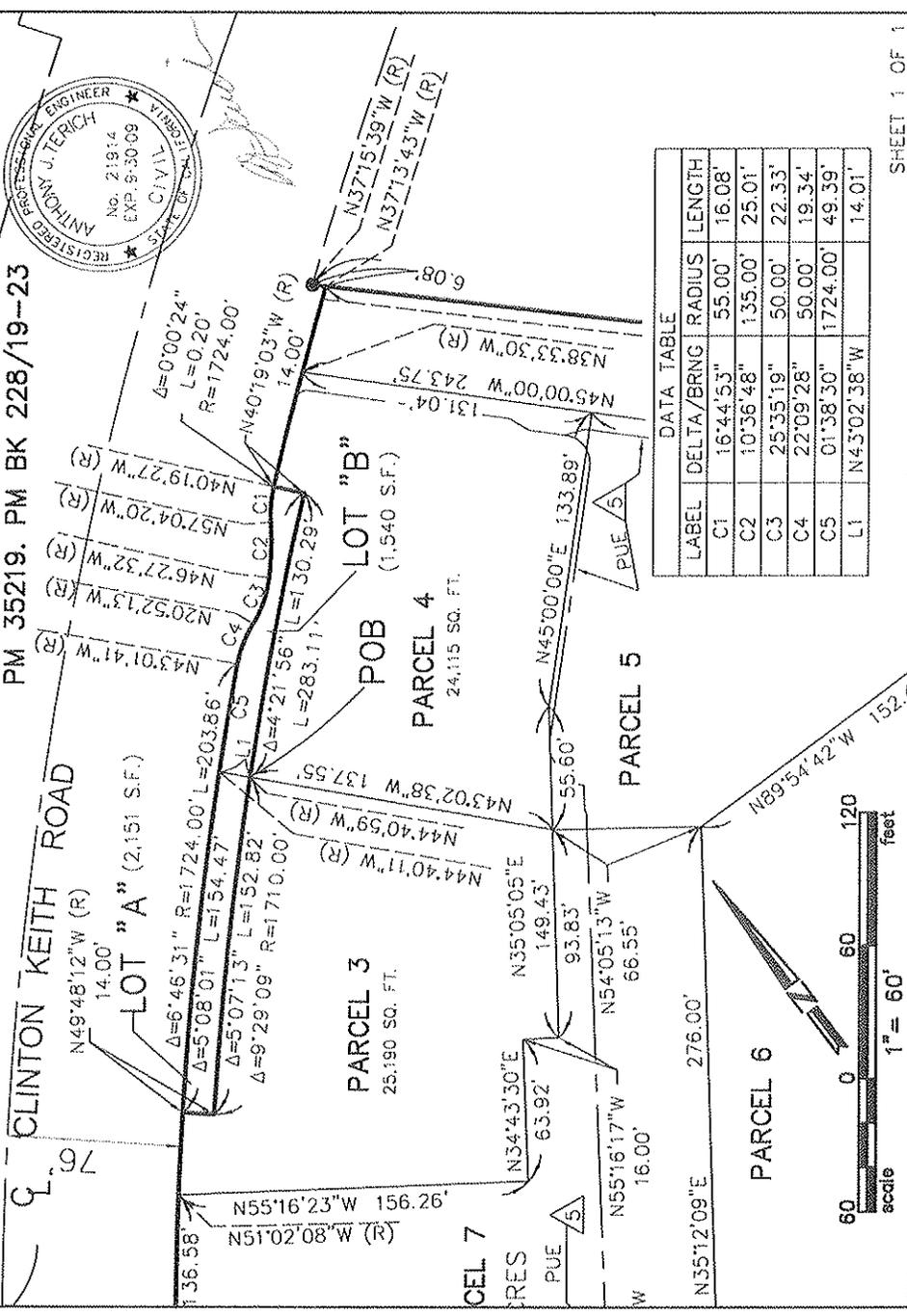
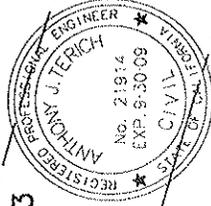
  
ANTHONY J. TERICH  
5/12/09  
DATE



# EXHIBIT "B"

EXCESS R/W IN PM 35219

CLINTON KEITH ROAD  
PM 35219. PM BK 228/19--23



DATA TABLE		
LABEL	DELTA/BRNG   RADIUS	LENGTH
C1	16°44'53"   55.00'	16.08'
C2	10°36'48"   135.00'	25.01'
C3	25°35'19"   50.00'	22.33'
C4	22°09'28"   50.00'	19.34'
C5	01°38'30"   1724.00'	49.39'
L1	N45°02'38"W	14.01'



Parcel name: LOT A

North: 6870.8907 East : 5876.3838  
Curve Length: 152.82 Radius: 1710.00  
Delta: 5-07-13 Tangent: 76.46

Course In: S 44-40-59 E Course Out: N 49-48-12 W  
RP North: 5655.0680 East : 7079.8292  
End North: 6758.7246 East : 5772.6738

Line Course: N 49-48-12 W Length: 14.00  
North: 6767.7604 East : 5761.9801

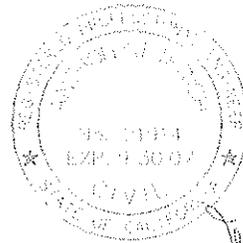
Curve Length: 154.47 Radius: 1724.00  
Delta: 5-08-01 Tangent: 77.29

Course In: S 49-48-12 E Course Out: N 44-40-11 W  
RP North: 5655.0680 East : 7079.8292  
End North: 6881.1269 East : 5866.8245

Line Course: S 43-02-38 E Length: 14.01  
North: 6870.8880 East : 5876.3871

Perimeter: 335.30 Area: 2,151 Sq Ft 0.05 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0043 Course: S 50-28-33 E  
Error North: -0.00276 East : 0.00334  
Precision 1: 77,976.74



*[Handwritten signature]*

-----

Parcel name: LOT B

North: 6937.7861 East : 5937.1792  
 Curve Length: 25.01 Radius: 135.00  
 Delta: 10-36-48 Tangent: 12.54

Course In: N 46-27-32 W Course Out: S 57-04-20 E  
 RP North: 7030.7842 East : 5839.3204  
 End North: 6957.4007 East : 5952.6335

Curve Length: 16.08 Radius: 55.00  
 Delta: 16-44-53 Tangent: 8.10

Course In: S 57-04-20 E Course Out: N 40-19-27 W  
 RP North: 6927.5037 East : 5998.7981  
 End North: 6969.4351 East : 5963.2066

Curve Length: 0.20 Radius: 1724.00  
 Delta: 0-00-24 Tangent: 0.10

Course In: S 40-19-27 E Course Out: N 40-19-03 W  
 RP North: 5655.0654 East : 7078.8267  
 End North: 6969.5649 East : 5963.3595

Line Course: S 40-19-03 E Length: 14.00  
 North: 6958.8903 East : 5972.4179

Curve Length: 130.79 Radius: 1710.00  
 Delta: 4-21-56 Tangent: 65.17

Course In: S 40-19-03 E Course Out: N 44-40-59 W  
 RP North: 5655.0654 East : 7078.8267  
 End North: 6879.8881 East : 5876.3812

Line Course: N 43-02-36 W Length: 14.01  
 North: 6881.1271 East : 5866.8186

Curve Length: 49.79 Radius: 1724.00  
 Delta: 1-38-30 Tangent: 24.70

Course In: S 44-40-11 E Course Out: N 43-01-41 W  
 RP North: 5655.0681 East : 7078.8223  
 End North: 6915.5460 East : 5992.5409

Curve Length: 19.34 Radius: 50.00  
 Delta: 22-09-28 Tangent: 9.79

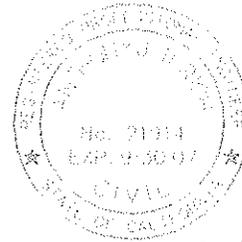
Course In: S 43-01-41 E Course Out: N 20-52-13 W  
 RP North: 6878.7946 East : 5936.5582  
 End North: 6925.5149 East : 5918.7455

Curve Length: 22.33 Radius: 50.00  
 Delta: 25-35-19 Tangent: 11.35

Course In: N 20-52-13 W      Course Out: S 46-27-32 E  
RP North: 6972.2335            East : 5900.9328  
End North: 6937.7898           East : 5937.1769

Perimeter: 290.63    Area: 1,540 Sq Ft 0.04 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)  
Error Closure: 0.0044            Course: N 33-07-08 W  
Error North: 0.00366            East : -0.00238  
Precision 1: 66,659.09



*Handwritten signature*

**EXHIBIT "C"**  
**Grant Deed**

**NO FEE DOCUMENT**

Government Code §6103 & §27383

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

A&S Properties at Clinton Keith, LLC  
11512 El Camino Real, Suite 200  
San Diego, CA 92130 Attn: David Esoldi

The Above Space For Recorder's Use Only

Project Name: Sale of Surplus Property  
Address: 32250 Clinton Keith Road  
APN: Ptn: 380-130-015  
Project No.: 09-08-01  
Title Order No. NHRV-3292853 (tc)  
Escrow No. 3292853

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, CITY OF WILDOMAR as successor and interest to County of Riverside, by Resolution No. 91-07 ("GRANTOR"), hereby grants to A&S Properties at Clinton Keith, LLC, a California limited liability Company, all that real property situated in the City of Wildomar, County of Riverside, State of California, described as follows:

See Exhibit A, legal description, and Exhibit B, plat to accompany legal description, attached hereto and made a part hereof.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**CITY OF WILDOMAR municipal corporation**

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT "A"

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BEGINNING AT THE MOST NORTHERLY CORNER OF PARCEL 3 OF SAID PARCEL MAP, SAID CORNER BEING A POINT THE CURVED RIGHT-OF-WAY OF CLINTON KEITH ROAD AS SHOWN ON SAID MAP, SAID CURVE BEING CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1,710.00 FEET, A RADIAL TO SAID CORNER BEARS NORTH 44°40'59" WEST;

THENCE ALONG THE NORTHWESTERLY PROLONGATION OF THE NORTH-EASTERLY LINE OF SAID PARCEL 3, NORTH 43°02'38" WEST A DISTANCE OF 14.01 FEET TO A POINT ON A CURVE, SAID CURVE BEING CONCENTRIC WITH THE AFOREMENTIONED CURVE AND HAVING A RADIUS OF 1,724.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 44°40'11" WEST;

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THENCE LEAVING SAID CURVE, ALONG THE BOUNDARY OF SAID PARCEL 3, SAID COURSE BEING RADIAL TO SAID AFOREMENTIONED CURVES, SOUTH 49°48'12" EAST A DISTANCE OF 14.00 FEET TO THE BEGINNING OF THE AFOREMENTIONED CURVE ON THE BOUNDARY OF SAID PARCEL 3 HAVING A RADIUS OF 1,710.00 FEET;

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THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 2,151 SQUARE FEET.

### LOT B

BEGINNING AT THE MOST NORTHERLY CORNER OF PARCEL 3 OF SAID PARCEL MAP, SAID CORNER BEING A POINT ON A CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1,710.00 FEET, A RADIAL TO SAID CORNER BEARS NORTH 44°40'59" WEST;

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## EXHIBIT "A" – CONTINUED

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THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°00'24" AND AN ARC LENGTH OF 0.20 FEET TO AN ANGLE POINT IN BOUNDARY OF PARCEL 4 OF SAID PARCEL MAP, SAID ANGLE POINT BEING A POINT ON THE RIGHT-OF-WAY OF CLINTON KEITH ROAD;

THENCE ALONG THE BOUNDARY OF SAID PARCEL 4, SAID BOUNDARY COURSE BEING RADIAL TO SAID LAST MENTIONED CURVE, SOUTH 40°19'03 EAST A DISTANCE OF 14.00 FEET TO THE BEGINNING OF A CURVE ALONG THE BOUNDARY OF SAID PARCEL 4, SAID CURVE BEING CONCENTRIC WITH SAID LAST MENTIONED CURVE AND HAVING A RADIUS OF 1,710.00 FEET;

THENCE SOUTHWESTERLY ALONG SAID CURVED BOUNDARY OF PARCEL 4, THROUGH A CENTRAL ANGLE OF 04°21'56" AND AN ARC LENGTH OF 130.29 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 1,540 SQUARE FEET.

  
 ANTHONY J. TERICH

5/12/09  
 DATE

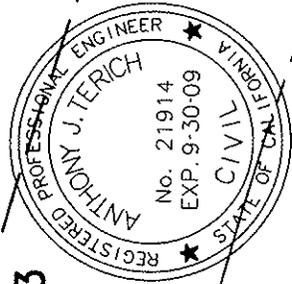


# EXHIBIT "B"

EXCESS R/W IN PM 35219

PM 35219. PM BK 228/19-23

CLINTON KEITH ROAD



LOT "A" (2,151 S.F.)

LOT "B" (1,540 S.F.)

POB

PARCEL 3  
25,190 SQ. FT.

PARCEL 4  
24,115 SQ. FT.

PARCEL 5

PARCEL 6

PARCEL 7

N49°48'12"W (R) 14.00'  
 Δ=6°46'31" R=1724.00' L=203.86'  
 Δ=5°08'01" L=154.47'  
 Δ=5°07'13" L=152.82'  
 Δ=9°29'09" R=1710.00'

N43°01'41"W (R)  
 N20°52'13"W (R)  
 N46°27'32"W (R)  
 N57°04'20"W (R)  
 N40°19'27"W (R)

N43°02'38"W 137.55'  
 N44°40'59"W (R)  
 N44°40'11"W (R)  
 N44°40'59"W (R)

N35°05'05"E 149.43'  
 N34°43'30"E 63.92'  
 N55°16'17"W 16.00'

N45°00'00"E 133.89'  
 N45°00'00"E 55.60'

N55°12'09"E 276.00'

N51°02'08"W (R) 156.26'  
 N55°16'23"W 156.26'

N40°19'03"W (R) 14.00'  
 N38°33'30"W (R) 131.04'  
 N45°00'00"W 243.75'  
 N37°15'39"W (R)  
 N37°13'43"W (R)

DATA TABLE			
LABEL	DELTA/BRNG	RADIUS	LENGTH
C1	16°44'53"	55.00'	16.08'
C2	10°36'48"	135.00'	25.01'
C3	25°35'19"	50.00'	22.33'
C4	22°09'28"	50.00'	19.34'
C5	01°38'30"	1724.00'	49.39'
L1	N43°02'38"W		14.01'



**EXHIBIT "D"**  
**Special Provisions**

None

**CITY OF WILDOMAR – CITY COUNCIL**  
**Agenda Item 1 F.**  
**CONSENT CALENDAR ITEM**  
**Meeting Date: June 10, 2009**

---

**TO:** Honorable Mayor and City Council Members

**FROM:** Michael Kashiwagi, Public Works Director

**SUBJECT:** Franchise Agreements with CR&R Incorporated and Waste Management for Solid Waste Collection services

**STAFF REPORT**

**RECOMMENDATION:**

That the City Council approve the attached agreements entitled:

“AGREEMENT BETWEEN THE CITY OF WILDOMAR AND CR&R INCORPORATED FOR THE COLLECTION AND TRANSPORTATION OF SOLID WASTE AND OTHER SPECIFIED SERVICES.”

“AGREEMENT BETWEEN THE CITY OF WILDOMAR AND WASTE MANAGEMENT, INC. FOR THE COLLECTION AND TRANSPORTATION OF SOLID WASTE AND OTHER SPECIFIED SERVICES”

**BACKGROUND/ANALYSIS:**

CR&R Incorporated (“CR&R”) currently provides solid waste collection and transportation services in the areas of the City that lie east of Interstate 15. Waste Management, Inc. (“WM”) currently provides solid waste collection and transportation services in the areas of the City that lie west of Interstate 15. CR&R and WM provide these services pursuant to Franchise Agreements that were entered into with the County of Riverside prior to the incorporation of the City. Upon incorporation, the County’s interest in the Franchise Agreements with CR&R and WM automatically transferred to the City pursuant to the conditions of approval for the incorporation of Wildomar, which provided that the City shall have the authority to continue the levying and collection of previously authorized franchise fees. However, the County has continued to administer the CR&R and WM franchises and has continued to collect the franchise fees from CR&R and WM as part of its responsibility to continue providing services for the City during its first fiscal year.

The attached agreements with CR&R and WM establish direct franchise agreements between the City and these entities. The agreements are on substantially the same terms and conditions as the existing County Franchise Agreement. The key

changes that have been made to the agreements generally reflect differences between the County and the City, including the fact that the City does not operate a landfill system and the County does. Therefore, provisions pertaining to the County landfill system were removed. Also, the term of the agreements was reduced from seven years to five years to reflect state law requirements. Adopting these agreements will complete the transfer of interest and allow the City to commence the administration of the franchises and the direct collection of the franchise fees.

**FISCAL IMPACTS:**

The establishment of direct franchises with the City will result in a positive fiscal impact because the City will receive the franchise fees that each of these service providers are currently paying without any County administrative cost.

**ALTERNATIVES:**

1. Take no action
2. Provide staff with further direction and take action at a subsequent Council meeting.

Submitted by:

Approved by:

\_\_\_\_\_  
Michael Kashiwagi  
Public Works Director

\_\_\_\_\_  
John Danielson  
Interim City Manager

Attachment

**AGREEMENT BETWEEN THE CITY OF WILDOMAR  
AND CR&R INCORPORATED  
FOR THE COLLECTION AND TRANSPORTATION  
OF SOLID WASTE AND OTHER SPECIFIED SERVICES**

This Franchise Agreement (“Franchise Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the City of Wildomar (“City”) and CR&R Incorporated (“Franchisee”), for the Collection and transportation of Solid Waste, Recyclable Materials, Green Waste, and construction debris and other specified services.

**RECITALS**

WHEREAS, in accord with California Public Resources Code Section 40059 (a)(1), and County Ordinance 657 which has been adopted by reference by the City of Wildomar (“City”) effective as of July 1, 2008, the City has determined that the public health, safety, and well-being of City residents requires that an Exclusive Franchise be awarded to a qualified enterprise for waste management services for residential, commercial, and industrial customers in the City of Wildomar; and

WHEREAS, in order to comply with the mandates of the California Integrated Waste Management Act of 1989 (“IWMA”) and subsequent legislation and regulation, the City of Wildomar must have the ability to direct the flow of Solid Waste within the City for the purposes of processing, recovery and disposal; and

WHEREAS, the City Council of the City of Wildomar declares its intention of maintaining reasonable rates for the provision of Solid Waste services within the City;

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**SECTION 1.            REPRESENTATIONS AND WARRANTIES.**

A.     Representations and Warranties of Franchisee. Franchisee hereby makes the following representations and warranties for the benefit of the City as of the date of this Agreement.

- 1)        Franchisee is duly organized and validly existing as a corporation in good standing under the laws of the State of California.
- 2)        Franchisee has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement.
- 3)        The Persons signing this Agreement on behalf of Franchisee have been authorized by Franchisee to do so, and this Agreement has been duly executed and delivered by Franchisee, and constitutes a legal, valid and binding obligation of Franchisee enforceable against Franchisee in accordance with its terms.

4) To the best of Franchisee's knowledge, there is no action, suit, or proceeding before any court or governmental entity against Franchisee or affecting Franchisee, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Franchisee.

5) Franchisee has sufficient financial resources to perform all aspects of its obligations hereunder. There has been no material adverse change in Franchisee's or Franchisee's parent company's financial circumstances since the date of the most recent financial statements submitted to the Environmental Health Department ("Department"). Prior to the Effective Date of this Agreement, the Franchisee shall submit to the City the most recent annual financial statements. The City may at its discretion specify the contents and form of such statements. The Public Works Director may inspect the financial records of the Franchisee at any reasonable time for any reasonable purpose relevant to the performance of this contract.

6) Franchisee has the expert, professional, and technical capability to perform all of its obligations under this Agreement.

7) Within thirty (30) days after the execution of this Agreement by the City, Franchisee has provided the performance bond or letter of credit certificates of insurance, and the annual financial statements, as provided in **Exhibit C**.

**B. Representations and Warranties of the City.**

Prior to commencement of any services hereunder, the City hereby makes the following representations and warranties to and for the benefit of Franchisee as of the date of this Agreement:

1) The parties executing this Agreement on behalf of the City are duly authorized to do so. This Agreement constitutes the legal, valid and binding Agreement of the City and is enforceable against the City in accordance with its terms.

2) To the best of the City's knowledge, there is no action, suit, or proceeding against the City before any court or governmental entity wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement.

**SECTION 2. DEFINITIONS.**

Whenever any term used in this Franchise Agreement has been defined by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Public Resources Code, as presently defined and as they may be amended in the future shall apply unless the term is otherwise defined in this Agreement. In the event of conflict between the definition of a term as found in the California Public Resources Code or in City ordinances and this Agreement, the definition in this Agreement shall supersede the definition found in the Public Resources Code or in City ordinances.

**A. Agreement.** means this Agreement between the City and CR&R Incorporated for

the Collection and transportation of Solid Waste and other specified services, including all exhibits, and any future amendments.

**B.** Bins. shall mean those containers provided by Franchisee for commercial, industrial, construction, and multi-residential uses. Bins are of two types: (i) Bins (generally 1 to 6 cubic yards in size) which are picked up by refuse trucks by means of front loading apparatus; and (ii) Rolloff Bins (generally 10 to 40 cubic yards in size) which are picked up by trucks using rear loading winches onto rails.

**C.** Board. shall mean the Wildomar City Council.

**D.** Bulky Waste. shall mean large, heavy or otherwise difficult to handle items, including, but not limited to, stoves, refrigerators, water tanks, water heaters, washing machines, furniture, large concrete and asphalt chunks, tree stumps, or other waste materials with weights or volumes greater than those allowed for containers.

**E.** Collection. means Collection of Solid Waste, recyclable material, or other material specified in this Agreement and its transportation to an appropriate Solid Waste Facility.

**F.** Commercial Units. shall mean all commercial, industrial, institutional or other facilities, except residential and Multi-Residential Units.

**G.** Compost. means a stable humus-like product that results from the biological decomposition of organic materials occurring under controlled conditions.

**H.** Compost Facility. means a Solid Waste Facility that processes Green Waste, Wood Waste or other organic materials to produce Compost or mulch.

**I.** Comprehensive Collection Areas. shall mean specific portions or areas of the City designated by an Ordinance or Resolution of the City Council in which specified residential, multi-residential, and/or commercial units are required to subscribe to refuse collection.

**J.** City. means the City of Wildomar, State of California.

**K.** Department. means the City of Wildomar Public Works

**L.** Director. shall mean the Director of the Wildomar Department of Public Works.

**M.** Effective Date. means the date on which this Agreement becomes effective, which shall be the date it is executed by the City Council.

**N.** Exclusive Franchise. means the rights granted to the Franchisee under the terms and conditions of this Agreement, including the sole right to collect Solid Waste, Recyclable Materials and/or Green Waste, and other materials as specified in this Agreement and its exhibits, within the area defined in **Exhibit B**.

**O.** Extremely Hazardous Waste. shall mean any Hazardous Waste or mixture of Hazardous Wastes which, if human exposure should occur, may likely result in death, disabling

personal injury or illness, during or as a proximate result of, any disposal of such waste or mixture of wastes.

**P.** Franchise Area. means the geographic territory defined in **Exhibit B**.

**Q.** Franchise Documents. shall mean the Agreement (as herein defined) and the insurance certificates and performance bond or letter of credit required under this Agreement.

**R.** Generator. means the owner or occupant of premises, including residences or businesses, which initially produces Solid Waste, Recyclable Materials, or Green Waste.

**S.** Green Waste. means organic waste generated from any landscaping including grass clippings, leaves, prunings, tree trimmings, weeds, branches, and brush.

**T.** Gross Receipts. means all monies received by Franchisee for providing franchise services specified in this Agreement, including, but not limited to, payment for regular and special services, leases on containers, pass through costs collected on behalf of the City, and collections received on delinquent accounts. Gross Receipts does not include uncollectible accounts and pass through costs collected on behalf of State or other governmental agencies.

**U.** Hard-to-Service. may refer to any of the following:

- 1) Rural, sparsely populated areas,
- 2) Hilly or mountainous terrain,
- 3) Poorly paved or unpaved roads which may be unpassable in poor weather,
- 4) Large, uninhabited areas between pockets of homes,
- 5) Unusually heavy waste due to large properties, livestock, etc.

**V.** Hazardous Waste. shall mean any waste material or mixture of wastes which is defined or otherwise considered to be hazardous under any state or federal law, or is toxic, corrosive, flammable, an irritant, a strong sensitizer, which generates pressure through decomposition, heat or other means, if such a waste or mixture of wastes may cause substantial personal injury, serious illness or harm to wildlife, during, or as a proximate result of any disposal of such wastes or mixture of wastes. The term "toxic," "corrosive," "flammable," "irritant," or "strong sensitizer" shall be given the same meaning as found in the California Hazardous Substances Act in the Health and Safety Code, Section 28740 et seq.

**W.** Integrated Waste Management Act (IWMA). shall mean the California Integrated Waste Management Act of 1989 (AB 939), including all subsequent amendments.

**X.** Materials Recovery Facility. means a facility intended primarily for recovery and processing of Recyclable Materials that are source-separated, or a facility intended to recover Recyclable Materials from Solid Waste. Such a facility may also function as a Transfer Station.

**Y.** Multi-Residential Units. shall mean permanent buildings containing three or more Residential Units including, but not limited to, condominiums, apartment houses, motels, hotels, mobilehome parks where mobilehome lots are not individually owned, travel trailer parks, and recreational vehicle parks.

**Z.** Person shall mean any Person, firm, business, sole proprietorship, partnership, joint venture, trust, association, or corporation whether for profit or non-profit.

**AA.** Public Roads shall mean those road rights of way in the City which have been offered to the City and accepted for the purpose of vesting title whether they have been accepted for City maintenance or not

**BB.** Recyclable Materials. means material which has been segregated from other Solid Waste material for the purpose of reuse or recycling, including, but not limited to, discarded paper, glass, cardboard, plastic, ferrous materials, green waste or aluminum. Recyclable Materials also include mixed Recyclables consisting of two or more of the above-referenced material types separated from non-Recyclable Materials at the point of Collection and offered for Collection in a mixture including not more than five (5) percent Solid Waste by weight.

**CC.** Residential Unit. shall mean an occupied dwelling within the City occupied by a Person or group of Persons. A Residential Unit shall be deemed occupied when either water or domestic light and power services are being supplied thereto. This: definition shall apply also to mobilehome subdivisions where the mobilehome lot is individually owned. A duplex is considered to be two (2) attached Residential Units.

**DD.** Solid Waste. means all putrescible and non-putrescible solid and semisolid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. "Solid Waste" does not include Green Waste or Recyclable Materials. "Solid Waste" does not include Hazardous Waste as defined by the State of California, or low-level radioactive waste. "Solid Waste" does not include medical waste which has not been treated, as required pursuant to state law, for subsequent disposal at a Solid Waste Facility.

**EE.** Solid Waste Facility. means any facility that is licensed, permitted or otherwise approved by all governmental bodies and agencies having jurisdiction, and that is designed to manage Solid Waste, Recyclable Materials, or Green Waste, and includes transfer, Recyclable Materials processing, material recovery, composting, waste-to-energy, or landfill facilities.

**FF.** Special Wastes. means any Solid Waste that, because of its source of generation, physical, chemical, or biological characteristics or unique handling or disposal practices, is specifically conditioned in the Solid Waste Facility permit for handling and/or disposal. Examples of Special Wastes include, but are not limited to, the following: bulky items, used tires, used oil, grease trap pumpings, septic tank pumpings, sewage sludge, asbestos, medical wastes, shipboard and port waste, automobile shredder waste, abandoned vehicles, street sweepings and catch basin debris, agricultural wastes, cannery waste, and incinerator ash.

**GG.** System Facility. means a Solid Waste Facility that for the purposes of this

Agreement is designated by the City to be used by the Franchisee for the processing, recovery and/or disposal of Solid Waste, Recyclable Materials or Green Waste.

**HH.** Term. means the Term of this Agreement, as provided for in Section 3.

**II.** Transfer Station. shall include those intermediate waste handling facilities where Solid Wastes are transferred from hauling vehicles to a transfer vehicle and where the Solid Waste or a portion thereof may undergo incidental processing, recycling or further handling before transportation to a disposal site, Solid Waste processing facility, or other facilities. The following facilities do not constitute a “transfer station”:

- 1) Locations where less than 15 cubic yards of combined container volume are provided to serve as community or multi-residence receptacles for residential refuse.
- 2) Storage receptacles for waste from multi-residential buildings or for commercial Solid Wastes.
- 3) A container used to store construction or demolition wastes at the place of generation.
- 4) Containers used to store salvaged materials.

**JJ.** Traveled Way. shall mean the accessible Public Road rights of way within the City, and shall include similar roads within Public facilities. “Traveled Way” does not include State or Federal Highways.

**KK.** Wood Waste. means industrial dimension lumber, pallets, shipping dunnage, and similar discarded processed wood materials, and large tree limbs.

### **SECTION 3. GRANT AND TERM OF EXCLUSIVE FRANCHISE.**

**A.** Pursuant to Ordinance 657, and the IWMA, and subject to the terms and conditions of this Agreement, City hereby grants to Franchisee the exclusive right, privilege, and franchise to provide the services set forth in **Exhibit A** of this Agreement within the City of Wildomar specified in **Exhibit B** of this Agreement for the Term set forth below and to use the City streets and roads for such purposes.

**B.** In consideration of the rights, privilege, and franchise granted by this Agreement, Franchisee hereby agrees (1) to provide the services set forth in **Exhibit A** of this Agreement within the City of Wildomar specified in **Exhibit B** of this Agreement for the Term set forth below; (2) to not collect from any other portions of the City covered by Exclusive Franchise Agreements, except as specified in **Exhibit B**, Solid Waste, Recyclable Materials or Green Waste; (3) to the cancellation, upon the Effective Date of this Agreement, of any permit or other authorization issued by or under the authority of City for the Collection of Solid Waste, Recyclable Materials, or Green Waste for the portion of the City permit area covered by Exclusive Franchise Agreements, and (4) hereby waives any right it may have pursuant to Public Resources Code section 49520 or other laws to advance notice of the cancellation of such permit or other authorization for those areas represented by Exclusive Franchise Agreements.

Franchisee agrees to abide by the conditions of any permit or other authorization pertaining to its operations within any City area not covered by an Exclusive Franchise Agreement and to terminate the operations upon effective date of any future Exclusive Franchise Agreement in accordance with the provisions of this Agreement.

In addition, Recyclable Materials collected from Commercial and Industrial Units are included within the Exclusive Franchise, to the extent provided for in state and federal law.

**C.** This Agreement shall continue for a period of five (5) years from the Effective Date. One year after the Effective Date of this Agreement, and annually thereafter, the Term of this Agreement shall be extended for an additional one year, unless no later than thirty (30) days prior thereto either the City or the Franchisee gives written notice of non-renewal to the other party. Only one notice of non-renewal shall be required hereunder. Notice of non-renewal need not be based on cause. The above provisions in no way affect the City's right to terminate this Agreement following thirty (30) days notice for nonperformance, as provided in Sections 9 and 10 hereof.

**D.** City will enforce the exclusivity of the Franchise granted in this Agreement, but will use its reasonable judgment in determining whether enforcement is necessary and the type of steps that should be taken.

#### **SECTION 4. FRANCHISE AREA.**

The Franchise Area granted by this Franchise Agreement is defined in **Exhibit B**, "Franchise Area."

#### **SECTION 5. SERVICES PROVIDED BY FRANCHISEE.**

**A.** General.

Franchisee shall provide the Collection and transportation of Solid Waste within the Franchise Area in accordance with the terms of this Agreement. The specific manner in which these services shall be provided is specified in **Exhibit A**. The Franchisee shall also, upon written request of the Director, provide optional services in the Franchise Area in accordance with the terms set forth in **Exhibit A**, and the rates set forth in **Exhibit E**. Minimum levels of Solid Waste service to be provided under this Agreement are defined below, however, no residential or commercial or business customer shall be refused service, if that party is willing to pay for such service and is current in payment. Disputes arising over the terms on which a particular customer may be serviced because of remoteness of location, difficulty of access, particular needs of the customer, etc. shall be decided in accordance with the provisions of Section 16 (B)(2) related to "service complaints."

**B.** Single Family Residential.

Weekly Service. Not less often than once per week, and more frequently if required to handle the waste stream of the premises, Franchisee shall collect the Solid Waste (except bulky items and Hazardous Waste) which have been placed, kept, or accumulated in containers at Residential Units within the Franchise Area and placed at curbside prior to Franchisee's normal

weekly Collection time. All Solid Waste must be placed within containers at curbside without obstructions so as to permit Collection, unless otherwise agreed upon by City and Franchisee. Franchisee may supply containers, and/or may require the use of specific containers as specified in **Exhibit A**. Franchisee may negotiate special pickup procedures, above and beyond the normal services described above, with customers for an additional fee in an amount provided in **Exhibit E**.

**C. Commercial, Industrial, and Multi-Residential.**

1) Multi-Residential Weekly Service. Not less often than once per week, and more frequently if required to handle the waste stream of the premises where the Bins are located, Franchisee shall collect the Solid Wastes (including bulky items which have been placed in a closed bin, and excepting metallic white goods and Hazardous Waste) which have been placed, kept or accumulated for Collection in Solid Waste Bins at Multi-Residential Units.

2) Commercial and Industrial Weekly Service. Not less often than once per week, and more frequently if required to handle the waste stream of the premises where the Bins are located, Franchisee shall collect the Solid Wastes which have been placed, kept or accumulated for Collection in Solid Waste Bins at Commercial Units.

**D. Construction and Temporary Bin/Rolloff Services.**

Franchisee shall provide construction and temporary bin/rolloff services using rates reflected in **Exhibit E**.

**E. Semi-Annual Cleanup and Bulky Wastes Collection.**

1) At least twice a year, Franchisee shall provide a one (1) day cleanup service to all Residential Unit customers on its routes wherein all bulky materials left on the curb, or other designated location on or adjacent to customer's property, up to a maximum of one and one-half cubic yards, will be removed and disposed. Cost for this service, excluding the cost of disposal, shall be included within the normal monthly rates for Residential Unit Solid Waste Collection as specified in **Exhibit E**. When feasible, the bulky material will be collected in a vehicle separate from the one used to pick up the residential unit's Solid Waste on a weekly basis so that it can be readily identified as not requiring tipping fees when it arrives at the designated landfill. Franchisee will make a good faith effort to divert the bulky material away from the designated landfill and to another facility where it can be either recycled or refurbished for reuse. Collection of heavy waste materials such as dirt, rock, concrete, and asphalt are not included in this service.

2) Franchisee shall provide Residential Unit customers with Bulky Wastes pickup service arranged at the request of the customer for large household appliances or furniture or multiple smaller items not exceeding one and one-half cubic yards. Collection of heavy waste materials such as dirt, rock, concrete, and asphalt are not included in this service. Franchisee shall advertise the availability of the Bulky Wastes Collection service and shall provide the Bulky Waste Collection service within seven (7)

working days of request by customer. Franchisee shall bill the customer for Bulky Waste Collection at the rate established in **Exhibit E**. Standard disposal rates shall be paid by Franchisee at the System Facility.

3) Franchisee shall provide large rolloff refuse containers requested by the Director or his designee to respond to organized community clean up efforts at no charge. Franchisee shall deliver containers to agreed upon collection points and shall cooperate with the Director and designated community leaders to remove containers and dispose of collected Solid Waste. Franchisee is obligated to provide the equivalent of two 40-cubic yard bins/loads per year for each 1,000 Residential Unit customers serviced within the Franchise Area.

#### **F. Illegal Dumping Retrieval Services**

Franchisee agrees to provide specified illegal dumping retrieval and disposal services as follows beginning sixty (60) days prior to the effective date of all other service requirements of this contract:

1) Franchisee shall turn in to City a monthly report of illegal dumping of trash (in quantities exceeding one equivalent medium size trash bag) and bulky items (such as tires, couches, and appliances) noticed within or along the Traveled Way in the franchise area. For the purpose of this provision, the Traveled Way shall include public rights of way within twenty (20) feet of the paved roadways and within twenty (20) feet of the shoulders of unpaved roadways.

2) Franchisee shall anticipate and arrange to receive daily by facsimile, copies of reports of illegal dumping reported by citizens to the City.

3) Franchisee shall arrange to remove and shall dispose all such reported illegally dumped materials on Traveled Way within forty-eight (48) hours of the receipt of reports thereof except for remote areas, as approved by the director, for which the removal shall occur within five working days. The Franchisee may request that specified roads, determined by the franchisee to be inaccessible for waste removal, be considered by the Director for revised waste removal requirements.

4) Franchisee shall leave the original reports (or copies thereof) with the gate fee collector at City disposal sites at the time of delivery of the corresponding loads of illegally dumped debris. Nothing herein shall prevent the immediate pickup, delivery and reporting thereof, as part of the normal route collection activities, of illegally discarded material.

5) Abandoned vehicles and objects or appliances larger than conventional household furniture or appliances as well as hazardous, special and medical wastes are exempt from the retrieval requirements set forth herein, provided, however, that of these exempted items noted within the traveled way are to be immediately reported to the Director.

6) The Franchisee shall, upon request of private property owners or the

Director, provide removal services for waste illegally disposed of on their private property, excluding those wastes described immediately above in paragraph 5, at a cost or costs as be specified in Exhibit E.

7) Illegally disposed materials along Traveled Ways within one mile of disposal sites within the City are exempt from the retrieval requirements set forth herein.

8) Within sixty (60) days of the end of each year of this Agreement, Franchisee shall submit to the Director an accurate accounting of its costs to provide Illegal Dumping Retrieval Service.

#### **G. Collection of Used Motor Oil.**

Franchisee shall collect used motor oil from single family residential customers in accordance with the Recycled Oil Collection and Storage Standards pursuant to Riverside County Ordinance 657 and Riverside County Resolution 90-668.

#### **H. Diversion Services**

1) Diversion services proposed by Franchisee as described in **Exhibit H** shall be provided throughout the duration of this contract.

2) At any time during the term of this Agreement, upon one hundred eighty (180) days written notice from the Director, Franchisee shall provide collection of Green Waste from Residential Units throughout, or in designated portions of its Exclusive Franchise Area. Franchisee's rates for this service shall be as established in **Exhibit E** as adjusted by the methodology established in **Exhibit F**.

#### **I. Collection and Equipment**

Franchisee shall provide an adequate number of vehicles and equipment for the Collection, transportation, recycling, and disposal of Solid Waste for which it is responsible under this Franchise Agreement. No vehicle shall be used for the collection and transportation of Solid Waste, Recyclable Materials or Green Waste, prior to inspection and approval by the County Department of Environmental Health. The equipment of Franchisee used under this Franchise Agreement shall in addition be subject to inspection by the County Department of Environmental Health on an annual basis.

1) All vehicles used by Franchisee under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, and shall be uniformly painted.

2) Solid Waste Collection vehicles shall be washed at least once every seven (7) calendar days.

3) A local or toll free telephone number, and vehicle number shall be visibly displayed on all vehicles in letters and figures no less than three inches (3") high.

4) Franchisee shall use its best efforts to use alternative fuel vehicles for the collection of Solid Waste within the City.

**SECTION 6. OWNERSHIP OF SOLID WASTE.**

Once Solid Waste, Green Waste, Wood Waste and construction debris collected from Residential, Commercial or Multi-Residential Units are picked up by Franchisee from Bins for Collection or containers at curbside, and once Recyclable Materials are set out for collection, ownership shall transfer to Franchisee. Solid Waste, Recyclable Materials, Green Waste, Wood Waste and construction debris, or any part thereof, shall become the property of the owner or operator of a System Facility once deposited there by Franchisee.

**SECTION 7. DIRECTION OF COLLECTED MATERIALS.**

The direction of the flow of materials collected by the Franchisee under this Agreement shall be controlled by the City. The rates shown in **Exhibit E** are based on the System Facilities to be effective on the same date as this Agreement.

**SECTION 8. INDEMNIFICATION AND INSURANCE, AND BOND.**

**A.** Indemnification of City.

Separate and distinct from the insurance provisions found in this Agreement, Franchisee agrees to defend, indemnify, and hold harmless, City and its officers, agents, and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including, but not limited to, injury to Franchisee's officers, agents, or employees which arise from or are connected with or are caused or claimed to be caused by negligent acts or omissions of Franchisee, and its officers, agents, or employees, in performing the work or services herein, and all reasonable costs and expenses of investigating and defending against same; provided, however, that Franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence or misconduct of City or its agents, officers, or employees.

This obligation shall not be limited by the amounts or coverage specified in the insurance policies and bond(s) supplied by franchisee in conjunction with the agreement. This indemnification obligation shall survive the term of the franchise.

**B.** Hazardous Substances Indemnification.

Without limiting the generality of the foregoing, if Franchisee has acted negligently or willfully with respect to the collection or transportation of waste materials, Franchisee shall indemnify, defend with counsel approved by City, protect and hold harmless City and its respective employees, agents, assigns, and any successor or successors to City's interest from and against all claims, actual damages (including, but not limited to, special and consequential damages), natural resources damage, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of

the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its respective officers, employees, agents, or Franchisees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Wastes at any place where Franchisee stores or disposes of municipal Solid Waste or construction debris pursuant to this Agreement. The foregoing indemnity is intended to operate as an Agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City from liability.

### C. Minimum Diversion Requirements

The percentage of all materials collected by Franchisee under this Agreement, as detailed in Form. 5 in programs approved by City, shall be recycled, processed and/or marketed by Franchisee in a manner which entitles City to diversion credit as specified in California Public Resources Code, Section 41780 measured on a calendar year basis beginning January 1, 1999 ("Minimum Diversion Requirement") provided the City adopts the recommended diversion programs as stated in Form 5, Diversion Proposal. Within sixty (60) days of each calendar year, Collector shall pay City as liquidated damages for failing to meet this requirement, twenty dollars (\$20.00) per ton, for each ton which was not diverted, which if it had been diverted would have enabled Franchisee to meet the Minimum Diversion Requirement for calendar year 2000 and each successive year. Further, if Franchisee fails to meet the annual Minimum Diversion Requirements two (2) times after the execution of the agreement, City may terminate this Agreement upon one hundred twenty (120) days notice. If the City finds that additional programs are necessary to meet any IWMA required diversion goals the City may require proposals for additional diversion programs to meet the diversion requirements. If necessary, City and Franchisee shall enter into good faith negotiations, but if agreement regarding programs and/or rate adjustments cannot be reached, City reserves the right upon one hundred twenty (120) days notice thereof to terminate the Franchisee's Franchise rights to collect Solid Waste, Recyclable Materials, and/or Green Waste, and/or to independently implement programs that may be needed to meet the minimum diversion requirement.

If commercial recycling is being performed by generators, and others, to the extent the Franchisee is unable to meet its Minimum Diversion Requirements, Franchisee shall document such commercial recycling in writing and petition the Director for an equitable adjustment of Franchisee's Minimum Diversion Requirement, which shall not be unreasonably denied.

### D. Worker's Compensation Insurance.

Franchisee shall obtain and maintain in full force and effect throughout the entire Term of this Agreement full workers' compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the Director throughout the Term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. The policy

shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, agents, or Franchisees for losses which arise from work performed by the named insured for the City.

**E. Public Liability Insurance.**

Franchisee shall obtain and maintain in full force and effect throughout the entire Term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of three million dollars (\$3,000,000.00) aggregate and one million five hundred thousand dollars (\$1,500,000.00) per occurrence for bodily injury and property damage. The insurance shall protect Franchisee, the City, and its elected or appointed officials, employees, and agents, from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Franchise Agreement, whether such operations be by Franchisee itself, or by its agents and/or employees. Copies of the policies or endorsements evidencing the above required insurance coverage shall be filed with the Director. All of the following endorsements are required to be made a part of the insurance policies required by this Section:

1) “This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it.”

2) “This insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company.”

3) Franchisee shall cause its insurance carrier(s) to furnish City by direct mail with certificate(s) of insurance showing that such insurance is in full force and effect, and City is named as additional insureds with respect to this Franchise and the obligations of Franchise hereunder. Further, the certificate(s) shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to City prior to modification, cancellation or reduction in coverage of such insurance. In the event of any such modification, cancellation or reduction in coverage and on the effective date thereof, this Franchise shall terminate forthwith, unless City receives prior to such effective date another certificate from an insurance carrier that the insurance required herein is in full force and effect.

The limits of such insurance coverage, and companies, shall be subject to review by the Director every year and may be modified at that time by the City upon a demonstration of reasonable need. The City shall be named as an additional insured on all policies and endorsements.

**F. Performance Bond or Letter of Credit.**

1) Franchisee shall furnish a corporate surety bond as security for performance under this Agreement. The amount of the bond shall be the average of two months expected Gross Receipts. Premium for the above described bond(s) shall be paid by Franchisee. A certificate from the surety showing that the bond premiums have been

paid in full shall accompany the bond. The surety on the bond shall be a company acceptable by the City and shall be a corporate surety company authorized to do business in the State of California.

**G. Modification.**

The insurance requirements provided herein may be modified or waived in writing by the Board upon the request of Franchisee, provided the Board determines such modification or waiver is in the best interest of City, in its reasonable judgment, considering all relevant factors, including financial guarantees provided by the parent company of Franchisee.

**SECTION 9. DEFAULT AND REMEDIES.**

**A.** If the Director determines that the Franchisee's performance pursuant to this Agreement has breached its obligation or otherwise has not been in conformity with reasonable industry standards, the provisions of this Agreement, the requirements of the California Integrated Waste Management Board, including, but not limited to, requirements for source reduction and recycling (as to the waste stream subject to this Franchise Agreement) or any other applicable Federal, State, or local law, ordinance or regulation, including, but not limited to, the laws governing transfer, storage, or disposal of Special Wastes or Hazardous Wastes, the Director shall advise Franchisee in writing of such deficiencies. The Director may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the mailing of such written notice. The Director shall review the Franchisee's response and either notify the Franchisee of that decision, in writing, or refer the matter to the Board. A decision or order of the Director shall be final and binding on Franchisee if the Franchisee fails to file a "Notice of Appeal" with the Director within thirty (30) days of receipt of the Director's decision. Within ten working days of receipt of a Notice of Appeal, the Director shall either refer the appeal to the Board for proceedings in accordance with Subsections 9B and 9C, below, or refer the matter to a hearing officer as provided in Section 11, below. Where the City and the Franchisee have claims pending against each other at the same time under Section 9 and Section 11 jurisdiction shall be with the Board.

**B.** The Board, may set the matter for hearing. The Board shall give Franchisee, and any other Person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the Board shall consider the report of the Director indicating the deficiencies, and shall give the Franchisee, or its representatives and any other interested Person, a reasonable opportunity to be heard.

**C.** Based on the evidence presented at the public hearing, the Board shall determine by Resolution whether the Agreement should be terminated or other remedies imposed. If, based upon the record, the Board determines that the performance of Franchisee is in breach of any material Term of this Agreement or any material provision of any applicable Federal, State, or local statute, ordinance or regulation, or is deficient with respect to prevailing industry standards, the Board in the exercise of its sole discretion, may terminate forthwith, this Agreement. Franchisee's performance under its franchise is not excused during the period of time prior to the Board's final determination as to whether such performance is deficient.

**D.** The right of termination is in addition to any other rights of City upon failure of Franchisee to perform its obligations under this Agreement.

**E.** The City further reserves the right to terminate Franchisee's franchise, following public hearing therefor, not later than 6 months following the date of the hearing at which a majority vote of the board determines it is in the public interest to do so:

- 1) If the Franchisee practices, or attempts to practice, any fraud or deceit upon the City.
- 2) If the Franchisee becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding.
- 3) If the Franchisee fails to provide or maintain in full force and effect, the workers' compensation, liability, indemnification coverage, and performance bond as required by the Agreement.
- 4) If the Franchisee willfully violates any orders or rulings of any regulatory body having jurisdiction over the Franchisee relative to this Agreement, provided the Franchisee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the franchise shall be deemed to have occurred.
- 5) If the Franchisee ceases to provide Collection services as required under this Agreement overall or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reason within the control of the Franchisee.
- 6) If the Franchisee willfully fails to make any payments required under the Agreement and/or refuses to provide City with required information, reports, and/or test results in a timely manner as provided in the Franchise Agreement.
- 7) For any other act or omission by the Franchisee which materially violates the terms, conditions, or requirements of this franchise, Ordinance 657, successor ordinance, other City ordinance, the IWMA, successor acts, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- 8) Should the Franchisee or any parent corporation or entity, or any of the officers or directors of the Franchisee or any parent corporation or entity be found guilty of felonious conduct related to the performance of this Agreement, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous waste or materials, or violation of Racketeer - Influenced Corrupt Organizations (RICO) Statutes.

**F.** Professional Conduct

1) In the event that any official, employee, or contractor for Franchisee or its successor-in-interest is indicted by a grand jury, named as a defendant in a felony complaint filed in any court in the United States, or is otherwise alleged to have participated in any criminal activity directly or indirectly associated with the solid waste management business, Franchisee or its successor-in-interest shall provide written notice thereof to the Director within 14 days of such indictment, complaint or allegation. Such notice shall contain a description of the indictment, complaint or allegation, as well as a copy of such indictment or complaint or other matters of public record related thereto. In addition to the foregoing, Franchisee or its successor-in-interest shall provide the Director with copies of any reports required to be prepared by Franchisee or its successor-in-interest pursuant to federal securities laws, including quarterly and annual reports.

2) In the event that any official, employee, or contractor for Franchisee or its successor-in-interest, who has any responsibility for any aspect of the franchisee's operations under this contract, is convicted, indicted by a grand jury, or named as a defendant in a felony complaint filed in the Superior Court or a complaint filed in Federal Court associated with conduct of doing business for Franchisee or its successor-in-interest, this person shall, upon request of the City be immediately removed from any assignment whatsoever, directly associated with operations under this contract during the pendency of trial and/or following conviction.

**G.** This Agreement is subject to all present and future laws, regulations and orders of Federal, State, City, and City governments and any instrumentalities thereof. Should either of the parties hereto at any time during the Term of this Agreement be ordered or required, pursuant to any laws, regulations or orders, to do any act that substantially impairs the party's ability to perform under this Agreement, then such party shall notify the other party of such order or requirement and the law, regulation or order on which such order or requirement is based. Unless the parties agree in writing to continue this Agreement, or to renegotiate the terms of the Agreement within thirty (30) days after the Effective Date of such law, regulation or order, then this Agreement shall terminate on the thirty-first day following the Effective Date of such law, regulation or order. Nothing in this Agreement shall prohibit either party, at that party's sole expense from obtaining or seeking to obtain modification or repeal of such law, regulation or order or restrict either party's right to legally contest the validity of such law, regulation or order.

## **SECTION 10. DISRUPTIONS IN SERVICE.**

**A.** If, at any time during the Term of this Agreement for a period of seventy-two (72) consecutive hours or more, Franchisee fails for any reason to collect and remove Solid Waste as required hereunder, City may immediately, upon written notice to Franchisee, cause such Solid Waste to be collected and removed by whatever means available to City. Franchisee shall pay any and all costs incurred by City in providing the service. This clause shall not apply to failure to collect due to unsafe weather or road conditions, provided, however, that the franchisee immediately notifies the Director of the areas affected by such conditions with an estimate of when service will be resumed.

**B.** In the event Franchisee fails to collect and remove Solid Waste as required hereunder for a period of at least seventy-two (72) consecutive hours, City, upon written notice

to Franchisee, may take temporary possession of and operate any and all trucks or other equipment used by Franchisee for Collection and removal of Solid Waste in the Franchise until such time, not to exceed one hundred twenty (120) days, as Franchisee satisfies City that it is ready, able, and willing to comply with all of the Provisions of this Agreement. In this event Franchisee shall provide City with driver route listings and necessary operational records. City shall be reimbursed by Franchisee for all costs of providing such substitute service. In such events, Franchisee shall indemnify and hold harmless City from and against any damage or liability to any third Person injured or damaged as a result of Franchisee's actions or inactions excepting City's sole negligence in providing such substitute service. Employees of Franchisee, including management employees, may be employed by City during any period in which City temporarily assumes the obligations of Franchisee under this Agreement. However, the rates of compensation paid to Franchisee's employees, or any other employees, during such period shall not exceed the rates in effect between Franchisee and its employees at the time Franchisee's service was interrupted.

C. The parties hereby agree that if Franchisee's failure to perform hereunder is due to a strike or labor dispute or other force majeure event, this Agreement shall not terminate and shall continue to be effective for the duration of such strike or labor dispute. In the event of such a strike or labor dispute, Franchisee shall maintain an unobstructed entrance at its place of business which is not regularly used but which will be primarily reserved for use by City access while City or its designated representative is performing Franchisee's responsibilities. If the labor dispute or picketing blocks access to Franchisee's place of business, Franchisee shall receive no compensation for any time period in which it failed to perform in accordance with the provisions of this Agreement.

## **SECTION 11. ADMINISTRATIVE HEARING PROCEDURES.**

A. Should Franchisee contend that the City is in breach of this Franchise Agreement, it shall file a request with the Director for an administrative hearing on the allegation.

B. If the Director refers a matter to a hearing officer, or if the Franchisee should allege a breach of the franchise by the City, City and Franchisee shall mutually agree on a hearing officer within twenty (20) days. City and the Franchisee may, but are not required to, choose a hearing officer from among retired California Superior Court judges or Appellate Court justices, none of whom are related to the parties, and such retired judges or justices may be affiliated with private judicial service companies, such as Judicial Arbitration and Mediation Services.

C. The hearing shall be conducted according to the provisions of California Government Code Section 11500, et seq. The exclusive venue shall be in Wildomar, California. A hearing officer to whom a matter is referred shall have the authority to (i) order the City or the Franchisee to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (ii) assess damages and/or levy a penalty upon the City or Franchisee consistent with the terms of this Agreement including terminate the Agreement; or (iii) find there has been no breach. The amount of the penalty shall be reasonably related to the seriousness of the breach of the Agreement.

**D.** The party losing the hearing shall be liable for the hearing officer's fees.

**E.** Any failure of the Franchisee or City to comply with the hearing officer's order shall be deemed a material breach of the Agreement, and may be grounds for termination of the Agreement.

**F.** Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to Agreement by the parties, or if Agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights.

**G.** Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.

**H.** Until final judgment is entered from the hearing officer proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in the Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon a finding that the party subject thereto acted with substantial justification or if the interests of justice so require.

**I.** Judicial review is as provided for in Code of Civil Procedure Section 1094.5.

## **SECTION 12. FRANCHISE TRANSFERABILITY.**

**A.** The franchise granted by this Agreement shall not be transferred, sold, hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any Person, except the Franchisee, either by act of the Franchisee or by operation of law, without the prior written consent of the City expressed by Resolution. Any attempt by Franchisee to assign this franchise without the consent of City shall be void. The City shall review such a request using such criteria as it deems necessary including, but not limited to, those listed in Subsection C.

**B.** The City shall not unreasonably withhold its consent to a transfer of the franchise granted by this Franchise Agreement. The City may impose new conditions of approval on a Franchise Agreement transfer, including, but not limited to, conditions requiring acceptance of any reasonable amendments to this Agreement.

**C.** If the Franchisee requests that the City consider and consent to a transfer, the Franchisee shall meet the following requirements:

1) The Franchisee shall pay the City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed transferee, and to review and finalize any documentation required as a condition for approving any such transfer.

2) The Franchisee shall furnish the City with audited financial statements of the proposed transferee's operations for the immediately preceding three (3) operating years.

3) The Franchisee shall furnish the City with satisfactory proof: (i) that the proposed transferee has at least five (5) years of solid waste management experience of a scale equal to or exceeding the scale of operations conducted by Franchisee under this Agreement; (ii) that in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management laws. Franchisee shall supply the City with a complete list of such citations and censures; (iii) that the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed transferee conducts its solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the Collection and disposal of waste; (v) of comparable financial strength; (vi) of required insurance and bonds; and (vii) of other material as may be requested by the City.

**D.** This franchise or portions thereof may be transferred, sold, hypothecated, leased, or assigned by the City to any Public Agency having the authority to provide solid waste collection services if the Board determines it is in the public interest to do so

### **SECTION 13.        **REPORTS.****

**A.** Franchisee shall provide the Director the periodic reports regarding waste stream Collection, recovery and disposal specified in **Exhibit D** of this Agreement.

**B.** Franchisee shall make its customer base and records available to the Department for audit at reasonable times for purposes relevant to review of performance and rate adjustment requests under the Agreement.

### **SECTION 14.        **COMPENSATION.****

**A.** Franchisee Rates.

Franchisee shall provide the services described in this Agreement and its exhibits in accordance with the rates set forth in the **Exhibit E**. Recyclable Materials collected from Commercial and Industrial Units are included in this Exclusive Franchise to the extent provided in state and federal law. **Exhibit E** specifies the maximum rate to be charged for such materials.

**B.** Modification and Adjustment of Rates.

If the Franchisee owns, has a financial interest in or operates any landfill located in the City at any time during the effective period of this contract, the Franchisee shall provide copies of all contract and any supplemental agreements is has with each of its (in the City) contract customers for disposal of waste at these sites. If rate discrepancies or financial incentives exhibit a potentially unfair advantage or subsidy, the Franchisee hereby agrees the City Council shall have the authority to renegotiate the City Franchise rates and/or the terms of the landfill operating agreement. The rates set forth on **Exhibit E** shall remain in effect until adjusted by City following a public hearing as provided in **Exhibit F**.

**C. Notice of Rate Changes**

The Franchisee shall provide customers a minimum of thirty (30) days written notice of the implementation of changes in any of its rates and charges provided Franchisee has ninety (90) days notice from City regarding approved changes in landfill fees and CPI adjustments. The wording of the notice shall be submitted to the Director ten (10) days in advance of its release, and shall be approved as to form prior to release. City shall provide Franchisee with written notice of changes in System Facility, Franchise, or Illegal Dumping Retrieval Services at least forty-five (45) days in advance of the anticipated rate changes.

**D. Resolution of Disputes Regarding Rate Adjustments**

Any dispute regarding adjustment, or the computation or any other dispute regarding Franchisee's reimbursement for fees, special services, or extraordinary costs described in **Exhibit D**, shall be decided by the Director or his representative. If resolution can not be reached, the Director shall refer the matter to the City Council, or to a hearing officer as provided in Section 11 above. The rates in effect at the time such dispute is submitted to the City Council, or a hearing officer shall remain in effect pending resolution of such dispute. The Effective Date of any dispute resolution, whether retroactive or prospective, shall reasonably be determined by the City Council, or the hearing officer, as appropriate. Any Franchisee operating in a Comprehensive Collection Area shall be subject to all applicable provisions in the City's comprehensive collection ordinance.

**E. Billing and Payment.**

Franchisee may bill and receive payment as provided in **Exhibit E**. In cases where Franchisee includes a Landfill Tipping Fee amount on a customer's bill, the City shall prescribe the amount consistent with established waste generation factors and Tipping Fees. Further, on a quarterly basis, the City shall be allowed to include a one (1) page insert for the - purpose of public education regarding waste disposal, recycling, or other environmental issues. Print ready copy of such insert, which conforms to the Franchisees' billing, shall be delivered by City Information Officer thirty (30) working days in advance of Franchisee's billing dates.

**F. Delinquent Accounts.**

Franchisee may discontinue service for non-payment of customer's billing or customer's failure to substantially comply with the requirements of this Agreement. After the Franchisee has given fifteen (15) days' notice to customer for non-compliance, Franchisee shall notify the Director in writing of any service termination including a written copy of the notice to the

customer. Upon payment of the delinquent fees, if applicable, Franchisee shall resume Collection on the next regularly scheduled Collection day. Any Franchisee operating in a comprehensive collection area shall be subject to all applicable provisions in the comprehensive collection ordinance.

**G. Refunds.**

Franchisee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is discontinued by written notification to Franchisee by the customer.

**SECTION 15. FRANCHISE FEES.**

A Franchise Fee of eight (8) percent of the Franchisee's Gross Receipts, less landfill fees or Transfer Station Tipping Fees, shall be payable by Franchisee to the Department thirty (30) days after the close of each quarter of each year this Agreement remains in effect. The Franchise Fee shall not be required to be paid for revenues generated by the collection or sale of Recyclable Materials and Green Waste collected by the Franchisee, or for the provision of construction roll off services. A penalty of ten (10) percent shall be due for fees not submitted within the thirty (30) day time period.

City may, at its sole discretion, adjust the Franchise Fee at any time after giving Franchisee one hundred twenty (120) days notice. Such adjustment shall be cause for a corresponding rate adjustment in accordance with **Exhibit F**.

**SECTION 16. OTHER REQUIREMENTS.**

**A. Privacy**

Franchisee shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by the IWMA, and/or City. In addition, Franchisee shall not market, sell, convey, or donate to any Person any list with the name or address of customers except that Franchisee may provide such lists to authorized employees and authorized representatives of the City as necessary to comply with this Agreement. The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State Law.

**B. Public Access to the Franchisee**

1) Office Hours. Franchisee's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday. A representative of Franchisee shall be available during office hours for communication with the public at Franchisee's principal office. In the event that normal business cannot be conducted over the telephone, a

representative of Franchisee shall agree to meet with the public at a location agreeable to Franchisee and the public. Normal office hours telephone numbers shall either be a local or toll free call. Franchisee shall also maintain a local or toll free after-hours telephone number for use during other than normal business hours. Franchisee shall have a representative or answering device or system available at the after-hours telephone number during all hours other than normal office hours.

2) Service Complaints. All customer complaints shall be directed to Franchisee. Franchisee agrees to use its best efforts to resolve all complaints received by mail, by telephone, or in Person, by close of business of the second business (waste Collection) day following the date on which such complaint is received. Service complaints may be investigated by the Director or a designee. Franchisee shall maintain records listing the date of customer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Franchisee to resolve the complaint. All such records shall be maintained and shall be available for inspection by City.

3) Government Liaison. The Franchisee shall designate a “government liaison” who shall be responsible for working with the Department to resolve customer complaints.

#### C. Resolution of Disputed Customer Complaints.

The Franchisee shall notify customers of this complaint arbitration procedure at the time customers apply for or are provided service, and subsequently, annually. Procedures for resolution of disputed claims shall be as follows:

1) A customer dissatisfied with Franchisee’s decision regarding a complaint may ask the City to review the complaint. To obtain this review, the customer may request City review within thirty (30) days of receipt of Franchisee’s response to the Complaint, or within forty-five (45) days of submitting the complaint to the Franchisee, if the Franchisee has failed to respond to the complaint. The City may extend the time to request its review for good cause.

2) Before reviewing the complaint, the Director shall refer it to the Franchisee. If the Franchisee fails to cure the complaint within ten (10) days, the Director shall review the customer’s complaint and determine if further action is warranted. The Director may request written statements from the Franchisee and customer, and/or oral presentations.

3) The Director shall determine if the Customer’s complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Franchise Agreement or a penalty of up to one hundred dollars (\$100.00) for any single event in addition to any actual damages.

4) The Director may delegate these duties to a designee. The decision of the Director or a designee shall be final on any matter under five thousand dollars

(\$5,000.00). In the event of a decision on a matter awarding five thousand dollars (\$5,000.00) or more, Franchisee may seek review pursuant to Section 11 above.

**D. Hazardous Materials and Waste Handling and Disposal**

The Franchisee shall comply with the procedures detailed in **Exhibit G** of this Agreement.

**SECTION 17. FORCE MAJEURE.**

Franchisee shall not be in default under this Franchise Agreement in the event that the services provided by the Franchisee are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, and fires, strikes, lockouts, and other labor disturbances or other catastrophic events which are beyond the reasonable control of Franchisee. Other catastrophic events do not include the financial inability of the Franchisee to perform or failure of the Franchisee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Franchisee.

**SECTION 18. OTHER PROVISIONS.**

**A. Independent Contractor.**

Franchisee is an independent contractor and not an officer, agent, servant, or employee of City. Franchisee is solely responsible for the acts and omissions of its officers, agents, and employees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between City and Franchisee. Neither Franchisee nor its officers, agents, or employees shall obtain any rights to retirement or other benefits which accrue to City employees.

**B. Property Damage.**

Any physical damage caused by the actions or non-actions of employees, officers, or agents of the Franchisee to private or public property shall be promptly repaired or replaced by the Franchisee.

**C. Right of Entry.**

Franchisee shall have the right, until receipt of written notice revoking permission to pass is delivered to Franchisee, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing temporary bin/rolloff services and the Collection, transportation, recycling, composting, and disposal of Solid Waste and construction debris pursuant to this Franchise Agreement.

**D. Law to Govern.**

The law of the State of California shall govern this Franchise Agreement.

**E. Gratuities.**

Franchisee shall not, nor shall it permit any officer, agent, or employee employed by it to, request, solicit, demand, or accept, either directly or indirectly, any gratuity for services required under this Franchise Agreement.

**F. Compliance with Franchise Agreement.**

Franchisee shall comply with those provisions of the Riverside County Ordinances 657 and 745, or any successor ordinances, which are applicable, and with any and all amendments to such applicable provisions during the Term of this Franchise Agreement.

**G. Notices.**

All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by telecopier (fax), or United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Wildomar  
Attn: Public Works Department  
23873 Clinton Keith Road  
Wildomar, CA 92595

Copy to: City Attorney

To Franchisee: CR&R Incorporated  
President  
Solid Waste Management Division  
P.O. Box 1208  
Perris, CA 92572

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States mail, or if by fax, upon receipt of confirmation of delivery which confirmation may be transmitted by fax.

**H. Exhibits Incorporated.**

Exhibits A through I are attached to and incorporated in the Franchise Agreement by reference.

**I. Nondiscrimination.**

In performing the Collection services hereunder, Franchisee shall not discriminate against any Person on the ground of race, sex, age, creed, color, religion or national origin.

**J. Laws and Licenses.**

Franchisee shall comply with all federal, State, and City-laws, ordinances, rules, and regulations applicable to the performance of the services hereunder and shall. obtain all licenses and permits necessary to perform the services hereunder and maintain the same in full force and effect.

**K. Waiver.**

No waiver by either party of any one or more defaults or breaches by the other in the performance of this Agreement shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character.

**SECTION 19. SEVERABILITY.**

If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement.

**SECTION 20. ENTIRE AGREEMENT; AMENDMENT.**

This Agreement, its accompanying Exhibits, constitute the entire Agreement between the parties concerning the subject matter hereof and supersede any and all other communications, representations, proposals, understandings or Agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by writing signed by both parties hereto.

**SECTION 21. CONSTRUCTION OF FRANCHISE.**

The parties hereto have negotiated this franchise at arms length and with advice of their respective attorneys, and no provision contained herein shall be construed against City solely because it prepared this agreement in its executed forms.

**SECTION 22. RENEGOTIATION OF TERMS AS A RESULT OF OWNERSHIP CHANGES**

In the event of a significant change to the ownership of the franchisee that impacts the activities in this contract, including, but not limited to acquisition of, acquisition by, merger with or stock exchange with another company, all service levels and rates of this contract shall at the discretion of the City Council be made open to renegotiation of the existing franchise and rate exhibits.

**[Remainder of page intentionally left blank. Text continues on next page.]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY OF WILDOMAR**

By: \_\_\_\_\_  
John Danielson, City Manager

**ATTEST:**

\_\_\_\_\_  
Debbie A. Lee, CMC, City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Julie Hayward Biggs, City Attorney

**CR&R Incorporated**

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

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

**EXHIBIT A**  
**PROVIDED SERVICES**

This Exhibit is for the exclusive franchise held by CR&R Incorporated in the City. The following is: 1) specific information regarding provision of the minimum levels of service, and; 2) definition of any additional services the Franchisee will be providing.

AUTOMATED CURBSIDE REFUSE AND RECYCLING

Three Can System

We propose a three can system with refuse, commingled recycling and green waste. The refuse, recyclable and green waste containers will be collected on a weekly basis. Weekly collection increases participation and diversion, as well as eliminates odor concerns. The residents can place ALL recyclables in the grey container, all green waste in the green container, and all refuse in the black container, thereby reducing refuse disposal and collection costs.

CR&R's proposed rate structure includes all costs, collection, maintenance, container replacement, recyclables processing, sorting and marketing. Our proposed recycling program creates vested interest to seek out the best possible commodity pricing, as well as participation.

Again, CR&R feels that our proposal is unique, due to CR&R's long standing recycling background, which ultimately ensures that the City of Wildomar will have markets for their recyclable materials. All commingled recyclables will be transported to our Perris Facility for processing. Our facility will allow us to offer one of the cleanest, simplest and most advanced curbside recycling programs in the United States.

Three Can Automated

Blue Container

Glass Containers  
Aluminum Cans  
Tin Cans  
Newspaper  
Cardboard  
Junk Mail  
Phone Books  
Waste Paper  
P.E.T. Plastic  
Other Plastics  
Other Metals  
Cartons (cereal boxes, shoe boxes, etc.)

Green Container

Grass Clippings  
Tree Branches  
Wood Products  
Shrubs

Black Container

Non-recyclable Waste

As one can see, our program addresses over 50% of the waste stream, approximately three times

that of standard programs. We also expect a participation rate of at least 95%, which is four times that of standard sources separated manual curbside programs, due to our existing experience with this system, its maximum convenience, and ease of separation.

**EXHIBIT B**  
**FRANCHISE AREA**

This exhibit contains: a map showing the franchise area, a legal description, and lists of exceptions to the Franchise Collection Agreement.

**EXHIBIT C**  
**CERTIFICATES**

This Exhibit is for the exclusive franchise held by Franchisee. Attached, as specified in the Agreement, are the Franchisee's: 1) certificates of insurance; 2) copy of performance bond, and; 3) copy of financial statements.

**EXHIBIT D**  
**REPORTING REQUIREMENTS**

**1. GENERAL**

The Franchisee shall provide disposal tonnage tracking, and quarterly and annual reporting as outlined in this Exhibit; however, the Department reserves the right to request additional information as necessary to meet their needs, including but not limited to the AB 939 reporting requirements. All information included in the reports shall be provided according to the source of generation. Waste generator types are defined as follows:

Residential - Solid waste, recyclables and green waste originating from single-family and from multi-residential units.

Commercial/Industrial - Solid waste, recyclables and green waste from commercial and industrial sources.

Construction/Temporary Bin/Rolloff - All solid waste or other materials placed in debris boxes.

Annual Cleanup - Solid waste and other materials collected through the annual cleanup.

Data and information pertaining to services performed under this franchise upon submittal to the Department become the property of the Department.

**2. DISPOSAL TONNAGE TRACKING**

Franchisee shall submit completed ticket transactions to the City. Tickets, with waste origin information, must be received by the City within five (5) business days of the landfill transactions (the day of transaction being the first (1st) business day). If these tickets and correct information are not received within the specified period of time, a penalty of twenty-five dollars (\$25.00) may be assessed by the City and placed on Franchisee's monthly billing, for each day's delinquencies.

**3. QUARTERLY REPORTS**

The Franchisee shall submit quarterly reports no later than one month following the completion of each quarter. The first report is due by the end of the first fiscal quarter after the Effective Date of this Agreement and shall cover the period from the effective date of this Agreement through the end of each quarter.

The quarterly reports shall include the information collected and summarized on a monthly basis. Specifically, Franchisee shall provide the following quarterly reports:

1. Collection information
2. Service performance

### 3. Program implementation

#### **Collection Information**

The Franchisee shall provide a quarterly report that lists the quantity of solid waste collected by Month and the number of accounts serviced monthly. The quantities of solid waste, recyclables and green waste collected shall be reported in terms of tonnage (or cubic yards if tonnage information is not available). The Department may, at its discretion, also require reporting by volume. The Franchisee shall clearly specify any assumptions made in reporting the tonnage or cubic yard information such as density factors.

#### **Service Performance**

The Franchisee shall provide a report summarizing the entries made in the service log including all praises, complaints, and notifications of missed pickups, and the Franchisee responses thereto. The summary report shall identify the total number of all written or oral Customer comments and shall provide the number of comments received in the following categories: praises, litter or property damage complaints, misplacement of containers, stolen containers, personnel complaints, missed pickups, and other.

#### **Program Implementation**

The Franchisee shall submit a report summarizing the problems or barriers to implementation of services for the quarter. The report shall address how the problems- and barriers were overcome or the proposed resolutions and schedule for correcting the-problem.

### 4. ANNUAL REPORTS

The Franchisee shall submit annual reports to the Department no later than January 31 of each year. The Franchisee will be responsible for providing the following reports:

1. Summary reports
2. Equipment inventory
3. Future programs
4. Litigation information

#### **Summary Reports**

The Franchisee shall provide a summary of information contained in the quarterly reports. The summary reports shall clearly indicate the diversion rate for each waste sector type. The diversion information provided shall include quantities of materials collected, and if processed by non-system facilities, the quantities recycled and composted in tons (or cubic yards if tonnage information is not available) for each waste generator type. In this report, the Franchisee shall note unusual changes in disposal quantities and indicate potential reason(s) for this change. The summary report shall include a discussion of noteworthy experiences, and any problems in

program operation and how they were resolved.

### **Equipment Inventory**

The Franchisee shall provide a complete inventory of collection equipment and other major equipment. The inventory list shall indicate the age of the equipment.

### **Future Programs**

The Franchisee shall prepare a report that identifies any future programs and/or facilities that may be needed but have not been planned for.

### **Litigation Information**

The Franchisee shall submit declarations of the: current status of any pending criminal or civil litigation against the parent company and all subsidiaries. of parent company that may have an effect on the Franchisee's ability to meet the obligations of the Agreement or provide a satisfactory level of service.

## **EXHIBIT E**

### **RATES**

#### **COMMERCIAL AND INDUSTRIAL RECYCLING RATES**

Franchisee is permitted to charge for commercial and industrial bin and roll-off recycling services at maximum rates not to exceed the rate established for collection of equitable amounts of Solid Waste, as set forth in the Schedule of Approved Rates, less the tipping fee component of the established rate, and the franchise fee. This maximum rate will be defined annually as specified in **Exhibit F**. In addition, the Department reserves the right to revise the maximum rate for commercial recycling at any level deemed reasonably appropriate by the Department for purposes of complying with IWMA diversion goals throughout the term of this Agreement.

#### **RATE GUARANTEE**

If the rate for specified residential curbside services as designated in the schedule of approved services exceeds the rate charged to a customer prior to this agreement, the Franchisee shall revert the rate back to the previous rate once the customer has provided proof of the immediate prior rate. The previous rate may then be adjusted periodically pursuant to the methodology described in **Exhibit F**

#### **PROCEDURES FOR BILLING AND COLLECTION**

The procedures for billing and collection of rates for services provided under the terms of this Agreement are provided as Attachment 1 to this Exhibit.

#### **OPTIONAL SERVICES**

Rates for optional Green Waste Collection service shall be the rate specified in this Exhibit as adjusted by the rate adjustment methodology (**Exhibit F**) to the date this service is authorized by the City Council .

Director may designate an alternate Green Waste disposal/processing location if such alternate location provides a rate reduction to the customer. Franchisee will be compensated for any additional transportation costs not included in rates on this exhibit.

#### **HARD-TO-SERVICE RATES**

Franchisee may request the Director to designate portions of its Exclusive Franchise Area as Hard-to-Service. Upon approval of the Director, whose approval shall not be unreasonably withheld, Franchisee may charge the Hard-to-Service Rates in this Exhibit. Considerations to be used in designating Hard-to-Service areas include, but are not limited to those listed in definition V:

**EXHIBIT “E” - ATTACHMENT 1**  
**BILLING AND COLLECTION PROCEDURES:**

The Franchisee shall adhere to the following procedures for billing and collection of rates for services provided under the terms of this Agreement:

A.) Billing:

Single Family Units - Franchisee shall bill each residential customer quarterly in advance for services rendered throughout this franchise area. Payment is due within 30 days of the invoice date and is overdue 30 days from invoice.

All other regular and special services including commercial and roll off service shall be billed by the Franchisee monthly, in advance, in accordance to the rate schedule established in **Exhibit “E”** and as amended.

B.) Delinquent Accounts:

Franchisee may discontinue service for non-payment of customer’s billing or customer’s failure to substantially comply with the requirements of this Agreement. After the Franchisee has given fifteen (15) days’ notice to customer for non-compliance (at 45 days from date of invoice), Franchisee shall notify the Director in writing of any temporary stop service including a written copy of the notice to the customer. Upon payment of the delinquent fees, if applicable, Franchisee shall resume collection on the next regularly scheduled Collection day.

C.) Refunds:

Franchisee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is discontinued by notification to Franchisee by the customer. In comprehensive collection areas, the refund shall only be related to discontinuance of use of the property and not simply for elimination of service.

D.) Franchisee shall be entitled to special fees as established in **Exhibit “E”** relating to Restart fees, Overage fees, Extra Empty fees, Redelivery fees , Hard to Service fees and Delinquent fees.

## EXHIBIT F

### RATE ADJUSTMENT MECHANISM

**All Rate adjustments must receive approval by the City Council following public hearings.**

#### 1. ANNUAL RATE ADJUSTMENT

The Schedule of Approved Rates provided in **Exhibit E** shall be adjusted annually following public hearings and according to the following methodology. The rate shall be adjusted annually each July 1st with the first such adjustment occurring July 1, 2009. The adjustment shall be no greater than the change in the Consumer Price Index for All Urban Consumers (CPI-U) for the Los Angeles/Anaheim/Riverside Metropolitan Area, (1982 -84 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics. For those residential curbside accounts for which a reduce rate is provided pursuant to **Exhibit E** of this Franchise Agreement the above adjustment factor may be increased by an additional three percentage points until such time as those rates have equaled the regular curbside residential rates for each type of service. The change shall be measured for the twelve (12) month period January through December. The first adjustment shall be effective July 1, 2009, based upon changes in the consumer Price Index formula for the period January 2008 through December 2008. In calculating the rate changes, the change in the CPI shall not be applied to the portions of the rate attributable to pass through items, including but not limited to disposal fees, Green Waste diversion tip fees, Franchise Fees, Illegal Dumping Retrieval Fees, and other local, state, and federal fees. City direction of the Franchisee to use a different System Facility for more than seven (7) consecutive days but no more than thirty (30) consecutive days at a time that involves a change in round trip time or distance will also be considered at the time of the annual rate adjustments. Any adjustments made in this latter instance will only impact the rate for a one year period in order to recover any additional costs incurred by Franchisee during the previous year. Pass through items shall be adjusted based upon the actual expenses or costs related to that item: revisions to the disposal fee portion of the rate shall be based on disposal costs and the appropriate tonnage amounts as determined through the disposal tonnage tracking requirements.

#### 2. PERIODIC RATE ADJUSTMENT MECHANISM

The Department reserves the right to review the Franchisee's rates every three years from the effective date of this Agreement if the Franchisee's rates exceed the then average rates for comparable services in comparable jurisdictions, as determined by the Department in its reasonable discretion. In the event that the Department makes such a determination the Franchisee's rates may be adjusted to any level at or above the average rates in the comparable jurisdictions.

#### 3. EXTRAORDINARY RATE REVIEW

A. The Director or Franchisee may initiate a special rate review by the Department should an extraordinary event or circumstance arise which has a significant impact on the economic operation of the Franchisee or the rates charged to customer as follows:

1. An event or circumstance (including changes in law) occurs which is beyond the

control of Franchisee or City.

2. Changes to operations mandated by the City or proposed by Franchisee and approved by the City.
3. Any change in disposal/Green Waste tip fees.
4. The City directs Franchisee to use a different System Facility for more than thirty (30) days that involves a change in round trip time or distance.
5. The City modifies the franchise fee.
6. Significant changes in the level of delinquent accounts in Comprehensive Collection Areas.
7. Significant increases in the number of customer accounts due to development or growth.
8. Other circumstances at the discretion of the Director or the City Council.

B. Should Franchisee request a special rate review only those costs related to the circumstance(s) which warrant consideration of a special rate review, as specified above, will be reviewed and considered.

C. Franchisee must submit its request for a special review of service rates, and all appropriate cost and operational information at least three months prior to the proposed effective date of any rate adjustment.

## EXHIBIT G

### HAZARDOUS WASTE AND MATERIALS SCREENING

#### I. SURVEILLANCE

Franchisee will screen all loads of Solid Waste, Recyclables, and Green Waste, using mirrors on the vehicles and direct means of inspection where appropriate, at the point of collection to eliminate, where practicable, the transport of hazardous wastes. Hazardous wastes found at the point of collection will not be collected and the generator and the Department of Environmental Health will be notified of the incident.

Hazardous waste shall be transported in accordance with the regulations of the Department of California Highway Patrol (Title 13, CCR), the regulations of the federal Department of Transportation (DOT)(Title 49, Code of Federal Regulations), the regulations of the U.S. Environmental Protection Agency (Title 40, Code of Federal Regulations), the regulations of the California Occupational Health and Safety Administration (Title 8, CCR), and the regulations of the California Department of Toxic Substances Control (Title 22, CCR). This section shall not be construed to exempt the Franchisee from any other applicable law, or from any other regulation unless expressly stated.

All records, plans and/or other documents kept on file by the Franchisee to meet the above mentioned requirements will be made available to the City upon request.

#### II. HAZARDOUS WASTE RESPONSE

In the event that any hazardous or suspected hazardous waste is commingled with the solid waste stream, the Franchisee shall take immediate and appropriate action to contain and isolate the load and contact the City Hazardous Materials Management Division of Environmental Health. Ongoing training programs will consist of monthly safety meetings for all drivers, mechanics, and other support personnel, including the recognition of hazardous materials and hazardous situations that may require assistance from, or notification to, City Hazardous Materials personnel.

##### Procedures for Handling Hazardous Waste

The procedure for handling hazardous materials will be as follows:

Notification of suspected hazardous waste in the waste stream will be communicated from the driver to the dispatch center. Dispatch will notify the field supervisor to determine appropriate response. Dispatch will notify the County Department of Environmental Health, Hazardous Materials Management Division, or such other person or entity the City may designate, and shall request that they inspect any materials suspected of containing hazardous waste. A determination will be made by the Hazardous Materials personnel whether a Hazardous Materials Emergency Response Team should be called in to assist in handling the waste.

Coordinating instructions will be issued by personnel from the Hazardous Materials Management Division based on their findings and recommended actions.

Dependent on the determination of Hazardous Materials personnel, the suspected hazardous materials may require segregation and containerizing to prepare for manifesting and transport.

For situations that require specialized equipment or involve extremely large amounts of material, a permitted hazardous materials transport company may be contacted to assist in the cleanup. Management shall be available during any incidents requiring cleanup to authorize the expenditure of funds.

The appropriate enforcement actions will be coordinated with the Hazardous Materials Management Division to determine if the generator can be identified.

The specific procedures to be followed, if suspected or known hazardous waste is believed to be in waste already picked up, shall include those steps specified in the attached Guidance Document entitled Hazardous Waste Screening and Response as developed by the County of Riverside, Department of Environmental Health, Hazardous Materials Management Division (HMMD).

## EXHIBIT H

### DIVERSION SERVICES

At any time during the term of this agreement, upon one hundred and eighty (180) days written notice from the Director, Franchisee shall provide collection of Green Waste from Residential units throughout, or in designated portions of its exclusive Franchise Area. Franchisee's rates for this service shall be as established in **Exhibit E** as adjusted by the methodology established in **Exhibit F**. The rates as shown in **Exhibit E** are to be applied only to customers in the areas designated by the Director. If the Franchise has proposed green waste rates based on automated service, manual green waste collection may be utilized, at the Franchisee's discretion, for up to one year from the implementation of the source separated green waste collection program.

## EXHIBIT “H” ATTACHMENT A

### DIVERSION SERVICES

#### 1.) RESIDENTIAL, SINGLE FAMILY

Basic Service to all single family residential accounts will include the following: Weekly Service and Collection:

- The general nature of automated residential collection via 96-gallon carts promotes diversion due to the volume limitation of the cart as well as the additional cost of added refuse carts.
- Recycling baskets for commingling fiber products, glass jars and bottles, metal cans, and plastic containers.
- Used motor oil collection at the curbside.
- With bulky item collection at the curbside and at community clean-up events, diversion of metal goods (such as appliances and the like) will take place. Other items that can be diverted, based upon an appropriate recycling opportunity are mattresses, usable furniture and clothing, and certain construction waste (such as roof tiles, lumber and plastic containers).
- CFC removal service will reuse and recycle the removed substances.

Optional Residential Recycling Services include separate green waste collection via 96-gallon carts for curbside pick-up when implemented by the Director.

#### 2.) COMMERCIAL BIN

All commercial bin customers will be offered separate bins delineated for recycling only. Customers will separate recyclable items on site. The rate structure established in **Exhibit “E”**, offers the customer significant reductions in collection costs with the added recycling bin.

All commercial can customers will not initially receive individual recycling services. Every effort will be taken to provide recycling services for commercial can customers into combined recycling bin service for several neighboring customers.

#### 3.) ROLL-OFF BOX

These customers will be offered separate roll-off boxes that can be specified for separate collection of a recyclable commodity. This includes the following:

Manure

Lumber

Roof tiles

Green Waste

Plastics

Dirt & Rock

Concrete & Asphalt

Due to the reduced cost of disposal, these customers will be economically encouraged to participate in these programs.

**FORM 5**

**DIVERSION PROPOSAL**

Franchisee proposes the following diversion programs. Estimated diversion percentages are calculated by dividing the annual weight of Recyclables and Greenwaste diverted by Franchisee's diversion programs by the total weight of all materials (including Solid Waste, Recyclables and Greenwaste) collected by Franchisee under this Agreement.

Residential Unit Recycling (Curbside)	8%*
Multi Residential Unit Recycling	NM%*
Commercial Recycling	3%*
Residential Unit Greenwaste Collection	16%*
Other OIL COLLECTION	0.5%*
_____	_____ %
_____	_____ %
Total Diversion (With Green Waste)	24%**
Total Diversion (W/O Green Waste)	8%**

Hauler reserves the right-to substitute alternate viable diversion programs for those shown herein which achieve the aggregate equal or greater diversion results.

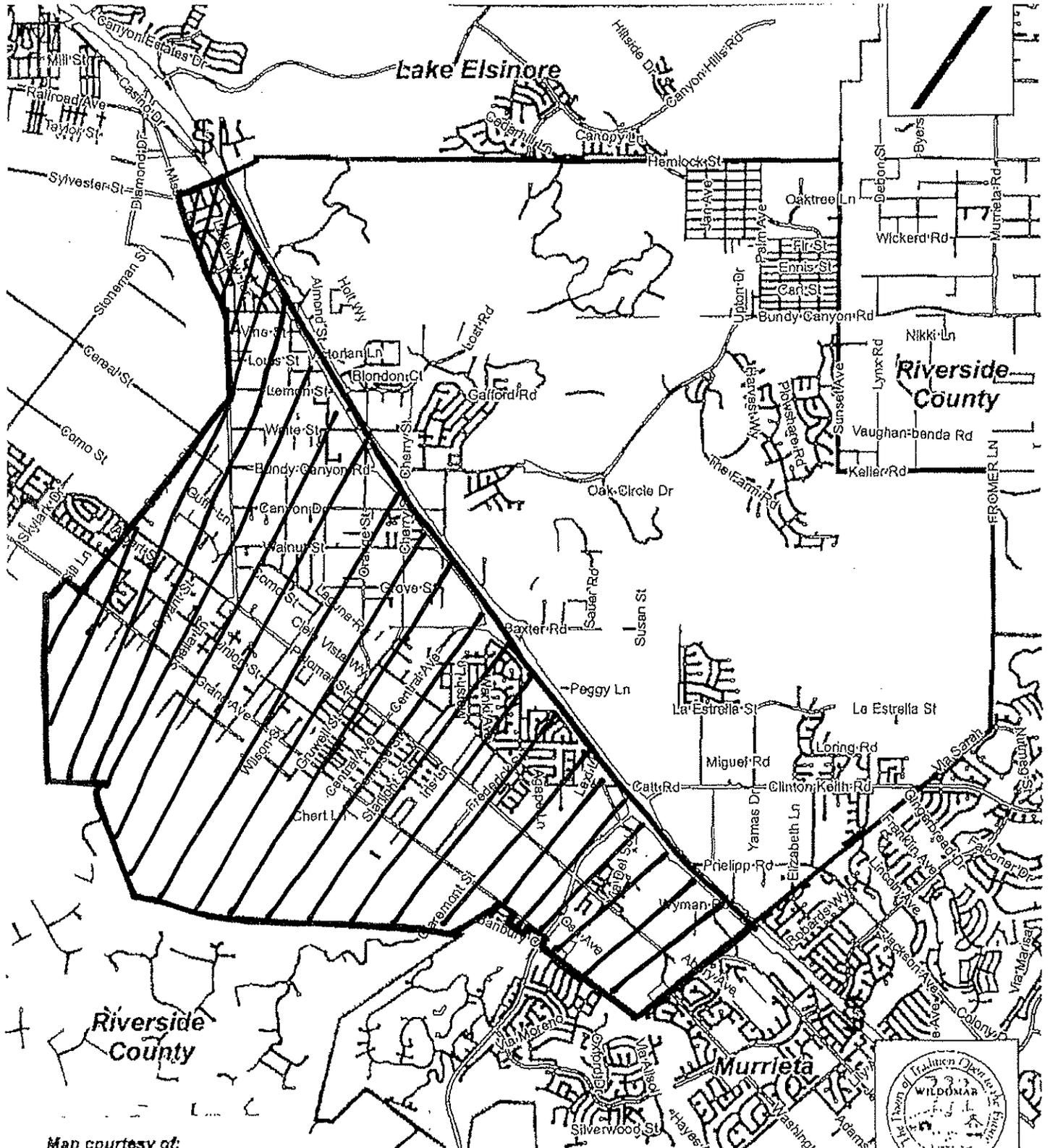
\*Information Only

\*\*Contractual

# EXHIBIT B

## FRANCHISE AREA

This exhibit contains: a map showing the boundaries of the City of Wildomar. The portion of the City that is shaded on the map is the Franchise Area.



Map courtesy of:

**AGREEMENT BETWEEN THE CITY OF WILDOMAR  
AND WASTE MANAGEMENT, INC.  
FOR THE COLLECTION AND TRANSPORTATION  
OF SOLID WASTE AND OTHER SPECIFIED SERVICES**

This Franchise Agreement (“Franchise Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2009 and between the CITY OF WILDOMAR (“City”) and USA WASTE OF CALIFORNIA, INC., a Delaware corporation, a Waste Management company (“Franchisee”), for the Collection and transportation of Solid Waste, Recyclable Materials, Green Waste, and construction debris and other specified services.

**RECITALS**

WHEREAS, in accord with California Public Resources Code Section 40059 (a)(1), and County Ordinance 657 which has been adopted by reference by the City of Wildomar (“City”) effective as of July 1, 2008, the City has determined that the public health, safety, and well-being of City residents requires that an Exclusive Franchise be awarded to a qualified enterprise for waste management services for residential, commercial, and industrial customers in the City of Wildomar; and

WHEREAS, unless required to comply with the mandates of the California Integrated Waste Management Act of 1989 (“IWMA”) and subsequent legislation and regulation, the City of Wildomar desires that Franchisee retain the ability to direct the flow of Solid Waste within the City for the purposes of processing, recovery and disposal and liability related thereto; and

WHEREAS, the City Council of the City of Wildomar declares its intention of maintaining reasonable rates for the provision of Solid Waste services within the City;

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**SECTION 1.            REPRESENTATIONS AND WARRANTIES.**

**A.**     Representations and Warranties of Franchisee. Franchisee hereby makes the following representations and warranties for the benefit of the City as of the date of this Agreement.

- 1)       Franchisee is duly organized and validly existing as a corporation in good standing under the laws of the State of California.
- 2)       Franchisee has full legal right, power, and authority to execute, deliver, and perform this Agreement, and has duly authorized the execution and delivery of this Agreement.
- 3)       The Persons signing this Agreement on behalf of Franchisee have been authorized by Franchisee to do so, and this Agreement has been duly executed and delivered by Franchisee, and constitutes a legal, valid and binding obligation of Franchisee enforceable against Franchisee in accordance with its terms.

4) To the best of Franchisee's knowledge, there is no action, suit, or proceeding before any court or governmental entity against Franchisee or affecting Franchisee, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Franchisee.

5) Franchisee has sufficient financial resources to perform all aspects of its obligations hereunder. There has been no material adverse change in Franchisee's or Franchisee's parent company's financial circumstances since the date of the most recent financial statements submitted to the Environmental Health Department ("Department"). Prior to the Effective Date of this Agreement, the Franchisee shall submit to the Department the most recent annual financial statements. The Department may at its discretion specify the contents and form of such statements. The Director of Environmental Health may inspect the financial records of the Franchisee at any reasonable time for any reasonable purpose relevant to the performance of this contract.

6) Franchisee has the expert, professional, and technical capability to perform all of its obligations under this Agreement.

7) Within thirty (30) days after the execution of this Agreement by the City, Franchisee has provided the performance bond or letter of credit certificates of insurance, and the annual financial statements, as provided in **Exhibit C**.

**B. Representations and Warranties of the City.**

Prior to commencement of any services hereunder, the City hereby makes the following representations and warranties to and for the benefit of Franchisee as of the date of this Agreement:

1) The parties executing this Agreement on behalf of the City are duly authorized to do so. This Agreement constitutes the legal, valid and binding Agreement of the City and is enforceable against the City in accordance with its terms.

2) To the best of the City's knowledge, there is no action, suit, or proceeding against the City before any court or governmental entity wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement.

**SECTION 2. DEFINITIONS.**

Whenever any term used in this Franchise Agreement has been defined by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Public Resources Code, as presently defined and as they may be amended in the future shall apply unless the term is otherwise defined in this Agreement. In the event of conflict between the definition of a term as found in the California Public Resources Code or in City ordinances and this Agreement, the definition in this Agreement shall supersede the definition found in the Public Resources Code or in City ordinances.

**A.** Agreement. means this Agreement between the City and Waste Management,

Inc., for the Collection and transportation of Solid Waste and other specified services, including all exhibits, and any future amendments.

**B.** Bins. shall mean those containers provided by Franchisee for commercial, industrial, construction, and multi-residential uses. Bins are of two types: (i) Bins (generally 1 to 6 cubic yards in size) which are picked up by refuse trucks by means of front loading apparatus; and (ii) Rolloff Bins (generally 10 to 40 cubic yards in size) which are picked up by trucks using rear loading winches onto rails.

**C.** Board. shall mean the Wildomar City Council.

**D.** Bulky Waste. shall mean large, heavy or otherwise difficult to handle items, including, but not limited to, stoves, refrigerators, Waster tanks, Waster heaters, washing machines, furniture, large concrete and asphalt chunks, tree stumps, or other waste materials with weights or volumes greater than those allowed for containers.

**E.** Collection. means Collection of Solid Waste, recyclable material, or other material specified in this Agreement and its transportation to an appropriate Solid Waste Facility.

**F.** Commercial Units. shall mean all commercial, industrial, institutional or other facilities, except residential and Multi-Residential Units.

**G.** Compost. means a stable humus-like product that results from the biological decomposition of organic materials occurring under controlled conditions.

**H.** Compost Facility. means a Solid Waste Facility that processes Green Waste, Wood Waste or other organic materials to produce Compost or mulch.

**I.** Comprehensive Collection Areas. shall mean specific portions or areas of the City designated by an Ordinance or Resolution of the City Council in which specified residential, multi-residential, and/or commercial units are required to subscribe to refuse collection.

**J.** City. means the City of Wildomar, State of California.

**K.** Department. means the City of Wildomar Public Works Department .

**L.** Effective Date. means the date on which this Agreement becomes effective, which shall be the date it is executed by the City Council.

**M.** Exclusive Franchise. means the rights granted to the Franchisee under the terms and conditions of this Agreement, including the sole right to collect Solid Waste, Recyclable Materials and/or Green Waste, and other materials as specified in this Agreement and its exhibits, within the area defined in **Exhibit B**.

**N.** Extremely Hazardous Waste. shall mean any Hazardous Waste or mixture of Hazardous Wastes which, if human exposure should occur, may likely result in death, disabling personal injury or illness, during or as a proximate result of, any disposal of such waste or mixture of wastes.

**O.** Franchise Area. means the geographic territory defined in **Exhibit B**.

**P.** Franchise Documents. shall mean the Agreement (as herein defined) and the insurance certificates and performance bond or letter of credit required under this Agreement.

**Q.** Generator. means the owner or occupant of premises, including residences or businesses, which initially produces Solid Waste, Recyclable Materials, or Green Waste.

**R.** Green Waste. means organic waste generated from any landscaping including grass clippings, leaves, prunings, tree trimmings, weeds, branches, and brush.

**S.** Gross Receipts. means all monies received by Franchisee for providing franchise services specified in this Agreement, including, but not limited to, payment for regular and special services, leases on containers, pass through costs collected on behalf of the City, and collections received on delinquent accounts. Gross Receipts does not include uncollectible accounts and pass through costs collected on behalf of State or other governmental agencies.

**T.** Hard-to-Service. may refer to any of the following:

- 1) Rural, sparsely populated areas,
- 2) Hilly or mountainous terrain,
- 3) Poorly paved or unpaved roads which may be unpassable in poor weather,
- 4) Large, uninhabited areas between pockets of homes,
- 5) Unusually heavy waste due to large properties, livestock, etc.

**U.** Hazardous Waste. shall mean any waste material or mixture of wastes which is defined or otherwise considered to be hazardous under any state or federal law, or is toxic, corrosive, flammable, an irritant, a strong sensitizer, which generates pressure through decomposition, heat or other means, if such a waste or mixture of wastes may cause substantial personal injury, serious illness or harm to wildlife, during, or as a proximate result of any disposal of such wastes or mixture of wastes. The term “toxic,” “corrosive,” “flammable,” “irritant,” or “strong sensitizer” shall be given the same meaning as found in the California Hazardous Substances Act in the Health and Safety Code, Section 28740 et seq.

**V.** Integrated Waste Management Act (IWMA). shall mean the California Integrated Waste Management Act of 1989 (AB 939), including all subsequent amendments.

**W.** Materials Recovery Facility. means a facility intended primarily for recovery and processing of Recyclable Materials that are source-separated, or a facility intended to recover Recyclable Materials from Solid Waste. Such a facility may also function as a Transfer Station.

**X.** Multi-Residential Units. shall mean permanent buildings containing three or more Residential Units including, but not limited to, condominiums, apartment houses, motels, hotels, mobilehome parks where mobilehome lots are not individually owned, travel trailer parks, and

recreational vehicle parks.

**Y.** Person shall mean any Person, firm, business, sole proprietorship, partnership, joint venture, trust, association, or corporation whether for profit or non-profit.

**Z.** Public Roads shall mean those road rights of way in the City which have been offered to the City and accepted for the purpose of vesting title whether they have been accepted for City maintenance or not

**AA.** Recyclable Materials. means material which has been segregated from other Solid Waste material for the purpose of reuse or recycling, including, but not limited to, discarded paper, glass, cardboard, plastic, ferrous materials, green waste or aluminum. Recyclable Materials also include mixed Recyclables consisting of two or more of the above-referenced material types separated from non-Recyclable Materials at the point of Collection and offered for Collection in a mixture including not more than five (5) percent Solid Waste by weight.

**BB.** Residential Unit. shall mean an occupied dwelling within the City occupied by a Person or group of Persons. A Residential Unit shall be deemed occupied when either Waster or domestic light and power services are being supplied thereto. This: definition shall apply also to mobilehome subdivisions where the mobilehome lot is individually owned. A duplex is considered to be two (2) attached Residential Units.

**CC.** Solid Waste. means all putrescible and non-putrescible solid and semisolid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. "Solid Waste" does not include Green Waste or Recyclable Materials. "Solid Waste" does not include Hazardous Waste as defined by the State of California, or low-level radioactive waste. "Solid Waste" does not include medical waste which has not been treated, as required pursuant to state law, for subsequent disposal at a Solid Waste Facility.

**DD.** Solid Waste Facility. means any facility that is licensed, permitted or otherwise approved by all governmental bodies and agencies having jurisdiction, and that is designed to manage Solid Waste, Recyclable Materials, or Green Waste, and includes transfer, Recyclable Materials processing, material recovery, composting, waste-to-energy, or landfill facilities.

**EE.** Special Wastes. means any Solid Waste that, because of its source of generation, physical, chemical, or biological characteristics or unique handling or disposal practices, is specifically conditioned in the Solid Waste Facility permit for handling and/or disposal. Examples of Special Wastes include, but are not limited to, the following: bulky items, used tires, used oil, grease trap pumpings, septic tank pumpings, sewage sludge, asbestos, medical wastes, shipboard and port waste, automobile shredder waste, abandoned vehicles, street sweepings and catch basin debris, agricultural wastes, cannery waste, and incinerator ash.

**FF.** Term. means the Term of this Agreement, as provided for in Section 3.

**GG.** Transfer Station. shall include those intermediate waste handling facilities where Solid Wastes are transferred from hauling vehicles to a transfer vehicle and where the Solid

Waste or a portion thereof may undergo incidental processing, recycling or further handling before transportation to a disposal site, Solid Waste processing facility, or other facilities. The following facilities do not constitute a “transfer station”:

- 1) Locations where less than 15 cubic yards of combined container volume are provided to serve as community or multi-residence receptacles for residential refuse.
- 2) Storage receptacles for waste from multi-residential buildings or for commercial Solid Wastes.
- 3) A container used to store construction or demolition wastes at the place of generation.
- 4) Containers used to store salvaged materials.

**HH.** Traveled Way. shall mean the accessible Public Road rights of way within the City, and shall include similar roads within Public facilities. “Traveled Way” does not include State or Federal Highways.

**II.** Wood Waste. means industrial dimension lumber, pallets, shipping dunnage, and similar discarded processed wood materials, and large tree limbs.

### **SECTION 3. GRANT AND TERM OF EXCLUSIVE FRANCHISE.**

**A.** Pursuant to Ordinance 657, and the IWMA, and subject to the terms and conditions of this Agreement, City hereby grants to Franchisee the exclusive right, privilege, and franchise to provide the services set forth in **Exhibit A** of this Agreement within the City of Wildomar specified in **Exhibit B** of this Agreement for the Term set forth below and to use the City streets and roads for such purposes.

**B.** In consideration of the rights, privilege, and franchise granted by this Agreement, Franchisee hereby agrees (1) to provide the services set forth in **Exhibit A** of this Agreement within the City of Wildomar specified in **Exhibit B** of this Agreement for the Term set forth below; (2) to not collect from any other portions of the City covered by Exclusive Franchise Agreements, except as specified in **Exhibit B**, Solid Waste, Recyclable Materials or Green Waste; (3) to the cancellation, upon the Effective Date of this Agreement, of any permit or other authorization issued by or under the authority of City for the Collection of Solid Waste, Recyclable Materials, or Green Waste for the portion of the City permit area covered by Exclusive Franchise Agreements, and (4) hereby waives any right it may have pursuant to Public Resources Code section 49520 or other laws to advance notice of the cancellation of such permit or other authorization for those areas represented by Exclusive Franchise Agreements.

Franchisee agrees to abide by the conditions of any permit or other authorization pertaining to its operations within any City area not covered by an Exclusive Franchise Agreement and to terminate the operations upon effective date of any future Exclusive Franchise Agreement in accordance with the provisions of this Agreement.

In addition, Recyclable Materials collected from Commercial and Industrial Units are

included within the Exclusive Franchise, to the extent provided for in state and federal law.

**C.** This Agreement shall continue for a period of five (5) years from the Effective Date. One year after the Effective Date of this Agreement, and annually thereafter, the Term of this Agreement shall be extended for an additional one year, unless no later than thirty (30) days prior thereto either the City or the Franchisee gives written notice of non-renewal to the other party. Only one notice of non-renewal shall be required hereunder. Notice of non-renewal need not be based on cause. The above provisions in no way affect the City's right to terminate this Agreement following thirty (30) days notice for nonperformance, as provided in Sections 9 and 10 hereof.

**D.** City will enforce the exclusivity of the Franchise granted in this Agreement, but will use its reasonable judgment in determining whether enforcement is necessary and the type of steps that should be taken.

#### **SECTION 4. FRANCHISE AREA.**

The Franchise Area granted by this Franchise Agreement is defined in **Exhibit B**, "Franchise Area."

#### **SECTION 5. SERVICES PROVIDED BY FRANCHISEE.**

##### **A.** General.

Franchisee shall provide the Collection and transportation of Solid Waste within the Franchise Area in accordance with the terms of this Agreement. The specific manner in which these services shall be provided is specified in **Exhibit A**. The Franchisee shall also, upon written request of the Director, provide optional services in the Franchise Area in accordance with the terms set forth in **Exhibit A**, and the rates set forth in **Exhibit E**. Minimum levels of Solid Waste service to be provided under this Agreement are defined below, however, no residential or commercial or business customer shall be refused service, if that party is willing to pay for such service and is current in payment. Disputes arising over the terms on which a particular customer may be serviced because of remoteness of location, difficulty of access, particular needs of the customer, etc. shall be decided in accordance with the provisions of Section 16 (B)(2) related to "service complaints."

##### **B.** Single Family Residential.

Weekly Service. Not less often than once per week, and more frequently if required to handle the waste stream of the premises, Franchisee shall collect the Solid Waste (except bulky items and Hazardous Waste) which have been placed, kept, or accumulated in containers at Residential Units within the Franchise Area and placed at curbside prior to Franchisee's normal weekly Collection time. All Solid Waste must be placed within containers at curbside without obstructions so as to permit Collection, unless otherwise agreed upon by City and Franchisee. Franchisee may supply containers, and/or may require the use of specific containers as specified in **Exhibit A**. Franchisee may negotiate special pickup procedures, above and beyond the normal services described above, with customers for an additional fee in an amount provided in **Exhibit E**.

**C. Commercial, Industrial, and Multi-Residential.**

1) Multi-Residential Weekly Service. Not less often than once per week, and more frequently if required to handle the waste stream of the premises where the Bins are located, Franchisee shall collect the Solid Wastes (including bulky items which have been placed in a closed bin, and excepting metallic white goods and Hazardous Waste) which have been placed, kept or accumulated for Collection in Solid Waste Bins at Multi-Residential Units.

2) Commercial and Industrial Weekly Service. Not less often than once per week, and more frequently if required to handle the waste stream of the premises where the Bins are located, Franchisee shall collect the Solid Wastes which have been placed, kept or accumulated for Collection in Solid Waste Bins at Commercial Units.

**D. Construction and Temporary Bin/Rolloff Services.**

Franchisee shall provide construction and temporary bin/rolloff services using rates reflected in **Exhibit E**.

**E. Semi-Annual Cleanup and Bulky Wastes Collection.**

1) At least twice a year, Franchisee shall provide a one (1) day cleanup service to all Residential Unit customers on its routes wherein all bulky materials left on the curb, or other designated location on or adjacent to customer's property, up to a maximum of one and one-half cubic yards, will be removed and disposed. Cost for this service, excluding the cost of disposal, shall be included within the normal monthly rates for Residential Unit Solid Waste Collection as specified in **Exhibit E**. When feasible, the bulky material will be collected in a vehicle separate from the one used to pick up the residential unit's Solid Waste on a weekly basis so that it can be readily identified as not requiring tipping fees when it arrives at the designated landfill. Franchisee will make a good faith effort to divert the bulky material away from the designated landfill and to another facility where it can be either recycled or refurbished for reuse. Collection of heavy waste materials such as dirt, rock, concrete, and asphalt are not included in this service.

2) Franchisee shall provide Residential Unit customers with Bulky Wastes pickup service arranged at the request of the customer for large household appliances or furniture or multiple smaller items not exceeding one and one-half cubic yards. Collection of heavy waste materials such as dirt, rock, concrete, and asphalt are not included in this service. Franchisee shall advertise the availability of the Bulky Wastes Collection service and shall provide the Bulky Waste Collection service within seven (7) working days of request by customer. Franchisee shall bill the customer for Bulky Waste Collection at the rate established in **Exhibit E**. Standard disposal rates shall be paid by Franchisee at the System Facility.

3) Franchisee shall provide large rolloff refuse containers requested by the Director or his designee to respond to organized community clean up efforts at no charge. Franchisee shall deliver containers to agreed upon collection points and shall cooperate

with the Director and designated community leaders to remove containers and dispose of collected Solid Waste. Franchisee is obligated to provide the equivalent of two 40-cubic yard bins/loads per year for each 1,000 Residential Unit customers serviced within the Franchise Area.

**F. Illegal Dumping Retrieval Services**

Franchisee agrees to provide specified illegal dumping retrieval and disposal services as follows beginning sixty (60) days prior to the effective date of all other service requirements of this contract:

1) Franchisee shall turn in to City a monthly report of illegal dumping of trash (in quantities exceeding one equivalent medium size trash bag) and bulky items (such as tires, couches, and appliances) noticed within or along the Traveled Way in the franchise area. For the purpose of this provision, the Traveled Way shall include public rights of way within twenty (20) feet of the paved roadways and within twenty (20) feet of the shoulders of unpaved roadways.

2) Franchisee shall anticipate and arrange to receive daily by facsimile, copies of reports of illegal dumping reported by citizens to the City.

3) Franchisee shall arrange to remove and shall dispose all such reported illegally dumped materials on Traveled Way within forty-eight (48) hours of the receipt of reports thereof except for remote areas, as approved by the director, for which the removal shall occur within five working days. The Franchisee may request that specified roads, determined by the franchisee to be inaccessible for waste removal, be considered by the Director for revised waste removal requirements.

4) Franchisee shall leave the original reports (or copies thereof) with the gate fee collector at City disposal sites at the time of delivery of the corresponding loads of illegally dumped debris. Nothing herein shall prevent the immediate pickup, delivery and reporting thereof, as part of the normal route collection activities, of illegally discarded material.

5) Abandoned vehicles and objects or appliances larger than conventional household furniture or appliances as well as hazardous, special and medical wastes are exempt from the retrieval requirements set forth herein, provided, however, that of these exempted items noted within the traveled way are to be immediately reported to the Director.

6) The Franchisee shall, upon request of private property owners or the Director, provide removal services for waste illegally disposed of on their private property, excluding those wastes described immediately above in paragraph 5, at a cost or costs as be specified in Exhibit E.

7) Illegally disposed materials along Traveled Ways within one mile of disposal sites within the City are exempt from the retrieval requirements set forth herein.

8) Within sixty (60) days of the end of each year of this Agreement, Franchisee shall submit to the Director an accurate accounting of its costs to provide Illegal Dumping Retrieval Service.

**G. Collection of Used Motor Oil.**

Franchisee shall collect used motor oil from single family residential customers in accordance with the Recycled Oil Collection and Storage Standards pursuant to Riverside County Ordinance 657 and Riverside County Resolution 90-668.

**H. Diversion Services**

1) Diversion services proposed by Franchisee as described in **Exhibit H** shall be provided throughout the duration of this contract.

2)

**I. Collection and Equipment**

Franchisee shall provide an adequate number of vehicles and equipment for the Collection, transportation, recycling, and disposal of Solid Waste for which it is responsible under this Franchise Agreement. No vehicle shall be used for the collection and transportation of Solid Waste, Recyclable Materials or Green Waste, prior to inspection and approval by the County Department of Environmental Health. The equipment of Franchisee used under this Franchise Agreement shall in addition be subject to inspection by the County Department of Environmental Health on an annual basis.

1) All vehicles used by Franchisee under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, and shall be uniformly painted.

2) Solid Waste Collection vehicles shall be washed at least once every seven (7) calendar days.

3) A local or toll free telephone number, and vehicle number shall be visibly displayed on all vehicles in letters and figures no less than three inches (3") high.

4) Franchisee shall use its best efforts to use alternative fuel vehicles for the collection of Solid Waste within the City.

**SECTION 6. OWNERSHIP OF SOLID WASTE.**

Once Solid Waste, Green Waste, Wood Waste and construction debris collected from Residential, Commercial or Multi-Residential Units are picked up by Franchisee from Bins for Collection or containers at curbside, and once Recyclable Materials are set out for collection, ownership shall transfer to Franchisee. Solid Waste, Recyclable Materials, Green Waste, Wood Waste and construction debris, or any part thereof, shall become the property of the owner or operator of a System Facility once deposited there by Franchisee.

**SECTION 7.                  DIRECTION OF COLLECTED MATERIALS.**

Except to the extent that the City’s exercise of flow control rights to a particular solid waste facility is required to comply with the mandates of the California Integrated Waste Management Act of 1989 (“IWMA”) and subsequent legislation and regulation, Franchisee shall be solely responsible for and shall direct all waste material collected to a properly permitted solid waste facility, in accordance with applicable law.

**SECTION 8.                  INDEMNIFICATION AND INSURANCE, AND BOND.**

**A.**          Indemnification of City.

Separate and distinct from the insurance provisions found in this Agreement, Franchisee agrees to defend, indemnify, and hold harmless, City and its officers, agents, and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including, but not limited to, injury to Franchisee’s officers, agents, or employees which arise from or are connected with or are caused or claimed to be caused by negligent acts or omissions of Franchisee, and its officers, agents, or employees, in performing the work or services herein, and all reasonable costs and expenses of investigating and defending against same; provided, however, that Franchisee’s duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence or misconduct of City or its agents, officers, or employees.

This obligation shall not be limited by the amounts or coverage specified in the insurance policies and bond(s) supplied by franchisee in conjunction with the agreement. This indemnification obligation shall survive the term of the franchise.

**B.**          Hazardous Substances Indemnification.

Without limiting the generality of the foregoing, if Franchisee has acted negligently or willfully with respect to the collection or transportation of waste materials, Franchisee shall indemnify, defend with counsel approved by City, protect and hold harmless City and its respective employees, agents, assigns, and any successor or successors to City’s interest from and against all claims, actual damages (including, but not limited to, special and consequential damages), natural resources damage, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, but not limited to, attorneys’ and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its respective officers, employees, agents, or Franchisees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Wastes at any place where Franchisee stores or disposes of municipal Solid Waste or construction debris pursuant to this Agreement. The foregoing indemnity is intended to operate as an Agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, “CERCLA”, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to

insure, protect, hold harmless, and indemnify City from liability.

**C. Minimum Diversion Requirements**

The percentage of all materials collected by Franchisee under this Agreement, as detailed in Form. 5 in programs approved by City, shall be recycled, processed and/or marketed by Franchisee in a manner which entitles City to diversion credit as specified in California Public Resources Code, Section 41780 measured on a calendar year basis beginning January 1, 2010 (“Minimum Diversion Requirement”) provided the City adopts the recommended diversion programs as stated in Form 5, Diversion Proposal. Within sixty (60) days of each calendar year, Collector shall pay City as liquidated damages for failing to meet this requirement, twenty dollars (\$20.00) per ton, for each ton which was not diverted, which if it had been diverted would have enabled Franchisee to meet the Minimum Diversion Requirement for calendar year 2000 and each successive year. Further, if Franchisee fails to meet the annual Minimum Diversion Requirements two (2) times after the execution of the agreement, City may terminate this Agreement upon one hundred twenty (120) days notice. If the City finds that additional programs are necessary to meet any IWMA required diversion goals the City may require proposals for additional diversion programs to meet the diversion requirements. If necessary, City and Franchisee shall enter into good faith negotiations, but if agreement regarding programs and/or rate adjustments cannot be reached, City reserves the right upon one hundred twenty (120) days notice thereof to terminate the Franchisee’s Franchise rights to collect Solid Waste, Recyclable Materials, and/or Green Waste, and/or to independently implement programs that may be needed to meet the minimum diversion requirement.

If commercial recycling is being performed by generators, and others, to the extent the Franchisee is unable to meet its Minimum Diversion Requirements, Franchisee shall document such commercial recycling in writing and petition the Director for an equitable adjustment of Franchisee’s Minimum Diversion Requirement, which shall not be unreasonably denied.

**D. Worker’s Compensation Insurance.**

Franchisee shall obtain and maintain in full force and effect throughout the entire Term of this Agreement full workers’ compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the Director throughout the Term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, agents, or Franchisees for losses which arise from work performed by the named insured for the City.

**E. Public Liability Insurance.**

Franchisee shall obtain and maintain in full force and effect throughout the entire Term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of three million dollars (\$3,000,000.00) aggregate and one million five hundred

thousand dollars (\$1,500,000.00) per occurrence for bodily injury and property damage. The insurance shall protect Franchisee, the City, and its elected or appointed officials, employees, and agents, from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Franchise Agreement, whether such operations be by Franchisee itself, or by its agents and/or employees. Copies of the policies or endorsements evidencing the above required insurance coverage shall be filed with the Director. All of the following endorsements are required to be made a part of the insurance policies required by this Section:

1) “This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it.”

2) “This insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company.”

3) Franchisee shall cause its insurance carrier(s) to furnish City by direct mail with certificate(s) of insurance showing that such insurance is in full force and effect, and City is named as additional insureds with respect to this Franchise and the obligations of Franchise hereunder. Further, the certificate(s) shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice (ten (10) days in the event of cancellation for non-payment) shall be given to City prior to modification, cancellation or reduction in coverage of such insurance. In the event of any such modification, cancellation or reduction in coverage and on the effective date thereof, this Franchise shall terminate forthwith, unless City receives prior to such effective date another certificate from an insurance carrier that the insurance required herein is in full force and effect.

The limits of such insurance coverage, and companies, shall be subject to review by the Director every year and may be modified at that time by the City upon a demonstration of reasonable need. The City shall be named as an additional insured on all policies and endorsements.

**F. Performance Bond or Letter of Credit.**

1) Franchisee shall furnish a corporate surety bond as security for performance under this Agreement. The amount of the bond shall be the average of two months expected Gross Receipts. Premium for the above described bond(s) shall be paid by Franchisee. A certificate from the surety showing that the bond premiums have been paid in full shall accompany the bond. The surety on the bond shall be a company acceptable by the City and shall be a corporate surety company authorized to do business in the State of California.

**G. Modification.**

The insurance requirements provided herein may be modified or waived in writing by the Board upon the request of Franchisee, provided the Board determines such modification or

waiver is in the best interest of City, in its reasonable judgment, considering all relevant factors, including financial guarantees provided by the parent company of Franchisee.

## **SECTION 9.            DEFAULT AND REMEDIES.**

**A.**     If the Director determines that the Franchisee’s performance pursuant to this Agreement has breached its obligation or otherwise has not been in conformity with reasonable industry standards, the provisions of this Agreement, the requirements of the California Integrated Waste Management Board, including, but not limited to, requirements for source reduction and recycling (as to the waste stream subject to this Franchise Agreement) or any other applicable Federal, State, or local law, ordinance or regulation, including, but not limited to, the laws governing transfer, storage, or disposal of Special Wastes or Hazardous Wastes, the Director shall advise Franchisee in writing of such deficiencies. The Director may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the mailing of such written notice. The Director shall review the Franchisee’s response and either notify the Franchisee of that decision, in writing, or refer the matter to the Board. A decision or order of the Director shall be final and binding on Franchisee if the Franchisee fails to file a “Notice of Appeal” with the Director within thirty (30) days of receipt of the Director’s decision. Within ten working days of receipt of a Notice of Appeal, the Director shall either refer the appeal to the Board for proceedings in accordance with Subsections 9B and 9C, below, or refer the matter to a hearing officer as provided in Section 11, below. Where the City and the Franchisee have claims pending against each other at the same time under Section 9 and Section 11 jurisdiction shall be with the Board.

**B.**     The Board, may set the matter for hearing. The Board shall give Franchisee, and any other Person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the Board shall consider the report of the Director indicating the deficiencies, and shall give the Franchisee, or its representatives and any other interested Person, a reasonable opportunity to be heard.

**C.**     Based on the evidence presented at the public hearing, the Board shall determine by Resolution whether the Agreement should be terminated or other remedies imposed. If, based upon the record, the Board determines that the performance of Franchisee is in breach of any material Term of this Agreement or any material provision of any applicable Federal, State, or local statute, ordinance or regulation, or is deficient with respect to prevailing industry standards, the Board in the exercise of its sole discretion, may terminate forthwith, this Agreement. Franchisee’s performance under its franchise is not excused during the period of time prior to the Board’s final determination as to whether such performance is deficient.

**D.**     The right of termination is in addition to any other rights of City upon failure of Franchisee to perform its obligations under this Agreement.

**E.**     The City further reserves the right to terminate Franchisee’s franchise, following public hearing therefor, not later than 6 months following the date of the hearing at which a majority vote of the board determines it is in the public interest to do so:

- 1) If the Franchisee practices, or attempts to practice, any fraud or deceit upon the City.
- 2) If the Franchisee becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding.
- 3) If the Franchisee fails to provide or maintain in full force and effect, the workers' compensation, liability, indemnification coverage, and performance bond as required by the Agreement.
- 4) If the Franchisee willfully violates any orders or rulings of any regulatory body having jurisdiction over the Franchisee relative to this Agreement, provided the Franchisee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the franchise shall be deemed to have occurred.
- 5) If the Franchisee ceases to provide Collection services as required under this Agreement overall or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reason within the control of the Franchisee.
- 6) If the Franchisee willfully fails to make any payments required under the Agreement and/or refuses to provide City with required information, reports, and/or test results in a timely manner as provided in the Franchise Agreement.
- 7) For any other act or omission by the Franchisee which materially violates the terms, conditions, or requirements of this franchise, Ordinance 657, successor ordinance, other City ordinance, the IWMA, successor acts, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- 8) Should the Franchisee or any parent corporation or entity, or any of the officers or directors of the Franchisee or any parent corporation or entity be found guilty of felonious conduct related to the performance of this Agreement, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous waste or materials, or violation of Racketeer - Influenced Corrupt Organizations (RICO) Statutes.

**F. Professional Conduct**

- 1) In the event that any official, employee, or contractor for Franchisee or its successor-in-interest is indicted by a grand jury, named as a defendant in a felony complaint filed in any court in the United States, or is otherwise alleged to have participated in any criminal activity directly or indirectly associated with the solid waste management business, Franchisee or its successor-in-interest shall provide written notice thereof to the Director within 14 days of such indictment, complaint or allegation. Such notice shall contain a description of the indictment, complaint or allegation, as well as a copy of such indictment or complaint or other matters of public record related thereto. In

addition to the foregoing, Franchisee or its successor-in-interest shall provide the Director with copies of any reports required to be prepared by Franchisee or its successor-in-interest pursuant to federal securities laws, including quarterly and annual reports.

2) In the event that any official, employee, or contractor for Franchisee or its successor-in-interest, who has any responsibility for any aspect of the franchisee's operations under this contract, is convicted, indicted by a grand jury, or named as a defendant in a felony complaint filed in the Superior Court or a complaint filed in Federal Court associated with conduct of doing business for Franchisee or its successor-in-interest, this person shall, upon request of the City be immediately removed from any assignment whatsoever, directly associated with operations under this contract during the pendency of trial and/or following conviction.

**G.** This Agreement is subject to all present and future laws, regulations and orders of Federal, State, City, and City governments and any instrumentalities thereof. Should either of the parties hereto at any time during the Term of this Agreement be ordered or required, pursuant to any laws, regulations or orders, to do any act that substantially impairs the party's ability to perform under this Agreement, then such party shall notify the other party of such order or requirement and the law, regulation or order on which such order or requirement is based. Unless the parties agree in writing to continue this Agreement, or to renegotiate the terms of the Agreement within thirty (30) days after the Effective Date of such law, regulation or order, then this Agreement shall terminate on the thirty-first day following the Effective Date of such law, regulation or order. Nothing in this Agreement shall prohibit either party, at that party's sole expense from obtaining or seeking to obtain modification or repeal of such law, regulation or order or restrict either party's right to legally contest the validity of such law, regulation or order.

## **SECTION 10. DISRUPTIONS IN SERVICE.**

**A.** If, at any time during the Term of this Agreement for a period of seventy-two (72) consecutive hours or more, Franchisee fails for any reason to collect and remove Solid Waste as required hereunder, City may immediately, upon written notice to Franchisee, cause such Solid Waste to be collected and removed by whatever means available to City. Franchisee shall pay any and all costs incurred by City in providing the service. This clause shall not apply to failure to collect due to unsafe weather or road conditions, provided, however, that the franchisee immediately notifies the Director of the areas affected by such conditions with an estimate of when service will be resumed.

**B.** In the event Franchisee fails to collect and remove Solid Waste as required hereunder for a period of at least seventy-two (72) consecutive hours, City, upon written notice to Franchisee, may take temporary possession of and operate any and all trucks or other equipment used by Franchisee for Collection and removal of Solid Waste in the Franchise until such time, not to exceed one hundred twenty (120) days, as Franchisee satisfies City that it is ready, able, and willing to comply with all of the Provisions of this Agreement. In this event Franchisee shall provide City with driver route listings and necessary operational records. City shall be reimbursed by Franchisee for all costs of providing such substitute service. In such events, Franchisee shall indemnify and hold harmless City from and against any damage or liability to any third Person injured or damaged as a result of Franchisee's actions or inactions

excepting City's sole negligence in providing such substitute service. Employees of Franchisee, including management employees, may be employed by City during any period in which City temporarily assumes the obligations of Franchisee under this Agreement. However, the rates of compensation paid to Franchisee's employees, or any other employees, during such period shall not exceed the rates in effect between Franchisee and its employees at the time Franchisee's service was interrupted.

**C.** The parties hereby agree that if Franchisee's failure to perform hereunder is due to a strike or labor dispute or other force majeure event, this Agreement shall not terminate and shall continue to be effective for the duration of such strike or labor dispute. In the event of such a strike or labor dispute, Franchisee shall maintain an unobstructed entrance at its place of business which is not regularly used but which will be primarily reserved for use by City access while City or its designated representative is performing Franchisee's responsibilities. If the labor dispute or picketing blocks access to Franchisee's place of business, Franchisee shall receive no compensation for any time period in which it failed to perform in accordance with the provisions of this Agreement.

#### **SECTION 11. ADMINISTRATIVE HEARING PROCEDURES.**

**A.** Should Franchisee contend that the City is in breach of this Franchise Agreement, it shall file a request with the Director for an administrative hearing on the allegation.

**B.** If the Director refers a matter to a hearing officer, or if the Franchisee should allege a breach of the franchise by the City, City and Franchisee shall mutually agree on a hearing officer within twenty (20) days. City and the Franchisee may, but are not required to, choose a hearing officer from among retired California Superior Court judges or Appellate Court justices, none of whom are related to the parties, and such retired judges or justices may be affiliated with private judicial service companies, such as Judicial Arbitration and Mediation Services.

**C.** The hearing shall be conducted according to the provisions of California Government Code Section 11500, et seq. The exclusive venue shall be in Wildomar, California. A hearing officer to whom a matter is referred shall have the authority to (i) order the City or the Franchisee to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (ii) assess damages and/or levy a penalty upon the City or Franchisee consistent with the terms of this Agreement including terminate the Agreement; or (iii) find there has been no breach. The amount of the penalty shall be reasonably related to the seriousness of the breach of the Agreement.

**D.** The party losing the hearing shall be liable for the hearing officer's fees.

**E.** Any failure of the Franchisee or City to comply with the hearing officer's order shall be deemed a material breach of the Agreement, and may be grounds for termination of the Agreement.

**F.** Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to Agreement by the parties, or if Agreement

is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights.

**G.** Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.

**H.** Until final judgment is entered from the hearing officer proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in the Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon a finding that the party subject thereto acted with substantial justification or if the interests of justice so require.

**I.** Judicial review is as provided for in Code of Civil Procedure Section 1094.5.

## **SECTION 12. FRANCHISE TRANSFERABILITY.**

**A.** The franchise granted by this Agreement shall not be transferred, sold, hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any Person, except the Franchisee, either by act of the Franchisee or by operation of law, without the prior written consent of the City expressed by Resolution. Any attempt by Franchisee to assign this franchise without the consent of City shall be void. The City shall review such a request using such criteria as it deems necessary including, but not limited to, those listed in Subsection C.

**B.** The City shall not unreasonably withhold its consent to a transfer of the franchise granted by this Franchise Agreement. The City may impose new conditions of approval on a Franchise Agreement transfer, including, but not limited to, conditions requiring acceptance of any reasonable amendments to this Agreement.

**C.** If the Franchisee requests that the City consider and consent to a transfer, the Franchisee shall meet the following requirements:

1) The Franchisee shall pay the City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed transferee, and to review and finalize any documentation required as a condition for approving any such transfer.

2) The Franchisee shall furnish the City with audited financial statements of the proposed transferee's operations for the immediately preceding three (3) operating years.

3) The Franchisee shall furnish the City with satisfactory proof: (i) that the proposed transferee has at least five (5) years of solid waste management experience of a scale equal to or exceeding the scale of operations conducted by Franchisee under this Agreement; (ii) that in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management laws. Franchisee shall supply the City with a complete list of such citations and censures; (iii) that the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed transferee conducts its solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the Collection and disposal of waste; (v) of comparable financial strength; (vi) of required insurance and bonds; and (vii) of other material as may be requested by the City.

**D.** This franchise or portions thereof may be transferred, sold, hypothecated, leased, or assigned by the City to any Public Agency having the authority to provide solid waste collection services if the Board determines it is in the public interest to do so

### **SECTION 13.        REPORTS.**

**A.** Franchisee shall provide the Director the periodic reports regarding waste stream Collection, recovery and disposal specified in **Exhibit D** of this Agreement.

**B.** Franchisee shall make its customer base and records available to the Department for audit at reasonable times for purposes relevant to review of performance and rate adjustment requests under the Agreement.

### **SECTION 14.        COMPENSATION.**

**A.** Franchisee Rates.

Franchisee shall provide the services described in this Agreement and its exhibits in accordance with the rates set forth in the **Exhibit E**. Recyclable Materials collected from Commercial and Industrial Units are included in this Exclusive Franchise to the extent provided in state and federal law. **Exhibit E** specifies the maximum rate to be charged for such materials.

**B.** Modification and Adjustment of Rates.

If the Franchisee owns, has a financial interest in or operates any landfill located in the City at any time during the effective period of this contract, the Franchisee shall provide copies of all contract and any supplemental agreements is has with each of its (in the City) contract customers for disposal of waste at these sites. If rate discrepancies or financial incentives exhibit a potentially unfair advantage or subsidy, the Franchisee hereby agrees the City Council shall have the authority to renegotiate the City Franchise rates and/or the terms of the landfill operating agreement. The rates set forth on **Exhibit E** shall remain in effect until adjusted by City following a public hearing as provided in **Exhibit F**.

**C. Notice of Rate Changes**

The Franchisee shall provide customers a minimum of thirty (30) days written notice of the implementation of changes in any of its rates and charges provided Franchisee has ninety (90) days notice from City regarding approved changes in landfill fees and CPI adjustments. The wording of the notice shall be submitted to the Director ten (10) days in advance of its release, and shall be approved as to form prior to release. City shall provide Franchisee with written notice of changes in Solid Waste Facility, Franchise, or Illegal Dumping Retrieval Services at least forty-five (45) days in advance of the anticipated rate changes.

**D. Resolution of Disputes Regarding Rate Adjustments**

Any dispute regarding adjustment, or the computation or any other dispute regarding Franchisee's reimbursement for fees, special services, or extraordinary costs described in **Exhibit D**, shall be decided by the Director or his representative. If resolution can not be reached, the Director shall refer the matter to the City Council, or to a hearing officer as provided in Section 11 above. The rates in effect at the time such dispute is submitted to the City Council, or a hearing officer shall remain in effect pending resolution of such dispute. The Effective Date of any dispute resolution, whether retroactive or prospective, shall reasonably be determined by the City Council, or the hearing officer, as appropriate. Any Franchisee operating in a Comprehensive Collection Area shall be subject to all applicable provisions in the City's comprehensive collection ordinance.

**E. Billing and Payment.**

Franchisee may bill and receive payment as provided in **Exhibit E**. In cases where Franchisee includes a Landfill Tipping Fee amount on a customer's bill, the City shall prescribe the amount consistent with established waste generation factors and Tipping Fees. Further, on a quarterly basis, the City shall be allowed to include a one (1) page insert for the - purpose of public education regarding waste disposal, recycling, or other environmental issues. Print ready copy of such insert, which conforms to the Franchisees' billing, shall be delivered by City Information Officer thirty (30) working days in advance of Franchisee's billing dates.

**F. Delinquent Accounts.**

Franchisee may discontinue service for non-payment of customer's billing or customer's failure to substantially comply with the requirements of this Agreement. After the Franchisee has given fifteen (15) days' notice to customer for non-compliance, Franchisee shall notify the Director in writing of any service termination including a written copy of the notice to the customer. Upon payment of the delinquent fees, if applicable, Franchisee shall resume Collection on the next regularly scheduled Collection day. Any Franchisee operating in a comprehensive collection area shall be subject to all applicable provisions in the comprehensive collection ordinance.

**G. Refunds.**

Franchisee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is discontinued by

written notification to Franchisee by the customer.

**SECTION 15. FRANCHISE FEES.**

A Franchise Fee of eight (8) percent of the Franchisee's Gross Receipts, less landfill fees or Transfer Station Tipping Fees, shall be payable by Franchisee to the Department thirty (30) days after the close of each quarter of each year this Agreement remains in effect. The Franchise Fee shall not be required to be paid for revenues generated by the collection or sale of Recyclable Materials and Green Waste collected by the Franchisee, or for the provision of construction roll off services. A penalty of ten (10) percent shall be due for fees not submitted within the thirty (30) day time period.

City may, at its sole discretion, adjust the Franchise Fee at any time after giving Franchisee one hundred twenty (120) days notice. Such adjustment shall be cause for a corresponding rate adjustment in accordance with **Exhibit F**.

**SECTION 16. OTHER REQUIREMENTS.**

**A. Privacy**

Franchisee shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by the IWMA, and/or City. In addition, Franchisee shall not market, sell, convey, or donate to any Person any list with the name or address of customers except that Franchisee may provide such lists to authorized employees and authorized representatives of the City as necessary to comply with this Agreement. The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State Law.

**B. Public Access to the Franchisee**

1) Office Hours. Franchisee's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday. A representative of Franchisee shall be available during office hours for communication with the public at Franchisee's principal office. In the event that normal business cannot be conducted over the telephone, a representative of Franchisee shall agree to meet with the public at a location agreeable to Franchisee and the public. Normal office hours telephone numbers shall either be a local or toll free call. Franchisee shall also maintain a local or toll free after-hours telephone number for use during other than normal business hours. Franchisee shall have a representative or answering device or system available at the after-hours telephone number during all hours other than normal office hours.

2) Service Complaints. All customer complaints shall be directed to Franchisee. Franchisee agrees to use its best efforts to resolve all complaints received by

mail, by telephone, or in Person, by close of business of the second business (waste Collection) day following the date on which such complaint is received. Service complaints may be investigated by the Director or a designee. Franchisee shall maintain records listing the date of customer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Franchisee to resolve the complaint. All such records shall be maintained and shall be available for inspection by City.

3) Government Liaison. The Franchisee shall designate a “government liaison” who shall be responsible for working with the Department to resolve customer complaints.

#### C. Resolution of Disputed Customer Complaints.

The Franchisee shall notify customers of this complaint arbitration procedure at the time customers apply for or are provided service, and subsequently, annually. Procedures for resolution of disputed claims shall be as follows:

1) A customer dissatisfied with Franchisee’s decision regarding a complaint may ask the City to review the complaint. To obtain this review, the customer may request City review within thirty (30) days of receipt of Franchisee’s response to the Complaint, or within forty-five (45) days of submitting the complaint to the Franchisee, if the Franchisee has failed to respond to the complaint. The City may extend the time to request its review for good cause.

2) Before reviewing the complaint, the Director shall refer it to the Franchisee. If the Franchisee fails to cure the complaint within ten (10) days, the Director shall review the customer’s complaint and determine if further action is warranted. The Director may request written statements from the Franchisee and customer, and/or oral presentations.

3) The Director shall determine if the Customer’s complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Franchise Agreement or a penalty of up to one hundred dollars (\$100.00) for any single event in addition to any actual damages.

4) The Director may delegate these duties to a designee. The decision of the Director or a designee shall be final on any matter under five thousand dollars (\$5,000.00). In the event of a decision on a matter awarding five thousand dollars (\$5,000.00) or more, Franchisee may seek review pursuant to Section 11 above.

#### D. Hazardous Materials and Waste Handling and Disposal

The Franchisee shall comply with the procedures detailed in **Exhibit G** of this Agreement.

**SECTION 17.           FORCE MAJEURE.**

Franchisee shall not be in default under this Franchise Agreement in the event that the services provided by the Franchisee are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides, and fires, strikes, lockouts, and other labor disturbances or other catastrophic events which are beyond the reasonable control of Franchisee. Other catastrophic events do not include the financial inability of the Franchisee to perform or failure of the Franchisee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Franchisee.

**SECTION 18.           OTHER PROVISIONS.**

**A.**     Independent Contractor.

Franchisee is an independent contractor and not an officer, agent, servant, or employee of City. Franchisee is solely responsible for the acts and omissions of its officers, agents, and employees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between City and Franchisee. Neither Franchisee nor its officers, agents, or employees shall obtain any rights to retirement or other benefits which accrue to City employees.

**B.**     Property Damage.

Any physical damage caused by the actions or non-actions of employees, officers, or agents of the Franchisee to private or public property shall be promptly repaired or replaced by the Franchisee.

**C.**     Right of Entry.

Franchisee shall have the right, until receipt of written notice revoking permission to pass is delivered to Franchisee, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing temporary bin/rolloff services and the Collection, transportation, recycling, composting, and disposal of Solid Waste and construction debris pursuant to this Franchise Agreement.

**D.**     Law to Govern.

The law of the State of California shall govern this Franchise Agreement.

**E.**     Gratuities.

Franchisee shall not, nor shall it permit any officer, agent, or employee employed by it to, request, solicit, demand, or accept, either directly or indirectly, any gratuity for services required under this Franchise Agreement.

**F.**     Compliance with Franchise Agreement.

Franchisee shall comply with those provisions of the County Ordinances 657 and 745, or any successor ordinances, which are applicable, and with any and all amendments to such applicable provisions during the Term of this Franchise Agreement.

**G.** Notices.

All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by telecopier (fax), or United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: City of Wildomar  
Attn: Public Works Department  
23873 Clinton Keith Road  
Wildomar, CA 92595

Copy to: City Attorney

To Franchisee: USA Waste of California, Inc.  
Attn: Vice President, Director of Operations  
800 S. Temescal Street  
Corona, CA 91718

Copy to: Waste Management – Western Group  
7025 N. Scottsdale Road  
Suite 200  
Scottsdale, AZ 85253  
Attention: Group Legal Counsel

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States mail, or if by fax, upon receipt of confirmation of delivery which confirmation may be transmitted by fax.

**H.** Exhibits Incorporated.

Exhibits A through H are attached to and incorporated in the Franchise Agreement by reference.

**I.** Nondiscrimination.

In performing the Collection services hereunder, Franchisee shall not discriminate against any Person on the ground of race, sex, age, creed, color, religion or national origin.

**J.** Laws and Licenses.

Franchisee shall comply with all federal, State, and City-laws, ordinances, rules, and regulations applicable to the performance of the services hereunder and shall. obtain all licenses and permits necessary to perform the services hereunder and maintain the same in full force and effect.

**K. Waiver.**

No waiver by either party of any one or more defaults or breaches by the other in the performance of this Agreement shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character.

**SECTION 19. SEVERABILITY.**

If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement.

**SECTION 20. ENTIRE AGREEMENT; AMENDMENT.**

This Agreement, its accompanying Exhibits, constitute the entire Agreement between the parties concerning the subject matter hereof and supersede any and all other communications, representations, proposals, understandings or Agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by writing signed by both parties hereto.

**SECTION 21. CONSTRUCTION OF FRANCHISE.**

The parties hereto have negotiated this franchise at arms length and with advice of their respective attorneys, and no provision contained herein shall be construed against City solely because it prepared this agreement in its executed forms.

**SECTION 22. RENEGOTIATION OF TERMS AS A RESULT OF OWNERSHIP CHANGES**

In the event of a significant change to the ownership of the franchisee that impacts the activities in this contract, including, but not limited to acquisition of, acquisition by, merger with or stock exchange with another company, all service levels and rates of this contract shall at the discretion of the City Council be made open to renegotiation of the existing franchise and rate exhibits.

**[Remainder of page intentionally left blank. Text continues on next page.]**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY OF WILDOMAR**

By: \_\_\_\_\_  
John Danielson, City Manager

**ATTEST:**

\_\_\_\_\_  
Sheryll Schroeder, City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Julie Hayward Biggs, City Attorney

**USA Waste of California, Inc.**

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

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

## EXHIBIT A

### PROVIDED SERVICES

This Exhibit is for the exclusive franchise held by Waste Management, Inc., in the City. The following is: 1) specific information regarding provision of the minimum levels of service, and; 2) definition of any additional services the Franchisee will be providing.

### PROVIDED SERVICES

The Franchisee shall provide Collection, Transportation and Disposal Services for the following service types:

1. Single Family Residential

Residential Basic Level of Service – Initially, each single family residential unit (units of four (4) or less) and mobile home dwellings (excluding PUD’s) will receive curbside service for trash and recycling collection.

Residential Basic Level Option – As directed by the Director, this level of service shall be the Basic Level as described above plus green waste collection with three (3) automated carts.

- Trash collection will be accomplished via use of automated 96-gallon carts. Each customer subscribing to basic service shall receive from USA Waste Services one cart and will be offered additional carts based upon the rates established in **Exhibit “E”**. This form of collection will regulate the volume of trash collected and will better charge customers for the service received.
- Recyclable collection shall be accomplished via 96-gallon carts and shall include materials such as fiber products, glass bottles, plastic containers, and aluminum and metal cans. Additional carts shall be available to customers for a charge as outlined in **Exhibit “E”**. The Franchisee reserves the right to remove recycling carts from a customer that improperly segregates recyclable materials.
- Green waste collection shall be accomplished via the use of automated 96-gallon carts. Each customer shall receive one cart for this service and may request additional carts subject to the rates established in **Exhibit “E”** and amended.

For the *Basic Level of Service*, rates will be charged based upon the difficulty of collection:

#### Regular customers and Hard-to-Service customers

Regular customers are defined as a typical single-family residence on a paved roadway with appropriate curb-type of access. These customers are typically within tract-type developments and have a density of at least 6 dwelling units per acre.

Hard-to-Service customers will have a “Rate Band” and be priced based upon the collection difficulty or density of subscribed customer base in a particular neighborhood. The rates for

subscribed customers will be based upon the definition as noted in Section 2 of the Agreement between the City and Waste Management, Inc., and described as follows:

“Hard-to-Service” refers to any of the following:

1. Rural, sparsely populated areas
2. Hilly or mountainous terrain
3. Poorly paved or unpaved roads which may be unpassable in poor weather
4. Large, uninhabited areas between pockets of homes
5. Unusually heavy waste due to large properties, livestock, etc.

Optional Level of Service: (To be reviewed and approved by Franchisee)

In lieu of the Basic Level of Service, residential customers may subscribe Co. either the following:

- Commercial bin service in lieu of utilizing the Basic Level of Service described above. The rates for this optional service shall be the same as that established for commercial bin service in **Exhibit “E”** and as amended.
- Small volume carts (64 gallon size) may be offered to a senior citizen customer when it can be shown that the primary owner is 65 years of age or older.
- Existing Service Agreements in the City, wherever they exist, shall be brought in compliance as soon as practicable (and allowable under Wildomar City Franchises) with this franchise and the rates on **Exhibit “E”**.

**Other Services Provided (And as may further be described in Section “5.A.&B.” of the Franchise Agreement):**

**A. Bulky Waste Collection:**

Two Bulky Waste Collection opportunities are available for both regular and hard to service subscribed residential customers within the franchise area.

1. The Franchisee shall collect Bulky Waste generated at a residential unit two times per year at no additional charge to the customer. This service shall be at the curbside and on the regularly scheduled collection day of the designated clean-up week. Appliances containing CFC’s shall be charged a special removal fee as delineated in **Exhibit “E”**.
2. The Franchisee shall also provide residential customers with on-call bulky item pick-up service arranged at the request of the customer for large household appliances or furniture or multiple smaller items not exceeding one and one-half cubic yards. Rates for this service shall be as outlined in **Exhibit “E”** and as amended. If a customer has amounts of waste in excess of the one and one-half cubic yards, a temporary commercial bin or roll-off bin may be used.

Collection of heavy waste materials such as dirt, rock, concrete, and asphalt are not included in these services and will require a roll-off bin for collection by franchisee.

**B. Used Motor Oil Collection:** The Franchisee shall provide this service at no additional charge

subject to the provisions of County Ordinance 657 and County Resolution 90-668.

C. Roll-off collection containers for neighborhoods at the instruction of the Director.

D. Scout Service: This service is available for customers having residences with vehicular access prohibiting passage of a regular trash collection truck. This includes dirt roads that may be a single lane in width, or an instance where a customer resides a substantial distance from a traveled roadway and desires to have service close to the residence via a small vehicle. A "Out" vehicle is typically a small utility truck with a covered box to carry trash to the main road for deposit into a regular collection vehicle.

E. Street Sweeping services may be added to this Franchise subject to the Direction of the Director at rates established and later added to the rates in **Exhibit "E"**.

## 2. Commercial, Multi-family and Industrial

The Franchisee, in conjunction with the customer, shall place bins at each commercial property of the appropriate size, and emptied at a frequency necessary to accommodate complete: removal of all solid waste generated on the site.

Commercial businesses that generate very small quantities of waste may be allowed to share a bin with neighboring commercial businesses as deemed appropriate by the Franchisee: "Shared Bin Accounts" shall designate one individual or entity as the responsible party for payment of the monthly bill. Any shared account shall be approved by the Franchisee and is at the Franchisee's sole discretion.

Bins shall be provided, serviced, and charged as outlined in the attached **Exhibit "E"**. Other commercial services and fees are outlined in **Exhibit "E"** and include Restart fees, Overage fees, Extra Empty fees, Redelivery and Restart fees, and Hard to Service fees.

In special cases where there is not appropriate space on-site or with neighboring businesses for the placement of a commercial bin, the Franchisee may allow "Commercial Can Service" to satisfy the need or the requirement of refuse removal service. This service shall be collected one time per week and charged as outlined in the attached **Exhibit "E"**. The Franchisee shall supply each business that subscribes to this service with a 96-gallon cart for storage of solid waste.

If requested by the customer, additional carts will be available up to a maximum of three (3) per business per service for additional fees as outlined in the residential section of **Exhibit "E"**;

Cart(s) shall be placed by each individual business customer at the curbside or other mutually agreed upon location on collection day.

## 3. Roll Off Bin Service

The Franchisee shall provide when requested, roll-off boxes of the sizes listed in **Exhibit "E"**, to any property in this franchise area. This service is typically temporary in nature, but may

be considered regular commercial service with a minimum of once per week collection, in lieu of regular commercial bin service.

4. City facilities

The Franchisee shall provide Solid Waste collection services at City-owned facilities within the Franchise Area at no charge to the City. Such services may include turn-key office recycling program inclusive of desk-side containers, where appropriate. As of the Effective Date of this Agreement, there are no City-owned facilities within the Franchise Area. If a City-owned facility opens within the Franchise Area, the City shall notify Franchisee of the facility opening thirty (30) days prior to the opening.

**EXHIBIT B**  
**FRANCHISE AREA**

This exhibit contains: a map showing the franchise area, a legal description, and lists of exceptions to the Franchise Collection Agreement.

Legal Description: (To be provided before contract is executed by City)

## **EXHIBIT C**

### **CERTIFICATES**

This Exhibit is for the exclusive franchise held by Franchisee. Attached, as specified in the Agreement, are the Franchisee's: 1) certificates of insurance; 2) copy of performance bond, and; 3) copy of financial statements.

## **EXHIBIT D**

### **REPORTING REQUIREMENTS**

#### **1. GENERAL**

The Franchisee shall provide quarterly and annual reporting as outlined in this Exhibit; however, the Department reserves the right to request additional information as necessary to meet their needs, including but not limited to the AB 939 reporting requirements. All information included in the reports shall be provided according to the source of generation. Waste generator types are defined as follows:

Residential - Solid waste, recyclables and green waste originating from single-family and from multi-residential units.

Commercial/Industrial - Solid waste, recyclables and green waste from commercial and industrial sources.

Construction/Temporary Bin/Rolloff - All solid waste or other materials placed in debris boxes.

Annual Cleanup - Solid waste and other materials collected through the annual cleanup.

Data and information pertaining to services performed under this franchise upon submittal to the Department become the property of the Department.

#### **3. QUARTERLY REPORTS**

The Franchisee shall submit quarterly reports no later than one month following the completion of each quarter. The first report is due by the end of the first fiscal quarter after the Effective Date of this Agreement and shall cover the period from the effective date of this Agreement through the end of each quarter.

The quarterly reports shall include the information collected and summarized on a monthly basis. Specifically, Franchisee shall provide the following quarterly reports:

1. Collection information
2. Service performance
3. Program implementation

#### **Collection Information**

The Franchisee shall provide a quarterly report that lists the quantity of solid waste collected by Month and the number of accounts serviced monthly. The quantities of solid waste, recyclables and green waste collected shall be reported in terms of tonnage (or cubic yards if tonnage information is not available). The Department may, at its discretion, also require reporting by volume. The Franchisee shall clearly specify any assumptions made in reporting the tonnage or

cubic yard information such as density factors.

### **Service Performance**

The Franchisee shall provide a report summarizing the entries made in the service log including all praises, complaints, and notifications of missed pickups, and the Franchisee responses thereto. The summary report shall identify the total number of all written or oral Customer comments and shall provide the number of comments received in the following categories: praises, litter or property damage complaints, misplacement of containers, stolen containers, personnel complaints, missed pickups, and other.

### **Program Implementation**

The Franchisee shall submit a report summarizing the problems or barriers to implementation of services for the quarter. The report shall address how the problems- and barriers were overcome or the proposed resolutions and schedule for correcting the-problem.

## **4. ANNUAL REPORTS**

The Franchisee shall submit annual reports to the Department no later than January 31 of each year. The Franchisee will be responsible for providing the following reports:

1. Summary reports
2. Equipment inventory
3. Future programs
4. Litigation information

### **Summary Reports**

The Franchisee shall provide a summary of information contained in the quarterly reports. The summary reports shall clearly indicate the diversion rate for each waste sector type. The diversion information provided shall include quantities of materials collected, and if processed by non-system facilities, the quantities recycled and composted in tons (or cubic yards if tonnage information is not available) for each waste generator type. In this report, the Franchisee shall note unusual changes in disposal quantities and indicate potential reason(s) for this change. The summary report shall include a discussion of noteworthy experiences, and any problems in program operation and how they were resolved.

### **Equipment Inventory**

The Franchisee shall provide a complete inventory of collection equipment and other major equipment. The inventory list shall indicate the age of the equipment.

### **Future Programs**

The Franchisee shall prepare a report that identifies any future programs and/or facilities that

may be needed but have not been planned for.

### **Litigation Information**

The Franchisee shall submit declarations of the: current .status of any pending criminal or civil litigation against the parent company and all subsidiaries. of parent company that may have an effect on the Franchisee's ability to meet the obligations of the Agreement or provide a satisfactory level of service.

## **EXHIBIT E**

### **RATES**

#### **COMMERCIAL AND INDUSTRIAL RECYCLING RATES**

Franchisee is permitted to charge for commercial and industrial bin and roll-off recycling services at maximum rates not to exceed the rate established for collection of equitable amounts of Solid Waste, as set forth in the Schedule of Approved Rates, less the tipping fee component of the established rate, and the franchise fee. This maximum rate will be defined annually as specified in **Exhibit F**. In addition, the Department reserves the right to revise the maximum rate for commercial recycling at any level deemed reasonably appropriate by the Department for purposes of complying with IWMA diversion goals throughout the term of this Agreement, subject to Franchisee receiving an rate adjustment to compensate it for any lost revenue .

#### **RATE GUARANTEE**

If the rate for specified residential curbside services as designated in the schedule of approved services exceeds the rate charged to a customer prior to this agreement, the Franchisee shall revert the rate back to the previous rate once the customer has provided proof of the immediate prior rate. The previous rate may then be adjusted periodically pursuant to the methodology described in **Exhibit F**

#### **PROCEDURES FOR BILLING AND COLLECTION**

The procedures for billing and collection of rates for services provided under the terms of this Agreement are provided as Attachment 1 to this Exhibit.

#### **OPTIONAL SERVICES**

Rates for optional Green Waste Collection service shall be the rate specified in this Exhibit as adjusted by the rate adjustment methodology (**Exhibit F**) to the date this service is authorized by the City Council .

Director may designate an alternate Green Waste disposal/processing location if such alternate location provides a rate reduction to the customer. Franchisee will be compensated for any additional transportation costs not included in rates on this exhibit.

#### **HARD-TO-SERVICE RATES**

Franchisee may request the Director to designate portions of its Exclusive Franchise Area as Hard-to-Service. Upon approval of the Director, whose approval shall not be unreasonably withheld, Franchisee may charge the Hard-to-Service Rates in this Exhibit. Considerations to be used in designating Hard-to-Service areas include, but are not limited to those listed in definition V:

**EXHIBIT “E” - ATTACHMENT 1**  
**BILLING AND COLLECTION PROCEDURES:**

The Franchisee shall adhere to the following procedures for billing and collection of rates for services provided under the terms of this Agreement:

A.) Billing:

Single Family Units - Franchisee shall bill each residential customer quarterly in advance for services rendered throughout this franchise area. Payment is due within 30 days of the invoice date and is overdue 30 days from invoice.

All other regular and special services including commercial and roll off service shall be billed by the Franchisee monthly, in advance, in accordance to the rate schedule established in **Exhibit “E”** and as amended.

B.) Delinquent Accounts:

Franchisee may discontinue service for non-payment of customer’s billing or customer’s failure to substantially comply with the requirements of this Agreement. After the Franchisee has given fifteen (15) days’ notice to customer for non-compliance (at 45 days from date of invoice), Franchisee shall notify the Director in writing of any temporary stop service including a written copy of the notice to the customer. Upon payment of the delinquent fees, if applicable, Franchisee shall resume collection on the next regularly scheduled Collection day.

C.) Refunds:

Franchisee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is discontinued by notification to Franchisee by the customer. In comprehensive collection areas, the refund shall only be related to discontinuance of use of the property and not simply for elimination of service.

D.) Franchisee shall be entitled to special fees as established in **Exhibit “E”** relating to Restart fees, Overage fees, Extra Empty fees, Redelivery fees , Hard to Service fees and Delinquent fees.

## **EXHIBIT F**

### **RATE ADJUSTMENT MECHANISM**

**All Rate adjustments must receive approval by the City Council following public hearings.**

#### **1. ANNUAL RATE ADJUSTMENT**

The Schedule of Approved Rates provided in **Exhibit E** shall be adjusted annually following public hearings and according to the following methodology. The rate shall be adjusted annually each July 1st with the first such adjustment occurring July 1, 2009. The adjustment shall be no greater than the change in the Consumer Price Index for All Urban Consumers (CPI-U) for the Los Angeles/Anaheim/Riverside Metropolitan Area, (1982 -84 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics. For those residential curbside accounts for which a reduce rate is provided pursuant to **Exhibit E** of this Franchise Agreement the above adjustment factor may be increased by an additional three percentage points until such time as those rates have equaled the regular curbside residential rates for each type of service. The change shall be measured for the twelve (12) month period January through December. The first adjustment shall be effective July 1, 2009, based upon changes in the consumer Price Index formula for the period January 2008 through December 2008. In calculating the rate changes, the change in the CPI shall not be applied to the portions of the rate attributable to pass through items, including but not limited to disposal fees, Green Waste diversion tip fees, Franchise Fees, Illegal Dumping Retrieval Fees, and other local, state, and federal fees. City direction of the Franchisee to use a different Solid Waste Facility for more than seven (7) consecutive days but no more than thirty (30) consecutive days at a time that involves a change in round trip time or distance will also be considered at the time of the annual rate adjustments. Any adjustments made in this latter instance will only impact the rate for a one year period in order to recover any additional costs incurred by Franchisee during the previous year. Pass through items shall be adjusted based upon the actual expenses or costs related to that item: revisions to the disposal fee portion of the rate shall be based on disposal costs and the appropriate tonnage amounts as determined through the disposal tonnage tracking requirements.

#### **2. PERIODIC RATE ADJUSTMENT MECHANISM**

The Department reserves the right to review the Franchisee's rates every three years from the effective date of this Agreement if the Franchisee's rates exceed the then average rates for comparable services in comparable jurisdictions, as determined by the Department in its reasonable discretion. In the event that the Department makes such a determination the Franchisee's rates may be adjusted to any level at or above the average rates in the comparable jurisdictions.

#### **3. EXTRAORDINARY RATE REVIEW**

A. The Director or Franchisee may initiate a special rate review by the Department should an extraordinary event or circumstance arise which has a significant impact on the economic operation of the Franchisee or the rates charged to customer as follows:

1. An event or circumstance (including changes in law) occurs which is beyond the

control of Franchisee or City.

2. Changes to operations mandated by the City or proposed by Franchisee and approved by the City.
3. Any change in disposal/Green Waste tip fees.
4. The City directs Franchisee to use a different Solid Waste Facility for more than thirty (30) days that involves a change in round trip time or distance.
5. The City modifies the franchise fee.
6. Significant changes in the level of delinquent accounts in Comprehensive Collection Areas.
7. Significant increases in the number of customer accounts due to development or growth.
8. Other circumstances at the discretion of the Director or the City Council.

B. Should Franchisee request a special rate review only those costs related to the circumstance(s) which warrant consideration of a special rate review, as specified above, will be reviewed and considered.

C. Franchisee must submit its request for a special review of service rates, and all appropriate cost and operational information at least three months prior to the proposed effective date of any rate adjustment.

## **EXHIBIT G**

### **HAZARDOUS WASTE AND MATERIALS SCREENING**

#### **I. SURVEILLANCE**

Franchisee will screen all loads of Solid Waste, Recyclables, and Green Waste, using mirrors on the vehicles and direct means of inspection where appropriate, at the point of collection to eliminate, where practicable, the transport of hazardous wastes. Hazardous wastes found at the point of collection will not be collected and the generator and the Department of Environmental Health will be notified of the incident.

Hazardous waste shall be transported in accordance with the regulations of the Department of California Highway Patrol (Title 13, CCR), the regulations of the federal Department of Transportation (DOT)(Title 49, Code of Federal Regulations), the regulations of the U.S. Environmental Protection Agency (Title 40, Code of Federal Regulations), the regulations of the California Occupational Health and Safety Administration (Title 8, CCR). and the regulations of the California Department of Toxic Substances Control (Title 22, CCR). This section shall not be construed to exempt the Franchisee from any other applicable law, or from any other regulation unless expressly stated.

All records, plans and/or other documents kept on file by the Franchisee to meet the above mentioned requirements will be made available to the City upon request.

#### **II. HAZARDOUS WASTE RESPONSE**

In the event that any hazardous or suspected hazardous waste is commingled with the solid waste stream, the Franchisee shall take immediate and appropriate action to contain and isolate the load and contact the City Hazardous Materials Management Division of Environmental Health. Ongoing training programs will consist of monthly safety meetings for all drivers, mechanics, and other support personnel, including the recognition of hazardous materials and hazardous situations that may require assistance from, or notification to, City Hazardous Materials personnel.

##### Procedures for Handling Hazardous Waste

The procedure for handling hazardous materials will be as follows:

Notification of suspected hazardous waste in the waste stream will be communicated from the driver to the dispatch center. Dispatch will notify the field supervisor to determine appropriate response. Dispatch will notify the County Department of Environmental Health, Hazardous Materials Management Division, or such other person or entity the City may designate, and shall request that they inspect any materials suspected of containing hazardous waste. A determination will be made by the Hazardous Materials personnel whether a Hazardous Materials Emergency Response Team should be called in to assist in handling the waste.

Coordinating instructions will be issued by personnel from the Hazardous Materials Management Division based on their findings and recommended actions.

Dependent on the determination of Hazardous Materials personnel, the suspected hazardous materials may require segregation and containerizing to prepare for manifesting and transport.

For situations that require specialized equipment or involve extremely large amounts of material, a permitted hazardous materials transport company may be contacted to assist in the cleanup. Management shall be available during any incidents requiring cleanup to authorize the expenditure of funds.

The appropriate enforcement actions will be coordinated with the Hazardous Materials Management Division to determine if the generator can be identified.

The specific procedures to be followed, if suspected or known hazardous waste is believed to be in waste already picked up, shall include those steps specified in the attached Guidance Document entitled Hazardous Waste Screening and Response as developed by the County of Riverside, Department of Environmental Health, Hazardous Materials Management Division (HMMD).

## **EXHIBIT H**

### **DIVERSION SERVICES**

#### **1.) RESIDENTIAL, SINGLE FAMILY**

Basic Service to all single family residential accounts will include the following: Weekly Service and Collection:

- The general nature of automated residential collection via 96-gallon carts promotes diversion due to the volume limitation of the cart as well as the additional cost of added refuse carts.
- Recycling for commingled fiber products, glass jars and bottles, metal cans, and plastic containers, and green waste, using 96-gallon carts..
- Used motor oil collection at the curbside.
- With bulky item collection at the curbside and at community clean-up events, diversion of metal goods (such as appliances and the like) will take place. Other items that can be diverted, based upon an appropriate recycling opportunity are mattresses, usable furniture and clothing, and certain construction waste (such as roof tiles, lumber and plastic containers).
- CFC removal service will reuse and recycle the removed substances.

#### **2.) COMMERCIAL BIN**

All commercial bin customers will be offered separate bins delineated for recycling only. Customers will separate recyclable items on site. The rate structure established in **Exhibit “E”**, offers the customer significant reductions in collection costs with the added recycling bin.

All commercial can customers will not initially receive individual recycling services. Every effort will be taken to provide recycling services for commercial can customers into combined recycling bin service for several neighboring customers.

#### **3.) ROLL-OFF BOX**

These customers will be offered separate roll-off boxes that can be specified for separate collection of a recyclable commodity. This includes the following:

Manure

Lumber

Roof tiles

Green Waste

Plastics

Dirt & Rock

Concrete & Asphalt

Due to the reduced cost of disposal, these customers will be economically encouraged to participate in these programs.

**FORM 5**

**DIVERSION PROPOSAL**

Franchisee proposes the following diversion programs. Estimated diversion percentages are calculated by dividing the annual weight of Recyclables and Greenwaste diverted by Franchisee's diversion programs by the total weight of all materials (including Solid Waste, Recyclables and Greenwaste) collected by Franchisee under this Agreement.

Residential Unit Recycling (Curbside)	8%*
Multi Residential Unit Recycling	NM%*
Commercial Recycling	3%*
Residential Unit Greenwaste Collection	16%*
Other OIL COLLECTION	0.5%*
_____	_____%
_____	_____%
Total Diversion (With Green Waste)	24%**
Total Diversion (W/O Green Waste)	8%**

Hauler reserves the right-to substitute alternate viable diversion programs for those shown herein which achieve the aggregate equal or greater diversion results.

\*Information Only

\*\*Contractual

**CITY OF WILDOMAR – CITY COUNCIL**  
**Agenda Item 1 G.**  
**CONSENT CALENDAR ITEM**  
**Meeting Date: June 10, 2009**

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**TO:** Honorable Mayor and City Council Members  
**FROM:** Michael Kashiwagi, Public Works Director  
**SUBJECT:** Resolution of Intention to Grant Gas Franchise

**STAFF REPORT**

**RECOMMENDATION:**

That the City Council adopt the attached Resolution, entitled:

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF WILDOMAR, CALIFORNIA, DECLARING ITS  
INTENTION TO GRANT A GAS FRANCHISE TO THE  
SOUTHERN CALIFORNIA GAS COMPANY**

**BACKGROUND:**

Southern California Gas Company currently holds a gas franchise within the City of Wildomar, which was granted by the County prior to the incorporation of the City. Upon the incorporation of the City, the County's interest in that franchise transferred to the City pursuant to the conditions of approval of incorporation. However, the County has continued to administer the franchise and collect the franchise fees from Southern California Gas Company, and then transferring the franchise fees to the City. It is the City's desire to establish a direct franchisor-franchisee relationship between the City and Southern California Gas Company.

This franchise is governed by The Franchise Act of 1937, which requires the City Council to adopt a resolution declaring its intention to grant the franchise prior to the actual adoption of the franchise ordinance. The resolution of intention must set the hearing date for the franchise ordinance within 20 to 60 days of the passage of the resolution of intention. The attached Resolution sets the public hearing for the adoption of the ordinance granting a franchise to Southern California Gas Company for July 8, 2009. This Resolution also directs the City Clerk to publish a notice of the public hearing and gives the form of the notice.

**FISCAL IMPACTS:**

None.

**ALTERNATIVES:**

1. Take no action
2. Provide staff with further direction and take action at a subsequent Council meeting.

Submitted by:

Approved by:

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Michael Kashiwagi  
Public Works Director

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John Danielson  
Interim City Manager

**RESOLUTION NO. 09-32**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DECLARING ITS INTENTION TO GRANT A GAS FRANCHISE TO THE SOUTHERN CALIFORNIA GAS COMPANY**

THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DOES RESOLVE AS FOLLOWS:

**SECTION 1. Declaration of Intent to Grant Franchise.** The City Council hereby declares its intent to grant a franchise of the character specified in Section 3 to the Southern California Gas Company.

**SECTION 2. Character of the Franchise.** The franchise shall be an indeterminate franchise, pursuant to the Franchise Act of 1937, to construct, maintain and use pipes and appurtenances for the business of transmitting and distributing gas for all purposes under, along, across or upon the public streets, ways, alleys and places in the City.

**SECTION 3. Hearing of Objections.** A hearing shall be held on July 8, 2009 at the hour of 7:00 p.m. at 23878 Clinton Keith Road, Wildomar, California, where all persons having any objection to the granting of the franchise may appear before the City Council and be heard thereon.

**SECTION 4. Notice of Hearing.** The City Clerk is hereby directed to publish at least once within fifteen (15) days after the passage of this resolution, in a newspaper of general circulation published nearest to the City, a notice in the following form:

**"NOTICE OF INTENTION TO GRANT FRANCHISE**

NOTICE IS HEREBY GIVEN that Southern California Gas Company, a California corporation, has filed an application with the City Council of the City of Wildomar, requesting that the City Council grant it an indeterminate franchise, pursuant to the Franchise Act of 1937, to construct, maintain and use pipes and appurtenances for the business of transmitting and distributing gas for all purposes under, along, across or upon the public streets, ways, alleys and places in the City.

If such franchise shall be granted, the Southern California Gas Company, its successors and assigns, hereinafter designated Grantee, during the term of such franchise will pay to the City two percent (2%) of the gross annual receipts of such Grantee arising from the use, operation, or possession of such franchise; except provided that this payment shall not be less than one percent (1%) of the gross annual receipts derived by Grantee from the sale of gas within the limits of the City. Such percentage shall be paid annually from the date of the granting of

the franchise, and in the event such payment shall not be made the franchise shall be forfeited.

The City Council proposes to grant such franchise.

NOTICE IS HEREBY FURTHER GIVEN that any and all persons having any objections to the granting of such franchise may appear before the City Council at 23878 Clinton Keith Road, Wildomar, California, at the hour of 7:00 p.m. on Wednesday, the 8th day of July, 2009, and be heard thereon; and,

NOTICE IS HEREBY FURTHER GIVEN that at any time not later than the hour set for hearing objections, any person interested may make written protest stating objections against the granting of such franchise; which protest must be signed by the protestant and be delivered to the City Clerk. The City Council at the time set for hearing such objections shall proceed to hear and pass upon all protests so made.”

**PASSED, APPROVED, AND ADOPTED** this 10th day of June, 2009.

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Scott Farnam, Mayor

**ATTEST:**

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Debbie A. Lee, CMC, City Clerk

**APPROVED AS TO FORM:**

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Julie Hayward Biggs, City Attorney

**CITY OF WILDOMAR – COUNCIL**  
**Agenda Item #2A**  
**PUBLIC HEARING**  
**Meeting Date: June 10, 2009**

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**TO:** Honorable Mayor Farnam, Members of the City Council  
**FROM:** David Hogan, Assistant Planning Director  
**SUBJECT:** Appeal of the Planning Commission's Denial of Variance 08-0072

**STAFF REPORT**

**RECOMMENDATION:**

The Planning Commission recommends that the City Council:

1. Adopt a resolution entitled:

**“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR DENYING VARIANCE APPLICATION NO. 08-0072 TO INCREASE THE HEIGHT OF FREE-STANDING SIGN “A-1” TO 85 FEET AT WILDOMAR SQUARE SHOPPING CENTER LOCATED SOUTH OF CLINTON KEITH ROAD, EAST OF HIDDEN SPRINGS ROAD, AND WEST OF INTERSTATE 15 AND KNOWN AS ASSESSORS PARCEL NUMBER 380-110-039”**

**BACKGROUND:**

D.H. Holdings submitted a request for a Variance to increase the height for one of the two previously approved 65-foot tall freestanding (pylon) signs to a height of 85 feet. This request was heard by the City Planning Commission on April 15, 2009. During the public hearing on the proposed Variance, no alternate or revised sign heights were suggested or discussed by the Applicant. At the public hearing, the Planning Commission determined that the findings necessary to approve the variance could not be made and voted 5-0 to deny Variance 08-0072. A copy of the Planning Commission staff report package (including Attachments A through G) and the approved meeting minutes are located in Attachments 2 and 3, respectively. The Final Commission Resolution has been inserted into Attachment C of the Planning Commission staff report package in place of the draft resolution provided at the original hearing.

The applicant filed an appeal of the Planning Commission's decision on April 24, 2009. In the appeal the applicant indicated that the Commission had not understood the relevance of the requested variance and consequently had made an incorrect decision. A copy of the completed appeal application is located in Attachment 4.

If the City Council wishes to affirm the Planning Commission's decision and deny the requested variance, then staff recommends that the Council adopt the resolution provided in Attachment No. 2 denying Variance 08-0072.

If the City Council wishes to approve the requested variance (or approve some form of an alternate or reduced version of the variance), then staff requests that the Council provide the necessary direction and information to staff to make the required findings of fact. Should the City Council choose to approve the variance, the appropriate resolution of approval and the conditions of approval will be brought back to the Council at a future meeting for action.

**FISCAL IMPACT:**

No fiscal impacts are anticipated.

**ALTERNATIVES:**

1. Provide direction to staff.

**ATTACHMENTS:**

1. Resolution Denying the Appeal of Variance 08-0072
2. Planning Commission Staff Report (with Lettered Attachments)
3. Minutes from the April 15, 2009 Planning Commission Meeting
4. Signed Application for Appeal

Submitted by:

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David Hogan  
Assistant Planning Director

**ATTACHMENT 1**  
**RESOLUTION OF DENIAL**

RESOLUTION 09-\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR DENYING VARIANCE APPLICATION NO. 08-0072 TO INCREASE THE HEIGHT OF FREE-STANDING SIGN "A-1" TO 85 FEET AT WILDOMAR SQUARE SHOPPING CENTER LOCATED SOUTH OF CLINTON KEITH ROAD, EAST OF HIDDEN SPRINGS ROAD, AND WEST OF INTERSTATE 15 AND KNOWN AS ASSESSORS PARCEL NUMBER 380-110-039**

**WHEREAS**, David Horenstein representing, DH Wildomar, LLC, filed Variance Application No. 08-0072 on October 7, 2008 in a manner in accord with the City of Wildomar General Plan and Zoning Code;

**WHEREAS**, the Project was processed including, but not limited to, public notice in the time and manner prescribed by State and local law, including Ordinance No. 348 and California Environmental Quality Act ("CEQA");

**WHEREAS**, the Planning Commission, at a regularly scheduled meeting, considered the Project and environmental review on April 15, 2009, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support or in opposition to this matter;

**WHEREAS**, at the conclusion of the Commission hearing and after due consideration of the testimony, the Planning Commission denied Variance 08-0072 based upon the inability to make the necessary findings;

**WHEREAS**, on April 24, 2009, the applicant filed an appeal of the Planning Commission's decision to deny the application for a variance;

**WHEREAS**, the City Council, at a regularly scheduled meeting, considered the Project and environmental review on June 10, 2009, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support or in opposition to this matter;

**WHEREAS**, at the conclusion of the City Council public hearing and after due consideration of the testimony, the City Council denied Variance 08-0072 based upon the inability to make the necessary findings;

**WHEREAS**, all legal preconditions to the adoption of this Resolution have occurred; and

**WHEREAS**, that the above recitations are true and correct and are hereby incorporated by reference.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WILDOMAR HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Variance Findings.** The City Council, in denying the Project hereby makes the following findings as required by Section 17.196.010 of the City of Wildomar Municipal Code and Government Code Section 65906:

A. There are no special circumstances applicable to the parcel of property, including size, shape, topography, location or surroundings, and the strict application of this ordinance does not deprive such property of privileges enjoyed by other property in the vicinity that is under the same zoning classification.

*The project site has already received one variance from Riverside County on May 8, 2007, for increased sign height from 45-feet to 65-feet to compensate for the site's 20-foot elevation difference below the level of the Clinton Keith Road overcrossing, as explained in more detail in the staff report. This previously approved increase in sign height was approved by Riverside County to compensate for the elevation of the overcrossing. Thus, any special locational or topographical circumstances have been addressed by the original increase of 20-feet in the maximum allowable sign height (from 45 feet to 65 feet). Finally, the elevation of the site, the Clinton Keith Road overcrossing, and the freeway have not noticeably changed since the first variance was granted. In addition, (as shown in Figure 2 of the staff report) the shape of the site is not perfectly rectangular; however, the shape of the site is regular enough to accommodate the proposed development. As such, the size and shape of the project site does not create a site limitation requiring a taller freeway sign.*

*Poor freeway visibility has not been created by the topographical or other land characteristics, but by the request of the applicant and by the design layout of the shopping center. With Variance 1827, the County of Riverside approved a substantial increase in the allowable sign area from 150 square feet to 480 square feet. This increased sign area covers a larger portion of the sign structure than would normally occur with a 65-foot tall sign carrying 150 square feet of signage. If the freestanding sign for Wildomar Square carried 150 square feet of sign area, the signage would have been raised high enough to not be blocked by the building and would allow more of the signs to be visible from the freeway.*

B. Granting of this variance would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

*The approval of this proposed variance would constitute the approval of a special privilege by allowing taller freeway signage than the Zoning Ordinance allows and that was previously approved for the nearby shopping centers. The requested taller freestanding sign is nearly two times the height allowed by the Zoning Ordinance and twenty feet taller than the equivalent signage across Clinton Keith Road. Bear Creek Village center across Clinton Keith Road to the north of Wildomar Square was granted a variance for a sixty-five foot tall freestanding sign. Bear Creek Village sign has a similar visibility issue for northbound traffic on Interstate 15 as the Wildomar Square sign has for southbound traffic. The Bear Creek Village sign variance allowed a second freeway sign 45-feet taller than the 20-foot height allowed for a second freeway sign by the zoning ordinance for a total height of 65 feet. A surface area of 150 square feet was allowed for the sign rather than the 100 square feet allowed by the Zoning Ordinance for the second freeway sign.*

*At the present time, both centers have freestanding signs that are 65 feet in height. Wildomar Square has two 65-foot tall signs while Bear Creek Village has one 65-foot tall sign and one 45-foot tall sign. The allowable signage surface for each of the Wildomar Square signs is 480 square feet while the allowable signage surface for each freestanding sign at Bear Creek Village is 150 square feet. In addition, the shopping center to the east of Interstate-15 has a freeway sign which complies with the requirements of the Zoning Ordinance. There are no other signs in the area that are 85-feet in height. By the granting of this variance, a special privilege would be bestowed on this center that no one else in the area has receives.*

**Section 2. Environmental Compliance.** The California Environmental Quality Act (CEQA) does not apply to projects which an agency disapproves (CEQA Guidelines Section 15270).

**Section 3. City Council Actions.** Based on the foregoing findings, the City Council of the City of Wildomar hereby denies the requested Appeal of the Planning Commission's denial of Variance application No. 08-0072.

**PASSED AND ADOPTED** by the City Council of City of Wildomar on this 10th day of June, 2009.

**ATTEST:**

\_\_\_\_\_  
Debbie Lee, City Clerk

\_\_\_\_\_  
Scott Farnam, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Julie Biggs, City Attorney

STATE OF CALIFORNIA            )  
COUNTY OF RIVERSIDE        )  
CITY OF WILDOMAR            )

I, Sheryll Schroeder, City Clerk of the City of Wildomar, do hereby certify that the foregoing Resolution No. 09-\_\_\_\_\_ was duly adopted by the City Council of the City of Wildomar at a meeting held on the 10<sup>th</sup> day of June, 2009, by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

\_\_\_\_\_  
Debbie Lee, City Clerk

**ATTACHMENT 2**  
**PLANNING COMMISSION STAFF REPORT**  
**(WITH ATTACHMENTS)**

**CITY OF WILDOMAR – PLANNING COMMISSION**  
**Agenda Item 5.1**  
**PUBLIC HEARING ITEM**  
**Meeting Date: April 15, 2009**

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**TO:** Chairman Devine, Members of the Planning Commission

**FROM:** Harmony Linton, Development Services

**SUBJECT:** Variance 08-0072, David Horenstein, D.H. Holdings, Inc., Applicant. A request to amend the Sign Program for Wildomar Square and approve a Variance to increase the height of one free-standing sign (“A1”) to 85 feet within the Scenic Highway Commercial Zone (C-P-S), located at the southeast corner of Clinton Keith Road and Hidden Springs Road.

APN: 380-110-039

**STAFF REPORT**

**RECOMMENDATION:**

It is recommended that the Planning Commission deny the requested Variance based upon the analysis in this staff report and adopt a resolution entitled:

**“A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILDOMAR DENYING VARIANCE APPLICATION NO. 08-0072 TO INCREASE THE HEIGHT OF FREE-STANDING SIGN “A-1” TO 85 FEET AT WILDOMAR SQUARE LOCATED SOUTH OF CLINTON KEITH ROAD, EAST OF HIDDEN SPRINGS ROAD, AND WEST OF INTERSTATE 15 AND KNOWN AS ASSESSORS PARCEL NUMBER 380-110-039”**

**BACKGROUND:**

The project site is a rectangular shaped lot located at the southeast corner of Clinton Keith Road and Hidden Springs Road. The subject property is zoned Scenic Highway Commercial (C-P-S) and has a General Plan Land Use Designation of Commercial Retail. Conditional Use Permit No. 3504 was approved by the County of Riverside on May 8, 2007 for the development of Wildomar Square. The original permit was for the development of three buildings to equal 23,000 square feet on 2.96 acres. The permit was then revised and a Variance was added, these revisions were approved on April 22, 2008. The revised permit added an additional 1.85 acres, for a total of 4.81 net acres, and three additional buildings for a total of 46,600 square feet. Variance No. 1827 approved the installation of two 65-foot high, 21-foot wide freestanding (pylon) signs, each incorporating 480 square feet of signage area along the project’s easterly boundary adjacent to Interstate 15. The location of Wildomar Square is shown in Attachment A.

After incorporation DH Holdings submitted a Variance application to the City of Wildomar requesting a modification to the approved sign program to allow one of the previously approved 65-foot free-standing signs to exceed the height approved by Variance 1827 (and further exceed the requirements of Ordinance 348). This subsequent Variance request would allow the Freestanding Sign "A-1" to exceed the Ordinance requirement by an additional 40 feet, giving it a total height of 85 feet. This higher sign would require the modification of the existing Sign Program. The denial of this second variance request does not effect the privileges granted by the first variance.

## **DISCUSSION:**

Section 65906 of the State Planning and Zoning Law establishes the purpose and limitations for variances and are the foundation for the findings which must be made to approve a variance. The County's required findings for variances mirror these provisions of State Law. The provisions of State Law are as follows:

*"Variances from the terms of the zoning ordinances shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.*

*Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.*

*A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property."*

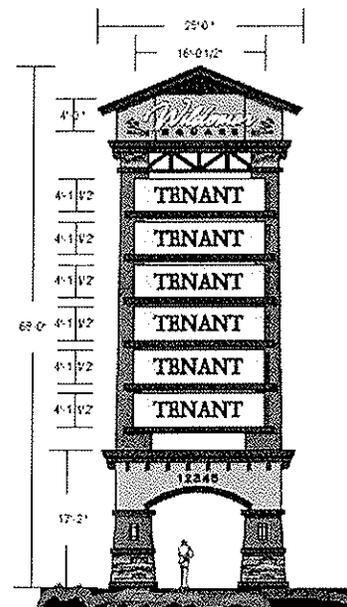
When Riverside County approved Variance No. 1827 to install the two 65-foot high, 18-foot wide freestanding (pylon) signs, each with 480 square feet in signage area per side, they made the following justifications for approval:

1. "The proposed signage exceeds the requirements of Section 19.4.a.4 of Ordinance No. 348, which allows for one free-standing sign to be constructed on the same street. The commercial center proposes to exceed this requirement by proposing two free-standing signs, both on the project site's easterly boundary (adjacent to Interstate 15). The commercial center is oddly shaped; therefore, being neglected of road frontage along Interstate 15, the road frontage that properties with conventional layouts along Interstate 15 enjoy. Therefore, in order to effectively display retailers compared to adjacent commercial developments, the project would need an additional free-standing sign. This constraint supports the variance for Signs A1 and A2 to exceed the maximum number of free-standing signs allowed for a project by an additional free-standing sign."

2. "The proposed signage exceeds the requirements of Section 19.4.a.4 of Ordinance No. 348, which limits the maximum height of free-standing signs to 45 feet for signs located within 660 feet of a freeway right of way line. The commercial center proposes to exceed this requirement by proposing 65 foot high Pylon Signs. The site is at a lower elevation than the adjacent freeway (Interstate 15), which is where the signs are proposed. Since the site is 22 feet lower than Interstate 15 it is being neglected the same privileges that adjacent properties enjoy given the site's topography. If the site was at grade with Interstate 15, the variance would not be required. Therefore, in order to effectively display retailers compared to adjacent commercial developments, the free-standing signs need to be 65 feet in total height. This constraint supports the variance for Signs A1 and A2 to exceed the maximum height by 20 feet."
  
3. "The proposed signage exceeds the requirements of Section 19.4.a.4 of Ordinance No. 348, which limits the maximum surface area of free-standing signs to 150 square feet for signs located within 660 feet of a freeway right of way line. The commercial center proposed to exceed this requirement by proposing two Pylon Signs with a surface area of 480 square feet per sign for a total of 960 square feet of surface area. The project is being neglected of the same privileges that adjacent properties enjoy given the site's odd shape and topography, which causes the buildings to be placed at lower elevations than Interstate 15 causing a lack of visibility of the tenant signs. Therefore, in order to effectively display retailers compared to adjacent commercial developments, the surface area of the pylon signs need to be larger. This constraint supports the variance for Signs A1 and A2 to exceed the maximum surface area by 330 square feet per sign."

After analyzing the County's decision, it is staff's position that the County of Riverside's findings for two of the three varnaced provisions were flawed. Specifically, the justification for two signs, the increased height for the second sign, and the increased amount of signage area. However, staff believes that the County of Riverside's findings to increase the height of one of the two freestanding signs was justified because allowing one sign at the 65 foot height would offset the height of the Clinton Keith Road overcrossing which is approximately 22 feet above the elevation of the project site and obstructs the visibility of the Wildomar Square signage for southbound traffic on Interstate 15. A similar variance was approved by Riverside County for the 65-foot tall Bear Creek Village freestanding sign.

**Figure 1 – Approved Freestanding Signs A-1 & A-2**



The City of Wildomar's Zoning Ordinance, Title 17 of the Municipal Code (formally Ordinance 348), has specific provisions for free-standing signs. According to Section 17.252.040.A of the Municipal Code, freeway oriented free-standing signs located within 660 feet of the nearest edge of a freeway right of way line, shall have a maximum height not to exceed 45 feet, and a maximum surface area not to exceed 150 square feet of signage area. The Code also indicates shopping centers with frontage on two or more streets, the shopping center is permitted to have two free-standing signs, provided that the two signs are not located on the same street; are at least 100 feet apart, and that the second sign does not exceed 100 square feet in surface area and 20 feet in height.

The project has already received a variance to allow two free-standing signs with a height of 65 feet and a surface area of 480 square feet each adjacent to Interstate 15. These two free standing pylon signs are in addition to the monument sign located at the corner of Clinton Keith Road and Hidden Springs Road, the other wall signage, and directional signs allowed by the approved Sign Program. A summary of the allowable sign heights and signage areas allowed by the Zoning Ordinance, and approved by Variance 1827, as well as the current variance proposal are described in Table 1 below. The approved Sign Program for Wildomar Square is contained in Attachment D.

<b>Table 1 WILDOMAR SQUARE FREESTANDING SIGNAGE</b>			
	<b>Zoning Code Requirement</b>	<b>Approved by Variance 1827*</b>	<b>Current Variance Request</b>
Number of Free-Standing Signs Allowed	2	No changes requested.	No additional changes requested.
Number of Free-Standing Signs per Street Frontage	1	No changes requested.	No additional changes requested.
Height of Free-Standing Sign #1	45 Feet	65 Feet	85 Feet
Allowable Signage Surface per Sign #1	150 Square Feet	480 Square Feet	No additional changes requested.
Height of Free-Standing Sign #2	20 Feet	65 Feet	No additional changes requested.
Allowable Signage Surface per Sign #2	100 Square Feet	480 Square Feet	No additional changes requested.
* If the second variance is denied by the City, this denial does not effect the previously approved variance (and the current approved Sign Program) for the Wildomar Square commercial center.			

In the attached variance justification provided by the Applicant (please see Attachment E), the applicant states that due to the topographical slope issues that three of the six previously approved sign panels (totalling approximately 240 square feet) will not be

viewable by southbound traffic on the freeway. Images of the existing and proposed Freestanding Sign "A-1" are shown in Attachment F. Copies of visual simulations provided by the Applicant are contained in Attachment G.

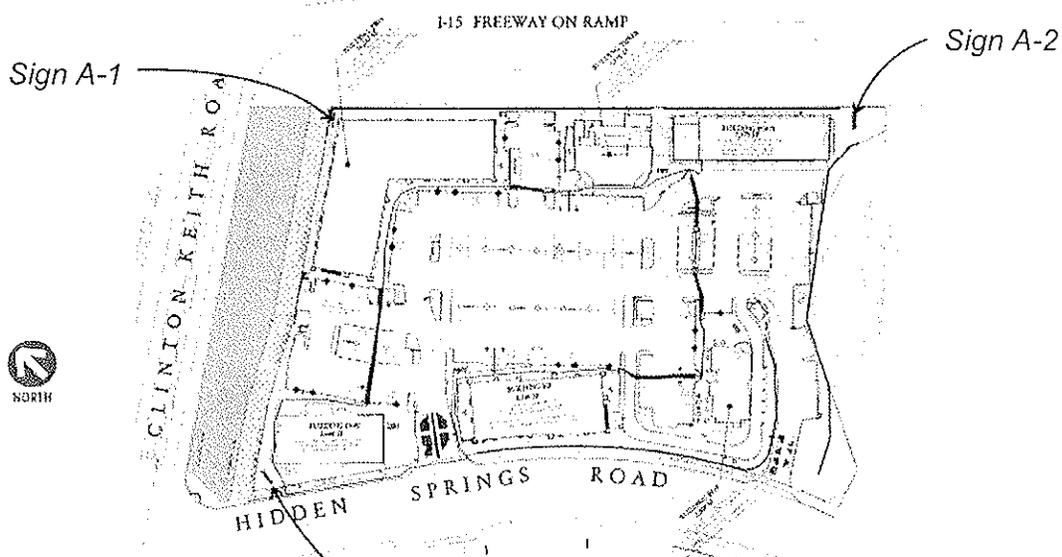
The Applicant concludes that in order to effectively display all of the previously approved enlarged signage area, the project would need to add an additional 20 feet to the height of the northern most pylon sign which is adjacent to Clinton Keith Road. In their justification e-mail, the Applicant provided the following rationale for the proposed variance. The three supporting arguments presented by the Applicant are italicized below.

- "a. The commercial center proposes to exceed this requirement by increasing (1) one of the Pylon Signs to 85' closest to Clinton Keith and Interstate 15. on the project site's easterly boundary (adjacent to Interstate 15). The commercial center is oddly shaped and is situated in a deep hole relative to other portions of the Shopping Center; In addition, due to Cal Trans right of way closer to the sign location being dedicated to Cal-Trans, the current location of the sign has further negative implications because of its set back from Interstate 15; therefore, being neglected of road frontage along Interstate 15, the road frontage that properties with conventional layouts along Interstate 15 enjoy. Furthermore, due to the topographical slope issues that we have three (3) of the (6) six panels will not be viewed from the Freeway in the current position of the sign. Therefore, in order to effectively display retailers compared to adjacent commercial developments, the project would need to add an additional 20' to the proposed existing pylon sign. This constraint supports the variance for Sign A1 exceed the height requirement for free-standing signs allowed for a project."*

The original variance and sign program approved by the County of Riverside placed both freestanding signs along the eastern edge of the property adjacent to Interstate 15, located within 20 feet of the Caltrans right-of-way. The shape of the site, while not perfectly rectangular, is regular enough to accommodate the proposed development without limitation. Consequently, staff does not believe that the size and shape of the project site creates a site limitation requiring a taller freestanding sign. The shape and building orientation that has been approved for the Wildomar Square Center, as well as the location of the approved freestanding signage are depicted in Figure 2 below. The shaded area to the left of the center is the location of the future road improvements for Clinton Keith Road. An enlarged version of Figure 2 is located in Attachment B.

In addition, the Applicant states that Wildomar Square is setback from the travel lanes of Interstate 15. While the project is partially set back from the freeway through lanes, the condition is ameliorated (in staff's opinion) by the projects proximity to the interchange which allows clear visibility from the interstate, and easy access to the center via the interchange. The site conditions for Wildomar Square are nearly identical to the Bear Creek Village Center across Clinton Keith Road. With an earlier variance, the County of Riverside approved a 65-foot tall sign structure for the 150 square feet of allowable sign surface for Bear Creek Village. This taller sign is also located adjacent to Clinton Keith Road.

**Figure 2 – Site Layout**



*Corner Monument Sign (Approximately 9' 8" high)*

The previously approved 65-foot tall freestanding sign for Wildomar Square contains six signage panels (totaling 480 square feet) which are located between 20 and 50 feet above the ground surface. In contrast, the 65-foot tall sign at Bear Creek Village has its 150 square feet of signage located between 35 and 52 feet above the ground surface. Based upon field visits by staff, the Bear Creek Village freestanding sign is clearly visible from the freeway even though this sign is set back from the edge of the freeway. Pictures of the two freestanding signs for Bear Creek Village Center are included on the following page in Figure 3.

If Freestanding Sign "A-1" at Wildomar Square Commercial center consisted of only the top three panels totaling 240 square feet of signage area (or 160% of the amount of signage normally allowed by the Zoning Ordinance), the height of the top three panels would range from 35 to 50 feet above the ground surface. The height of these top three sign panels is very similar to signage for the adjacent Bear Creek Village Center. While the top half of the approved freestanding sign does not have visibility problems, the bottom three panels can be partially obscured depending on where the viewer is located. However, this visibility condition does not relate to the characteristics of the site. Instead, the visibility problem appears to have been created primarily by the Applicant's request for, and the County's approval of, three times the amount of signage area allowed by the Zoning Ordinance. In this scenario, the approved signage stretches over 46% of the sign's height. In contrast, the 65-foot sign at Bear Creek Village has signage over 30% of its height.

The design of the shopping center also, albeit to a lesser extent, effects the visibility of Sign A-1 from northbound traffic because the mass of the building also blocks the bottom-most panels. However this condition is corrected by the second approved 65-foot tall freestanding sign (labeled A-2 on Figure 2) that will be fully visible to northbound traffic.

Figure 3- Bear Creek Village Center Freestanding Signs



Bear Creek Village Center  
Freestanding Sign #1  
(65 feet tall)



Bear Creek Village Center  
Freestanding Sign #2  
(45 feet tall)

*"b. The project site is at a lower elevation than the adjacent freeway (Interstate 15), which is where the signs are proposed. Since the site is 22' lower than Interstate 15 it is being neglected of the same privileges that adjacent properties enjoy given the site's topography. If the site was at grade with Interstate 15, the variance would not be required. Therefore, in order to effectively display retailers compared to adjacent commercial developments, the freestanding signs need to be 85' in total height. This constraint supports the variance for Signs A1 exceed the approved maximum height by 20 feet for just A1."*

The original variance approved by the County of Riverside increased the maximum height of the Freestanding Sign "A-1" from 45 feet to 65 feet to address the difference in elevation between the site and Interstate 15. Since the approval of Variance 1827, the elevations of the project site, Interstate 15, and the Clinton Keith Road overcrossing have not changed. Consequently, it is staff's opinion that any differences in elevation or location were previously addressed by Variance 1827 which was approved by the County of Riverside in 2008.

*"c. Lastly, Exhibit B shall show that the A1 new proposed signage shall appear be roughly +/-8.5' higher then the 65' pylon sign at the Stater Brothers Center known as Bear Village Center located on the SWC [southwest corner] of Clinton Keith and Interstate 15."*

According to the available information, the statement "c" does not appear to be consistent with actual elevations. Using estimated base elevations and the heights of

the freestanding signs, the proposed 85-foot freestanding sign is expected to be approximately 18 feet taller than the adjacent 65-foot tall sign at Bear Creek Village. Considering how close these two signs will be to each other staff is not convinced that an 18-foot taller sign would appear to be only 8½ feet taller when both signs are located in close proximity to each other. In addition, the appearance of any reduction in height for the 85-foot tall sign, when viewed by southbound traffic, would be counter-balanced by the perception of an increase in the apparent height for northbound traffic (in comparison to the existing 65-foot sign). The actual elevational differences have been calculated using the information contained in Table 2 below. Staff believes that the approximate two-foot difference in the elevation between the Bear Creek Village and Wildomar Square sites is minor and does not justify an increase in the height of Freestanding Sign A-1.

<b>Table 2 Sign Height - Comparative Analysis</b>		
	<b>Wildomar Square</b>	<b>Bear Creek Village</b>
Base Elevation	1,300 Feet <sup>1</sup>	1,302 Feet <sup>2</sup>
Height of Sign	85 Feet	65 Feet
Estimated Elevation of the Top of the Sign	1,385 Feet	1,367 Feet
Approximate Difference	+18 Feet	
Data Sources:		
1. Approximate proposed final grade elevation from the precise grading plan prepared for Wildomar Square.		
2. Approximate elevation at the base of the freestanding sign as shown on Clinton Keith Interchange improvement plans.		

**CONCLUSION:**

Staff recommends that the Planning Commission consider the proposed variance based upon the facts and findings in the staff report. As stated previously, it is City staff's position that the County erred in making the original Variance findings to allow two signs at a height of 65 feet with surface areas of 480 square feet each. The County's inappropriate approval of the earlier variance does not create a requirement for the City of Wildomar to do the same. The denial of this variance request by the City Planning Commission does not effect the previous approval of Variance 1827 by the County of Riverside.

The visibility problem described by the Applicant appears to have been created by a combination of factors that are unrelated to the characteristics of the site. The first factor is the previous request by the Applicant for three times the amount of signage allowed by the Zoning Ordinance. The County approved 480 square feet of signage area on each side of the side. This condition results in signage area spreading farther down the sign than would not normally occur if the sign area conformed with the

requirements of the zoning ordinance. To fit 480 square feet of signage on each face of the sign results in some of the sign area extending below the height of the Clinton Keith Road overcrossing and the adjacent Wildomar Square buildings. The second factor is the design of the shopping center which placed the freestanding sign structure in its current location. As a result, staff is unable to make the necessary findings to allow Freestanding Sign "A-1" to be raised an additional 20 feet (40 feet above the 45-foot height limit contained in the Zoning Ordinance) to 85 feet and recommends that the Planning Commission deny the requested Variance based upon the information and findings contained in staff report. A copy of the draft Planning Commission resolution is contained in Attachment C.

However, if the Planning Commission wishes to approve the variance request, staff recommends that the Commission do the following: (1) provide specific details and information to City Staff on how the findings to approve the Variance are to be made, and (2) direct staff to return the project to the Planning Commission for approval at the next Commission meeting.

#### **ENVIRONMENTAL ASSESSMENT:**

The California Environmental Quality Act (CEQA) does not apply to projects which an agency disapproves (Section 15270 of the CEQA Guidelines). As a result, no environmental documentation has been prepared for this recommended denial.

#### **FINDINGS:**

Based upon the following analysis, the facts do not support the findings necessary to approve the proposed variance.

- A. There are special circumstances applicable to the parcel of property, including size, shape, topography, location or surroundings, that the strict application of this ordinance deprives such property of privileges enjoyed by other property in the vicinity that is under the same zoning classification.

*The project site has already received one variance from Riverside County on May 8, 2007, for increased sign height from 45-feet to 65-feet to compensate for the site's 20-foot elevation difference below the level of the Clinton Keith Road overcrossing, as explained in more detail in the staff report. This previously approved increase in sign height was approved by Riverside County to compensate for the elevation of the overcrossing. Thus, any special locational or topographical circumstances have been addressed by the original increase of 20-feet in the maximum allowable sign height (from 45 feet to 65 feet). Finally, the elevation of the site, the Clinton Keith Road overcrossing, and the freeway have not noticeably changed since the first variance was granted. In addition, (as shown in Figure 2 of the staff report) the shape of the site is not perfectly rectangular, however, the shape of the site is regular enough to accommodate the proposed development. As such, the size and shape of the project site does not create a site limitation requiring a taller freeway sign.*

*Poor freeway visibility has not been created by the topographical or other land characteristics, but by the request of the applicant and by the design layout of the*

shopping center. With Variance 1827, the County of Riverside approved a substantial increase in the allowable sign area from 150 square feet to 480 square feet. This increased sign area covers a larger portion of the sign structure than would normally occur with a 65-foot tall sign carrying 150 square feet of signage. If the freestanding sign for Wildomar Square carried 150 square feet of sign area, the signage would have been raised high enough to not be blocked by the building and would allow more of the signs to be visible from the freeway.

- B. Granting of this variance shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

*The approval of this proposed variance would constitute the approval of a special privilege by allowing taller freeway signage than the Zoning Ordinance allows and that was previously approved for the nearby shopping centers. The requested taller freestanding sign is nearly two times the height allowed by the Zoning Ordinance and twenty feet taller than the equivalent signage across Clinton Keith Road. Bear Creek Village center across Clinton Keith Road to the north of Wildomar Square was granted a variance for a sixty-five foot tall freestanding sign. Bear Creek Village sign has a similar visibility issue for northbound traffic on Interstate 15 as the Wildomar Square sign has for southbound traffic. The Bear Creek Village sign variance allowed a second freeway sign 45-feet taller than the 20-foot height allowed for a second freeway sign by the zoning ordinance for a total height of 65 feet. A surface area of 150 square feet was allowed for the sign rather than the 100 square feet allowed by the Zoning Ordinance for the second freeway sign.*

*At the present time, both centers have freestanding signs that are 65 feet in height. Wildomar Square has two 65-foot tall signs while Bear Creek Village has one 65-foot tall sign and one 45-foot tall sign. The allowable signage surface for each of the Wildomar Square signs is 480 square feet while the allowable signage surface for each freestanding sign at Bear Creek Village is 150 square feet. In addition, the shopping center to the east of Interstate-15 has a freeway sign which complies with the requirements of the Zoning Ordinance. There are no other signs in the area that are 85-feet in height. By the granting of this variance, a special privilege would be bestowed on this center that no one else in the area has receives.*

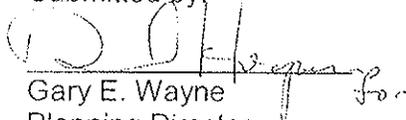
#### **ALTERNATIVES:**

1. Approve the Variance in concept, provide specific details and information to City staff on how the findings are to be made, and direct that the project be returned for consideration by the Planning Commission at an upcoming meeting.
2. Provide Staff with Further Direction.

**ATTACHMENTS:**

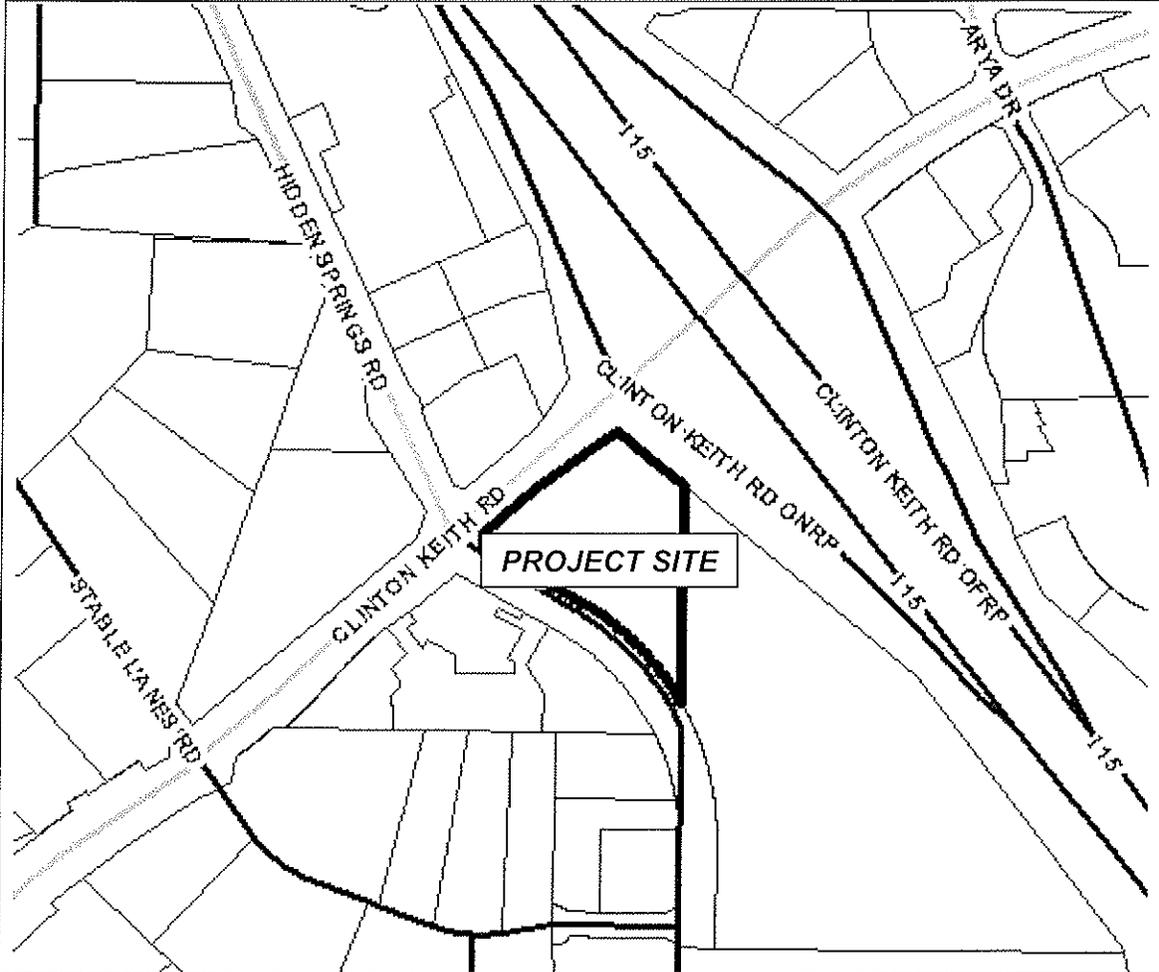
- A. Vicinity Map
- B. Site Plan Enlargement
- C. Planning Commission Resolution
- D. Approved Sign Program
- E. Applicant's Variance Justification Letter
- F. Wildomar Square Freestanding Signs
- G. Photo Simulation Exhibits provided by the Applicant

Submitted by:

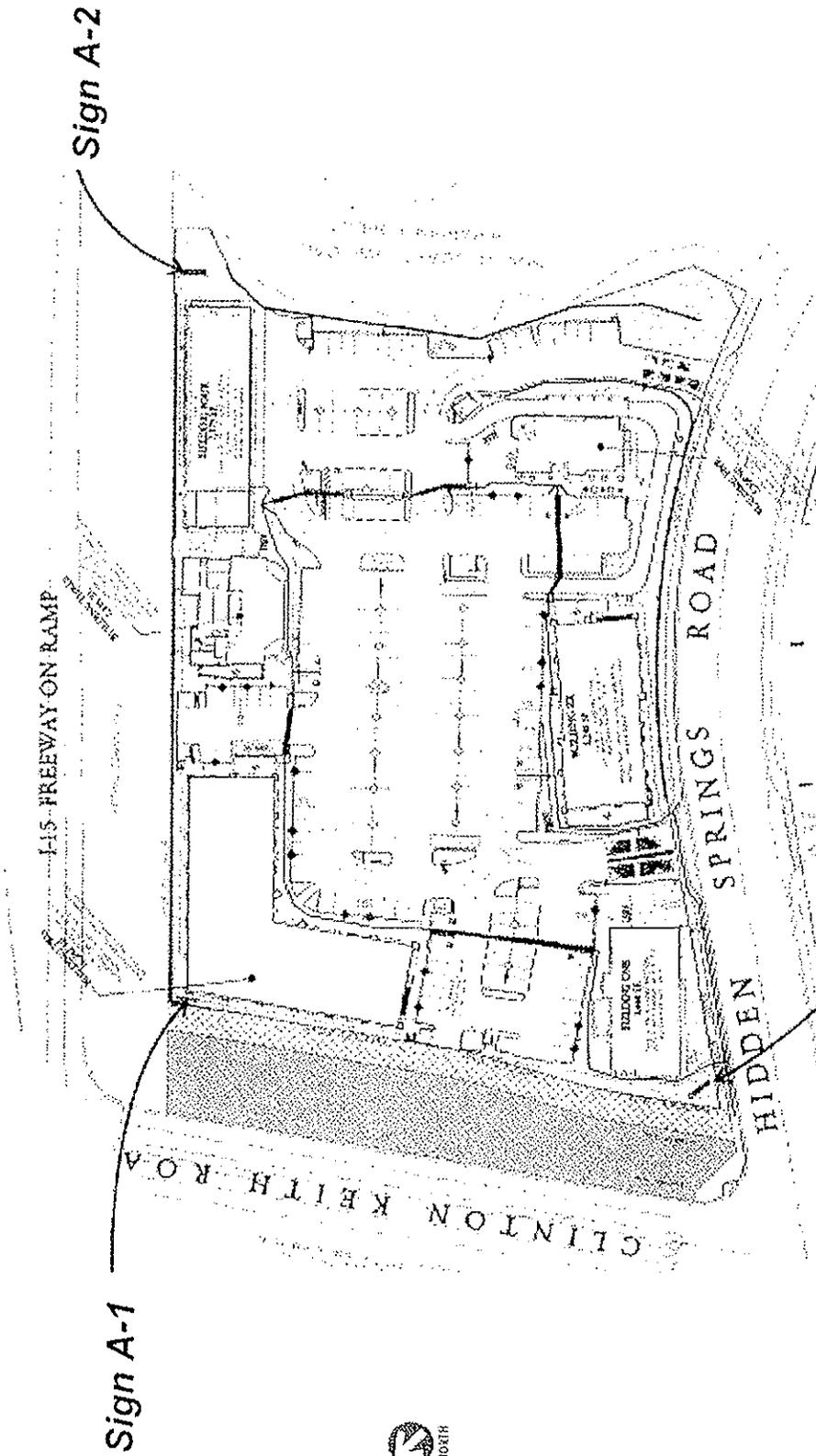
  
Gary E. Wayne  
Planning Director

**PC ATTACHMENT A**  
**VICINITY MAP**

VICINITY MAP



**PC ATTACHMENT B**  
**SITE PLAN ENLARGEMENT**



Corner Monument Sign (Approximately 9' 8" high)



**PC ATTACHMENT C**  
**PLANNING COMMISSION RESOLUTION\***

*\* The Final Planning Commission Resolution is included in this Attachment.*

PC RESOLUTION 09-009

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILDOMAR DENYING VARIANCE APPLICATION NO. 08-0072 TO INCREASE THE HEIGHT OF FREE-STANDING SIGN "A-1" TO 85 FEET AT WILDOMAR SQUARE LOCATED SOUTH OF CLINTON KEITH ROAD, EAST OF HIDDEN SPRINGS ROAD, AND WEST OF INTERSTATE 15 AND KNOWN AS ASSESSORS PARCEL NUMBER 380-110-039**

**WHEREAS**, David Horenstein representing, DH Wildomar, LLC, filed Variance Application No. 08-0072 on October 7, 2008 in a manner in accord with the City of Wildomar General Plan and Zoning Code;

**WHEREAS**, the Project was processed including, but not limited to, public notice in the time and manner prescribed by State and local law, including Ordinance No. 348 and California Environmental Quality Act ("CEQA");

**WHEREAS**, the Planning Commission, at a regularly scheduled meeting, considered the Project and environmental review on April 15, 2009, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support or in opposition to this matter;

**WHEREAS**, at the conclusion of the Commission hearing and after due consideration of the testimony, the Commission recommended denial of the Application subject to and based upon the findings set forth hereunder;

**WHEREAS**, all legal preconditions to the adoption of this Resolution have occurred;

**WHEREAS**, that the above recitations are true and correct and are hereby incorporated by reference.

**NOW THEREFORE, THE PLANNING COMMISSION FOR THE CITY OF WILDOMAR HEREBY RESOLVES AS FOLLOWS:**

**Section 1. Variance Findings.** The Planning Commission, in denying the Project hereby makes the following findings as required by Section 17.196.010 of the City of Wildomar Municipal Code and Government Code Section 65906:

A. There are no special circumstances applicable to the parcel of property, including size, shape, topography, location or surroundings, and the strict application of this ordinance does not deprive such property of privileges enjoyed by other property in the vicinity that is under the same zoning classification.

*The project site has already received one variance from Riverside County on May 8, 2007, for increased sign height from 45-feet to 65-feet to compensate for the site's 20-foot elevation difference below the level of the Clinton Keith Road overcrossing, as explained in more detail in the staff report. This previously approved increase in sign height was approved by Riverside County to compensate for the elevation of the overcrossing. Thus, any special locational or topographical circumstances have been addressed by the original increase of 20-feet in the maximum allowable sign height (from 45 feet to 65 feet). Finally, the elevation of the site, the*

Clinton Keith Road overcrossing, and the freeway have not noticeably changed since the first variance was granted. In addition, (as shown in Figure 2 of the staff report) the shape of the site is not perfectly rectangular, however, the shape of the site is regular enough to accommodate the proposed development. As such, the size and shape of the project site does not create a site limitation requiring a taller freeway sign.

Poor freeway visibility has not been created by the topographical or other land characteristics, but by the request of the applicant and by the design layout of the shopping center. With Variance 1827, the County of Riverside approved a substantial increase in the allowable sign area from 150 square feet to 480 square feet. This increased sign area covers a larger portion of the sign structure than would normally occur with a 65-foot tall sign carrying 150 square feet of signage. If the freestanding sign for Wildomar Square carried 150 square feet of sign area, the signage would have been raised high enough to not be blocked by the building and would allow more of the signs to be visible from the freeway.

B. Granting of this variance would constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

The approval of this proposed variance would constitute the approval of a special privilege by allowing taller freeway signage than the Zoning Ordinance allows and that was previously approved for the nearby shopping centers. The requested taller freestanding sign is nearly two times the height allowed by the Zoning Ordinance and twenty feet taller than the equivalent signage across Clinton Keith Road. Bear Creek Village center across Clinton Keith Road to the north of Wildomar Square was granted a variance for a sixty-five foot tall freestanding sign. Bear Creek Village sign has a similar visibility issue for northbound traffic on Interstate 15 as the Wildomar Square sign has for southbound traffic. The Bear Creek Village sign variance allowed a second freeway sign 45-feet taller than the 20-foot height allowed for a second freeway sign by the zoning ordinance for a total height of 65 feet. A surface area of 150 square feet was allowed for the sign rather than the 100 square feet allowed by the Zoning Ordinance for the second freeway sign.

At the present time, both centers have freestanding signs that are 65 feet in height. Wildomar Square has two 65-foot tall signs while Bear Creek Village has one 65-foot tall sign and one 45-foot tall sign. The allowable signage surface for each of the Wildomar Square signs is 480 square feet while the allowable signage surface for each freestanding sign at Bear Creek Village is 150 square feet. In addition, the shopping center to the east of Interstate-15 has a freeway sign which complies with the requirements of the Zoning Ordinance. There are no other signs in the area that are 85-feet in height. By the granting of this variance, a special privilege would be bestowed on this center that no one else in the area has receives.

**Section 2. Environmental Compliance.** The California Environmental Quality Act (CEQA) does not apply to projects which an agency disapproves (CEQA Guidelines Section 15270).

**Section 3. Planning Commission Actions.** Based on the foregoing findings, the Planning Commission of the City of Wildomar hereby denies the requested Variance application No. 08-0072.

**PASSED AND ADOPTED** by the City of Wildomar Planning Commission on this 15th day of April, 2009, by the following vote:

AYES: None

NOES: Andre, Casillas, Devine, Dykstra, Nowak

ABSENT: None.

ABSTAINED: None.

**ATTEST:**

\_\_\_\_\_  
David Hogan, Commission Secretary

\_\_\_\_\_  
Robert Devine, Chairman

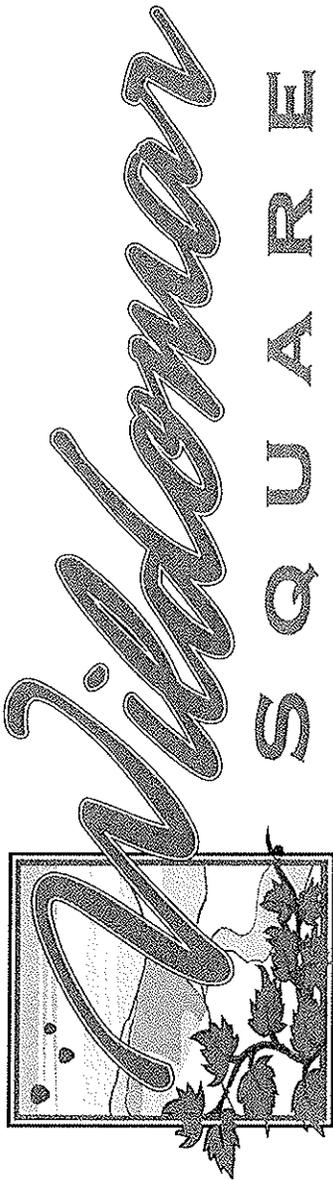
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Thomas Jex, Assistant City Attorney

**PC ATTACHMENT D**  
**APPROVED SIGN PROGRAM**

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*Wildomar Square*



SIGN PROGRAM

*Wildomar, California*

PROJECT DIRECTORY

OWNER:

DAVID HORENSTEIN  
D.H. HOLDINGS, INC.  
7033 WEST SUNSET BLVD, SUITE 208  
LOS ANGELES, CA 90028  
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CELL (949) 678-5846  
FAX (323) 962-2818

ARCHITECT:

BICKEL UNDERWOOD ARCHITECTURE  
3600 BIRCH ST, STE 120  
NEWPORT BEACH, CA 92660  
TEL (949) 757-0411  
FAX (949) 757-0511

SIGN CONSULTANT:

ULTRASIGNS ELECTRICAL ADVERTISING  
9025 BALBOA AVE., SUITE 150  
SAN DIEGO, CA 92123  
TEL (658) 569-1400  
FAX (658) 569-1453

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WALL SIGNS

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GROUND SIGNS

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A. INTRODUCTION

The intent of this sign criteria is to provide the guidelines necessary to achieve a visually coordinated, balanced and appealing sign environment, harmonious with the architecture of the project, while maintaining provisions for individual graphic expression.

Performance of this sign criteria shall be rigorously enforced and any nonconforming sign shall be removed by the tenant or his sign contractor at their expense, upon demand by the owner.

Exceptions to these standards shall not be permitted without approval from the Landlord and will require approval of a modification to the sign program application by the county.

Accordingly, the Landlord will retain full rights of approval for any sign used in the center.

No sign shall be installed without the written Landlord approval and the required County permits.

B. GENERAL LANDLORD/TENANT REQUIREMENTS:

1. Each tenant shall submit to landlord for written approval, three (3) copies of the detailed shop drawings of this proposed sign, indicating conformance with the sign criteria herein outlined.
2. The landlord shall determine and approve the availability and position of a tenant name on any ground sign(s).
3. The tenant shall pay for all signs, related materials and installation fees (including final inspection costs).
4. The tenant shall obtain all necessary permits.
5. The tenant shall be responsible for fulfillment of all requirements of this sign criteria.
6. It is the responsibility of the Tenants sign company to verify all conduit and transformer locations and service access prior to fabrication.
7. Should a sign be removed, it is the Tenant's responsibility to patch all holes and paint surface to match the existing color.

C. GENERAL SIGN CONSTRUCTION REQUIREMENTS:

1. All signs and their installation shall comply with all local building and electrical codes.
2. All electrical signs will be fabricated by a U.L. approved sign company, according to U.L. specifications and bear U.L. Label.
3. Sign company to be fully licensed with the County and State and shall have full Workman's Compensation and general liability insurance.
4. All penetrations of building exterior surfaces are to be sealed waterproof in color and finish to match existing exterior.
5. Internal illumination to be 30 milliamper neon, installed and labeled in accordance with the "National Board of Fire Underwriters Specifications".
6. Painted surfaces to have a semi gloss finish. Only paint containing acrylic polyurethane products can be used.
7. Logo and letter heights shall be as specified and shall be determined by measuring the normal capital letter of a type font exclusive of swashes, ascenders, and descenders.
8. All sign fabrication work shall be of excellent quality. All logo images and type-styles shall be accurately reproduced. Lettering that approximates type-styles shall not be acceptable. The Owner reserves the right to reject any fabrication work deemed to be below standard.
9. All lighting must match the exact specification of the approved working drawings. No exposed conduits or race ways will be allowed.
10. Signs must be made of durable rust -inhibited materials that are appropriate and complimentary to the building.
11. Color coatings shall exactly match the colors specified on the approved plans.
12. Joining of materials (e.g., seams) shall be finished in way as to be unnoticeable. Visible welds shall be continuous and ground smooth. Rivets, screws, and other fasteners that extend to visible surfaces shall be flush, filled, and finished so as to be unnoticeable.
13. Finished surfaces of metal shall be free from canning and warping. All sign finishes shall be free from dust, orange peel, drips, and runs and shall have a uniform surface conforming to the highest standards of the industry.
14. In no case shall any manufacturer's label be visible from the street from normal viewing angles.
15. Exposed raceways are not permitted unless they are incorporated into the overall sign design.
16. Exposed junction boxes, lamps, tubing, or neon crossovers of any type are not permitted.

# Wildomar Square

## D. SIGNAGE SPECIFICATIONS:

The intent of this criteria is to encourage creativity to ensure the individuality of each tenant sign as opposed to similar sign design, construction, and colors repeated throughout the project.

The following types of construction will be allowed:

- Acrylic face channel letters
- Through face and halo channel letters
- Reverse pan channel letters
- Open pan channel letters
- Push thru letters and logos in aluminum cabinets
- Logo modules with applied vinyl graphics.
- Flat cut out dimensional shapes and accents
- Metal screen mesh

The use of at least two types of the above to be incorporated into each sign design is encouraged.

The idea of using dissimilar materials and creating signs with varying colors, layers and textures will create an exciting and appealing retail environment.

The use of dimensional and layered icons is also encouraged.

Stacked copy is permitted

Ascending and descending shapes shall not be included in allocated square footage except for the area they occupy.

Tenant signs must meet the requirements of Ordinance 348.

Specifically, the following tenant sign areas are allowed.

**FRONT WALL SIGNS** - 10% of wall area square footage for Tenant's lease area.

**SIDE WALL SIGNS** - 10% of wall area total for all signs.

**REAR WALL SIGNS** - 5% of wall area square footage for Tenant's lease area.

Sign area available shall be calculated at maximum 1.5 square foot of sign area for each lined foot of leased premises.

The sign width is 75% of leased frontage of tenant space or the architectural element of which the sign is placed, whichever is the smallest. Refer to following exhibits for maximum sign heights allowed.

Regardless of the allowable square footage allowance for a tenant sign, the display must be balanced and proportional to the area upon which it is installed, as determined by Owner or Owner's Agent.

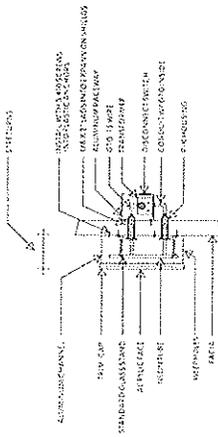
All tenants who have leased space adjacent to building storefront shall be allocated at least one sign for each building wall face.

Tenants who elect to place sign panels on a monument sign shall give up one wall sign for each two (2) panels (one on each side) or for any single-sided sign panel on each monument sign. In-line shops or end cap shops who only use two (2) wall signs may also have two (2) sign panels (one on each side) on a designated multi-tenant monument sign or freeway sign. Subject to availability and owner approval. In no case shall the combination of wall signs and monument signs exceed four (4) signs.

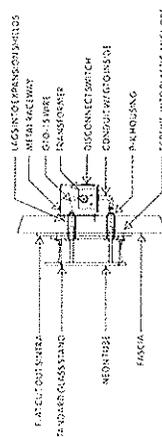
E. PROHIBITED SIGNS:

1. Signs constituting a Traffic Hazard  
No person shall install or maintain, or cause to be installed or maintained, any sign which simulates or imitates in size, color, lettering or design any traffic sign or signal, or which makes use of the words "STOP", "LOOK", "DANGER" or any words, phrases, symbols, or characters in such a manner as to interfere with, mislead or confuse traffic.
2. Signs in Proximity to Utility Lines:  
Signs which have less horizontal or vertical clearance from authorized communication or energized electrical power lines that are prescribed by the laws of the State of California are prohibited.
3. Primary & Secondary Signs painted directly on the building will not be permitted.
4. Wall signs may not project above the top of a parapet, the roof line at the wall, roof line or attached to the building.
5. There shall be no signs that are flashing, moving or audible.
6. Signs must be architecturally compatible with the entire center.
7. No sign shall project above or below the sign-able area. The sign-able area is defined in the attached Exhibit for minor and major tenants.
8. Vehicle Signs:  
Signs on or affixed to trucks, automobiles, trailers, or other vehicles which advertise, identify, or provide direction to a use or activity not related to its lawful activity are prohibited.

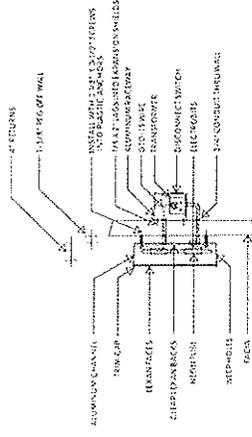
9. Light Bulb Strings:  
External displays, other than temporary decorative holiday lighting which consists of unshielded light bulbs are prohibited. An exception hereto may be granted by the Landlord when the display is an integral part of the design character of the activity to which it relates.
  10. Banners, Pennants & Balloons Used for Advertising Purposes:  
Temporary flags, banners, or pennants, or a combination of same constituting an architectural feature which is an integral part of the design character of a project may be permitted subject to Municipal Code requirements, Landlord's, and County approval.
  11. Billboard Signs are not permitted.
  12. The use of permanent sale sign is prohibited. The temporary use of these signs are limited to a thirty-day period and is restricted to signs affixed to the interior of windows which do not occupy more than 20% of the window area. Each business is permitted a total of not more than ninety (90) days of temporary window sale signs per calendar year.
- F. ABANDONMENT OF SIGNS:  
Any tenant sign left after thirty (30) days from vacating premises shall become the property of Landlord.
- G. INSPECTION:  
Landlord reserves the right to hire an independent electrical engineer at the Tenant's sole expense to inspect the installation of all Tenant's signs and to require the Tenant to have any discrepancies and/or code violations corrected at the Tenant's expense.



**SECTION A**  
SIGN TO BE IN APPROVED AND BEAR UL LABEL  
LEXAN FACED CHANNEL LETTERS  
PK HOUSINGS



**SECTION B**  
SIGN TO BE IN APPROVED AND BEAR UL LABEL  
EXPOSED NEON WITH SINTRA BACKS



**SECTION C**  
SIGN TO BE IN APPROVED AND BEAR UL LABEL  
LEXAN FACED CHANNEL LETTERS  
THROUGH FACE AND HALO ILLUMINATION

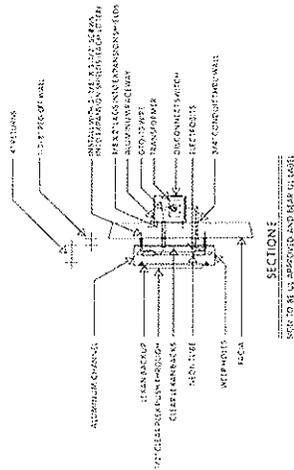
**SECTION A**  
New single faced internally illuminated Lexan faced channel letter display.  
Use standard aluminum construction with Matthews (or equivalent) semi gloss acrylic polyurethane finish.  
Faces use translucent Lexan with 3/4" firm cap to match face color, illuminate with 30 ma neon.  
Paint 5" deep returns to match face color or to match adjacent fascia color.

**SECTION B**  
New single faced illuminated wall display.  
Use multi layered flat cut 1/2" Sintra graphics with applied neon overlays.  
Flush mount Sintra to wall. Paint Sintra Matthews (or equivalent) semi gloss acrylic polyurethane.  
Use neon overlays with PK type housings.

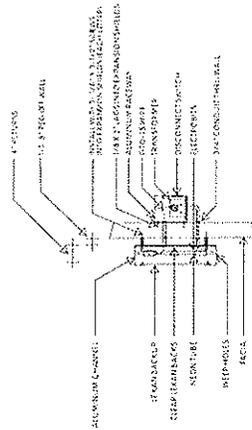
**SECTION C**  
New single faced internally illuminated Lexan faced channel letter display with through face and halo illumination.  
Use standard aluminum construction with Matthews (or equivalent) semi gloss acrylic polyurethane finish.  
Faces use Lexan with 3/4" firm cap to match face color, illuminate with 30 ma neon through face and halo.  
Paint returns to match face color or to match adjacent fascia color.

**SECTION D**  
New single faced internally illuminated aluminum faced channel letter display with through face and halo illumination.  
Use standard aluminum construction with Matthews (or equivalent) semi gloss acrylic polyurethane finish.  
Route out where graphics occur and back up with Lexan. Illuminate with 30 ma neon through face and halo.  
Paint aluminum face and returns.

**SECTION E**  
Same as "D" except route out where graphics occur and push through 1/2" clear plex with applied vinyl overlays.  
Note: All signs may utilize digital vinyl printing on faces of illuminated or non illuminated surfaces.



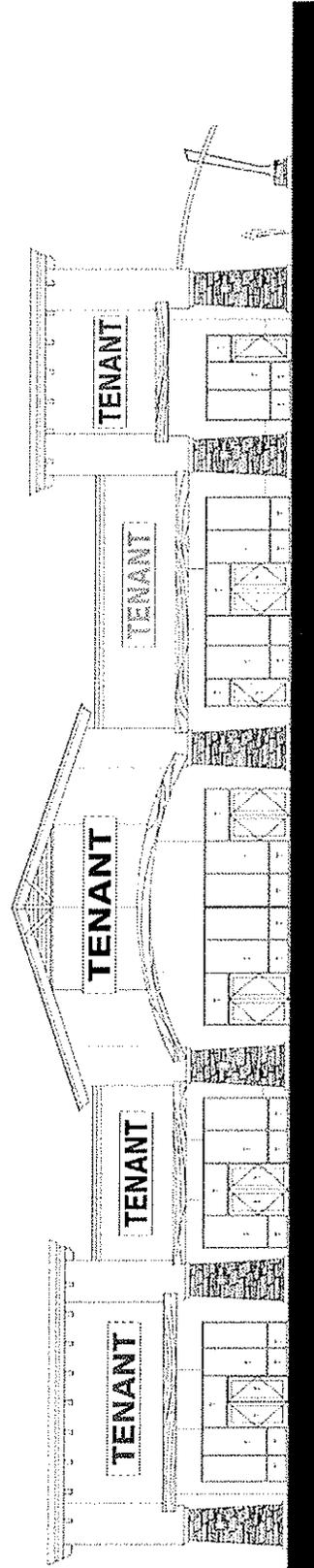
**SECTION E**  
SIGN TO BE IN APPROVED AND BEAR UL LABEL  
REVERSE PAN CHANNELS  
THROUGH FACE AND HALO ILLUMINATION  
PUSH THROUGH GRAPHICS



**SECTION D**  
SIGN TO BE IN APPROVED AND BEAR UL LABEL  
REVERSE PAN CHANNELS  
THROUGH FACE AND HALO ILLUMINATION



- SIZE:**  
FRONT ELEVATION: 1.5 SQUARE FOOT OF SIGN AREA PER LINEAR FOOT OF LEASED PREMISES, MAXIMUM OF 150 SQUARE FEET PER ELEVATION.
- MATERIALS:** VARIETY OF TYPES PER SIGN CRITERIA, THREE TYPES OF CONSTRUCTION REQUIRED
- ILLUMINATION:** YES
- COPY:** TENANT NAME AND / OR LOGO
- HEIGHT:** SEVENTY PERCENT OF ADJACENT SURFACE
- LENGTH:** SEVENTY FIVE PERCENT OF ADJACENT SURFACE
- TYPEFACE:** CUSTOM LOGO AND TYPE OK
- COLORS:** CUSTOM COLORS OK
- SECONDARY SIGNS:** NO



TYPICAL SHOP TENANT ELEVATION SCALE 3/32" = 1'-0"

MAXIMUM 75%  
OF ADJACENT SURFACE

**PAD TENANT**

70% OF ADJACENT  
SURFACE OR 3'-0" MAX  
(WHICHEVER IS LESS)

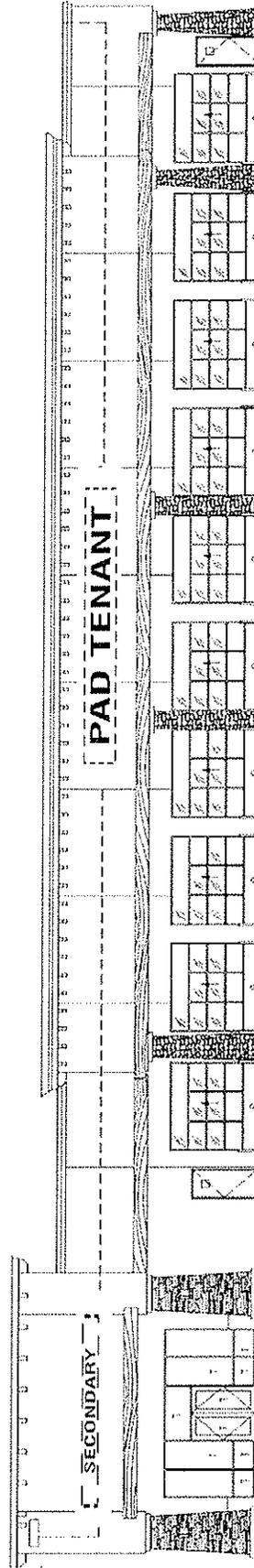
MAXIMUM 75%  
OF ADJACENT SURFACE LENGTH

**SECONDARY**

70% OF ADJACENT  
SURFACE HEIGHT OR  
1'-6" MAX (WHICHEVER IS LESS)

**NOTE: IF OCCUPIED BY ONE (1) TENANT ONLY**

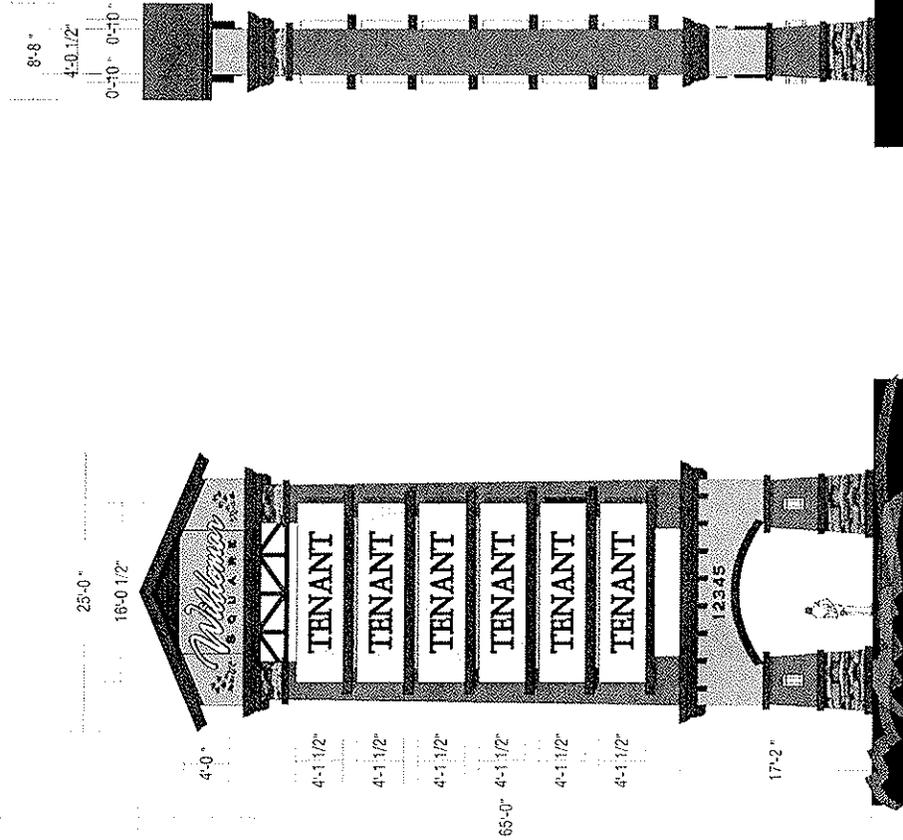
- SIZE: 1.5 SQUARE FOOT OF SIGN AREA PER LINEAR FOOT OF LEASED PREMISES, MAXIMUM OF 250 SQUARE FEET TOTAL PER ELEVATION.
- MATERIALS: VARIETY OF TYPES PER SIGN CRITERIA, TWO TYPES OF CONSTRUCTION REQUIRED
- ILLUMINATION: YES
- COPY: TENANT NAME AND / OR LOGO
- HEIGHT: SEVENTY PERCENT OF ADJACENT SURFACE
- LENGTH: SEVENTY FIVE PERCENT OF ADJACENT SURFACE
- TYPEFACE: CUSTOM LOGO AND TYPE OK
- COLORS: CUSTOM, COLORS OK
- SECONDARY SIGNS: YES (NOT TO EXCEED 25% OF TOTAL ALLOWABLE SIGN AREA); ONLY MAJOR SERVICES/DEPARTMENTS ALLOWED. NO ADVERTISING OR SLOGANS.



TYPICAL PAD TENANT ELEVATION

SCALE 3/32" = 1'-0"

# Wildomar Square

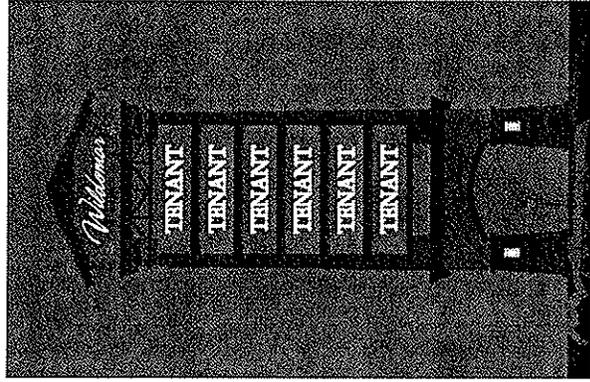


SEE **A** NEW DOUBLE FACED INTERNALLY ILLUMINATED MULTI TENANT PYLON

SCALE 3/32" = 1'-0"

USE STANDARD ALUMINUM CONSTRUCTOR WITH ANGLE FRAME AND STEEL PIPE SUPPORT INTO CEMENT FOOTING.  
SEE ENGINEERS SPECS FOR STRUCTURAL CALCULATIONS.  
VERIFY EXACT LOCATION OF SIGN PRIOR TO INSTALLATION.

(5) 20 amp. circuits at 120v. or (3) at 277v



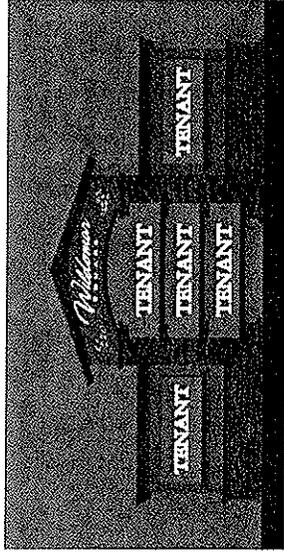
SIMULATED NIGHT VIEW

	HC-67
	HC-42
	HC-174
	WALNUT SOUTHERN LEDGE STONE #CSX2027
	VERIFY
	VERIFY
	WHITE PLEX #7328

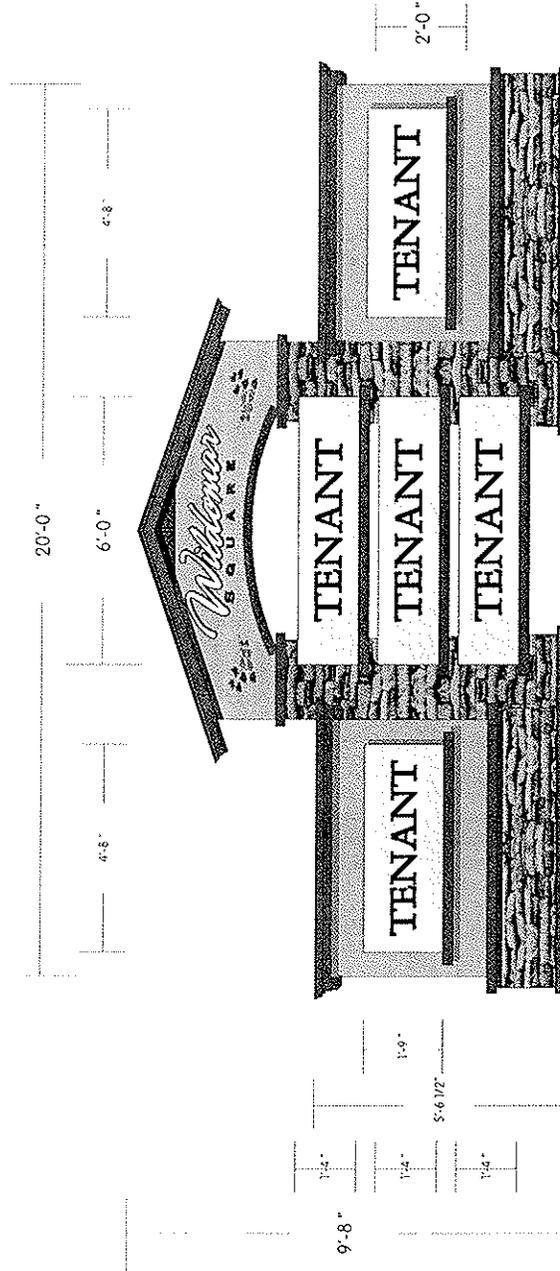
**COLOR PALETTE**



*Wildomar Square*



SIMULATED NIGHT VIEW



- HC-57
  - HC-42
  - HC-174
  - WALNUT SOUTHERN LEDGE STONE #CSX2027
  - VERBY
  - VERBY
  - WHITE PLEX #7326
- COLOR PALETTE

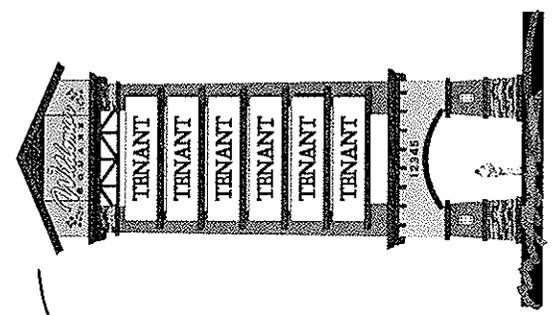
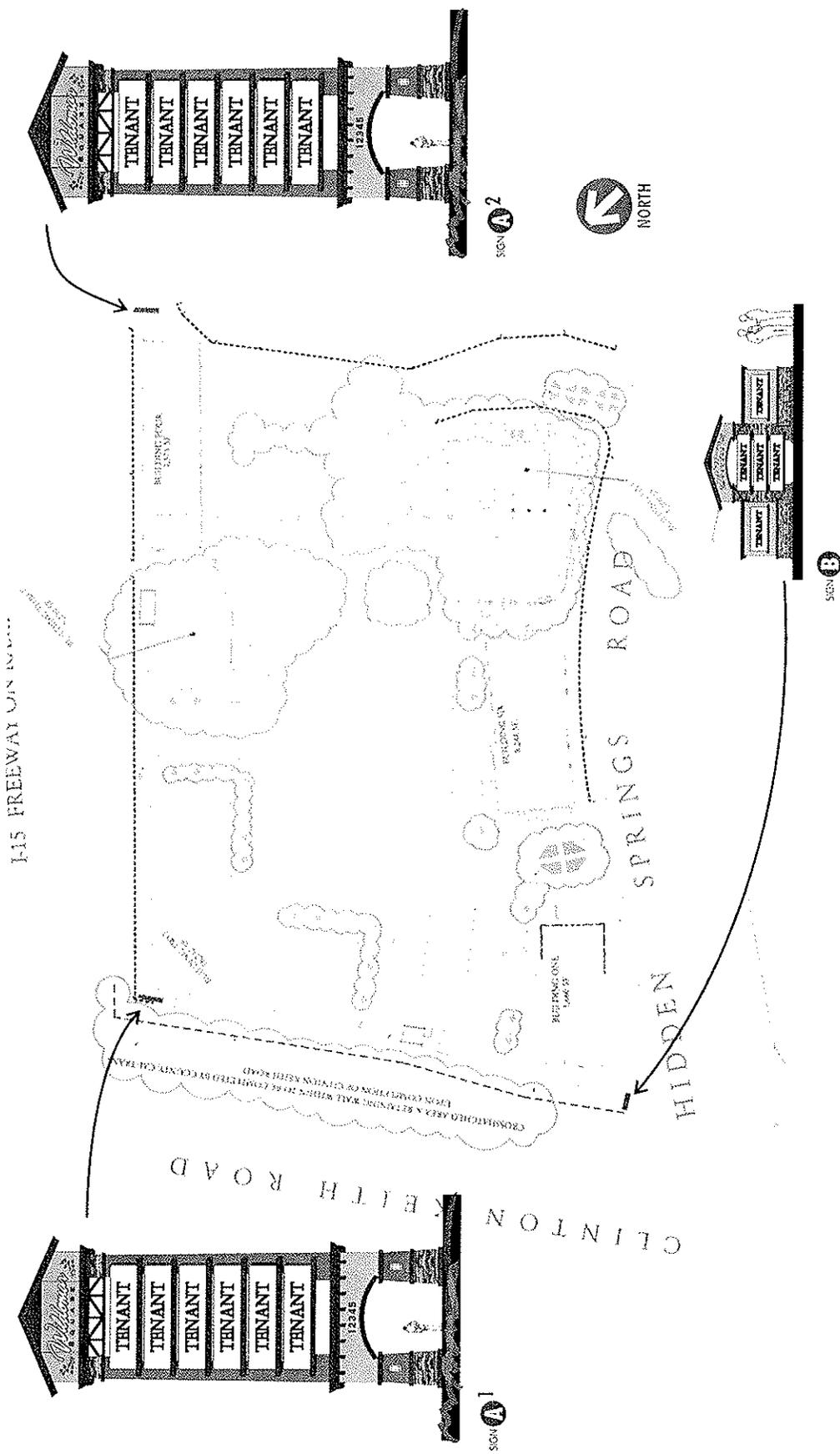
SIMULATED NIGHT VIEW



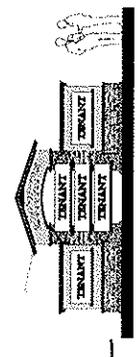
SIGN **B** NEW DOUBLE FACED INTERNALLY ILLUMINATED MULTI TENANT MONUMENT DISPLAY  
 PACKAGE ONE SCALE 3/8"=1'-0"

(2) 20 amp circuits at 120v or (1) at 277v

*Wildomar Square*



SIGN A



SIGN B

**PC ATTACHMENT E**  
**APPLICANT'S VARIANCE JUSTIFICATION LETTER**

## Variance Justification from the Applicant

"Variance No. 1827 is a proposal to exceed the number of signs, the height of the signs, and the surface area permitted pursuant to Section 19.4.a of Ordinance No. 348 for on-site free-standing advertising signs. The variance proposes to install two (2) 65' high Pylon Signs both on the project site's easterly boundary (adjacent to Interstate 15). Per Section 19.4.a of Ordinance No. 348, only one (1) free-standing sign is permitted on the same street (2 are proposed), the total height of the free standing sign shall not exceed 45' (65' proposed), and the total display area per sign shall not exceed 150 sq. ft. (480 sq. ft. proposed per sign for a total of 960 sq. ft.). **This was approved on April 22<sup>nd</sup>, 2008.**

16. Section 18.27.a of Ordinance No. 348 states the basis for a variance. Variances from the terms of this ordinance may be granted when, because of special circumstances applicable to a parcel of property, including size, shape, topography, location or surroundings, the strict application of this ordinance deprives such property of privileges enjoyed by other property in the vicinity that is under the same zoning classification. A variance shall not be granted for a parcel of property which authorizes a use or activity that is not otherwise expressly authorized by the zone regulation governing the parcel of property, but shall be limited to modifications of property development standards.

The following are justifications for the proposed variance:

- a. The proposed signage exceeds the requirements of Variance No. 1827 which allows for (2) two 65' freestanding pylon signs.

The commercial center proposes to exceed this requirement by increasing (1) one of the Pylon Signs to 85' closest to Clinton Keith and Interstate 15. on the project site's easterly boundary (adjacent to Interstate 15). The commercial center is oddly shaped and is situated in a deep hole relative to other portions of the Shopping Center; In addition, due to Cal Trans right of way closer to the sign location being dedicated to Cal-Trans, the current location of the sign has further negative implications because of its set back from Interstate 15; therefore, being neglected of road frontage along Interstate 15, the road frontage that properties with conventional layouts along Interstate 15 enjoy. Furthermore, due to the topographical slope issues that we have three (3) of the (6) six panels will not be viewed from the Freeway in the current position of the sign. Therefore, in order to effectively display retailers compared to adjacent commercial developments, the project would need to add an additional 20' to the proposed existing pylon sign. This constraint supports the variance for Signs A1 exceed the height requirement for free-standing signs allowed for a project.

- b. The proposed signage exceeds the requirements of Variance No. 1827 which allows for (2) two 65' freestanding pylon signs.

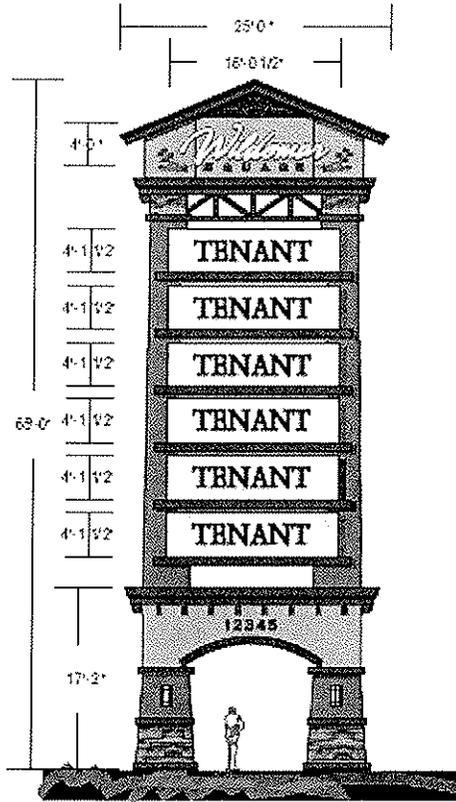
The project site is at a lower elevation than the adjacent freeway (Interstate 15), which is where the signs are proposed. Since the site is 22' lower than Interstate 15 it is being neglected of the same privileges that adjacent properties enjoy given the site's topography. If the site was at grade with Interstate 15, the variance would not be required. Therefore, in order to effectively display retailers compared to adjacent commercial developments, the freestanding signs need to be 85' in total height. This constraint supports the variance for Signs A1 exceed the approved maximum height by 20 feet for just A1.

- c. Lastly, Exhibit B shall show that the A1 new proposed signage shall appear be roughly +/-8.5' higher than the 65' pylon sign at the Stater Brothers Center known as Bear Village Center located on the SWC of Clinton Keith and Interstate 15."

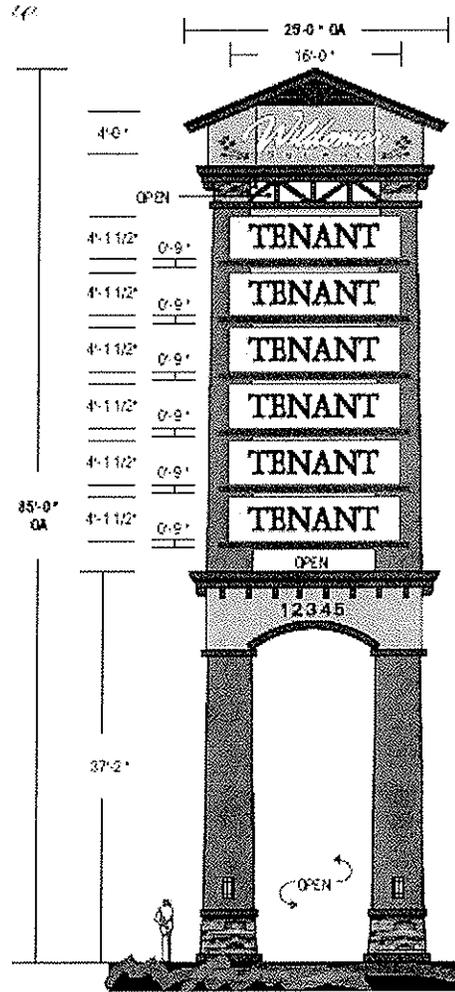
**PC ATTACHMENT F**  
**WILDOMAR SQUARE FREESTANDING SIGNS**

ATTACHMENT F

Approved 65-foot Freestanding Sign



Proposed 85-foot Freestanding Sign

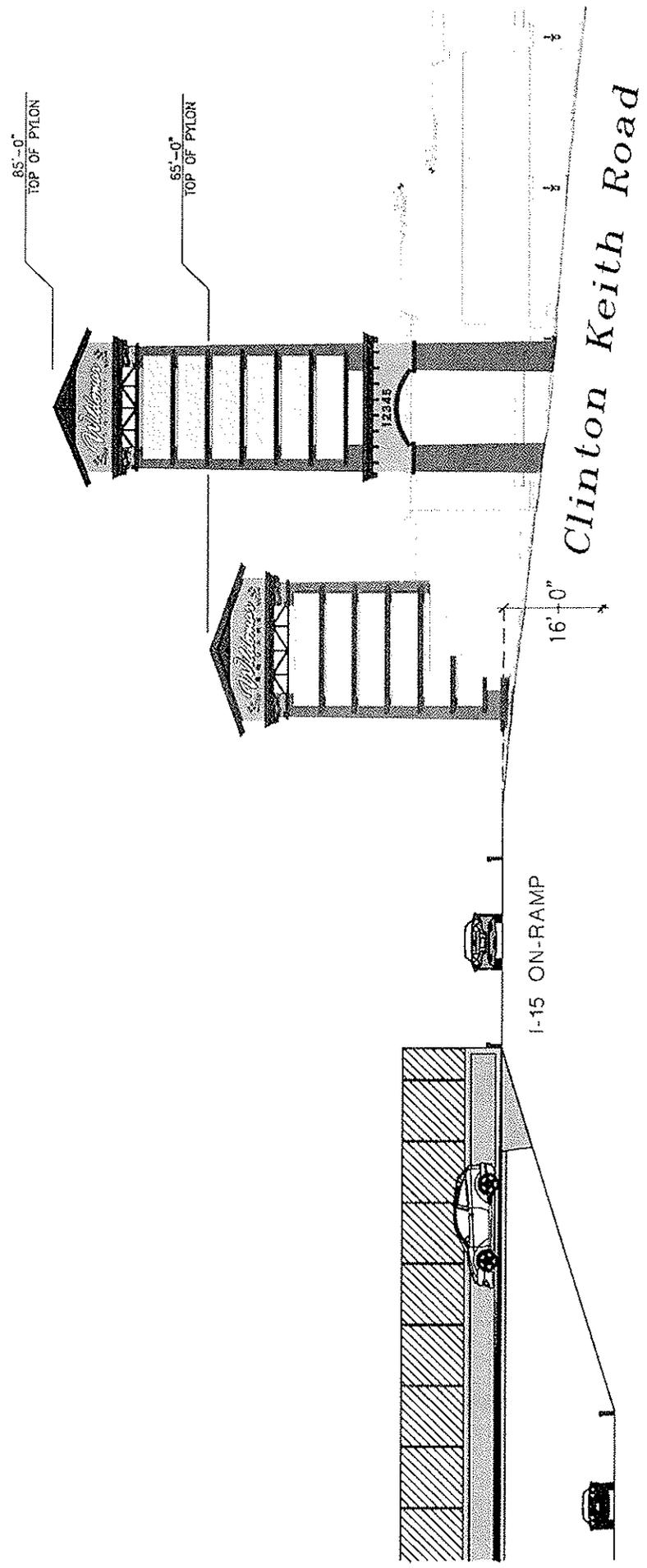


**PC ATTACHMENT G**  
**APPLICANT'S VISUAL SIMULATION EXHIBITS**

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# PYLON SIGNS

## Exhibit A



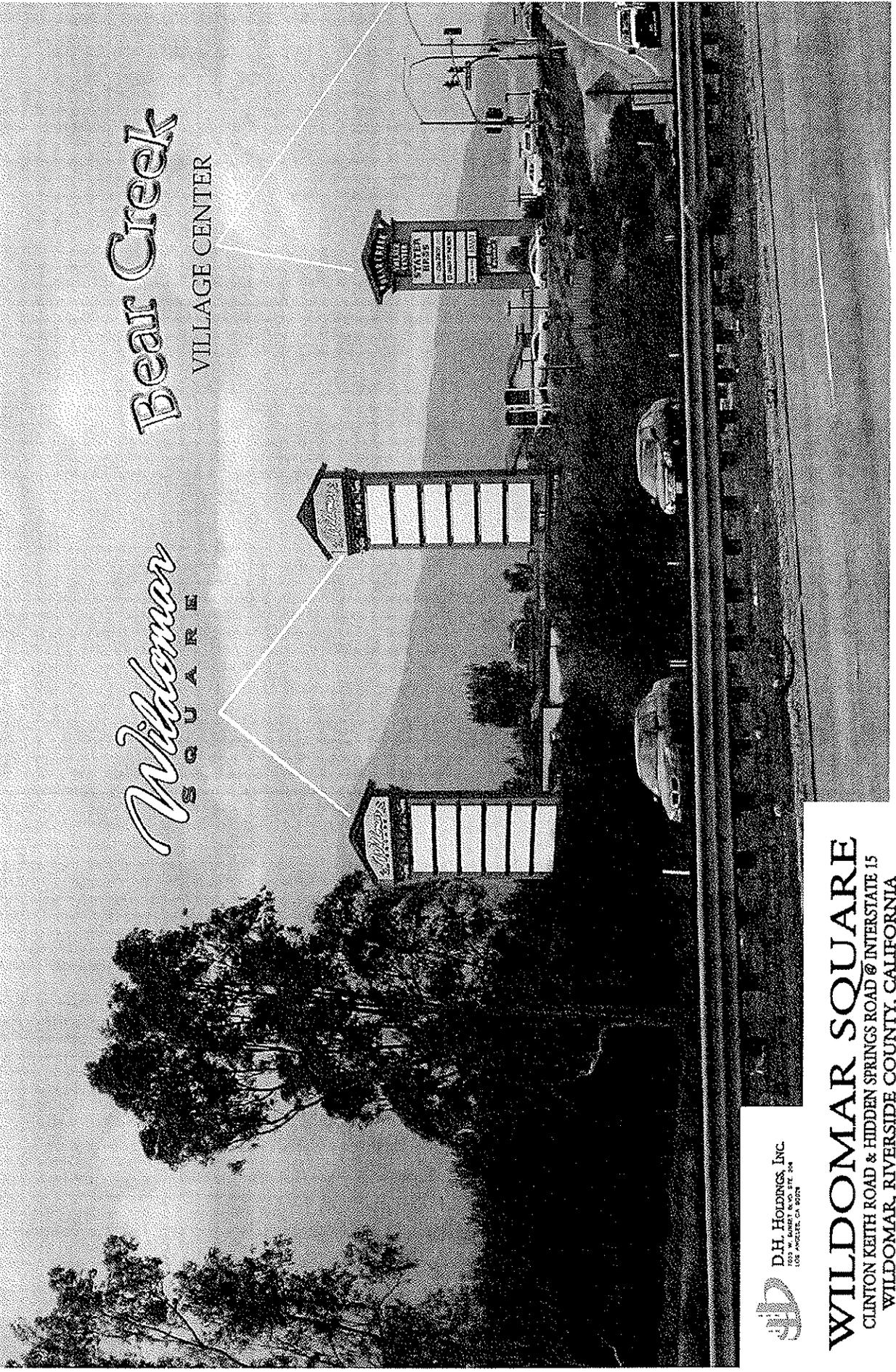
D.H. Holdings, Inc.  
1231 W. MARKET BLVD. STE. 204  
LOS ANGELES, CA 90006

**WILDOMAR SQUARE**  
CLINTON KEITH ROAD & HIDDEN SPRINGS ROAD @ INTERSTATE 15  
WILDOMAR, RIVERSIDE COUNTY, CALIFORNIA

# PYLON SIGNS Exhibit B

*Wildomar*  
S Q U A R E

*Bear Creek*  
VILLAGE CENTER



D.H. Holdings, Inc.  
100 W. CENTER ST. #204  
WILDOMAR, CA 92595

**WILDOMAR SQUARE**  
CLINTON KEITH ROAD & HIDDEN SPRINGS ROAD @ INTERSTATE 15  
WILDOMAR, RIVERSIDE COUNTY, CALIFORNIA

# PYLON SIGNS *Exhibit C*

45' PYLON

65'

85'

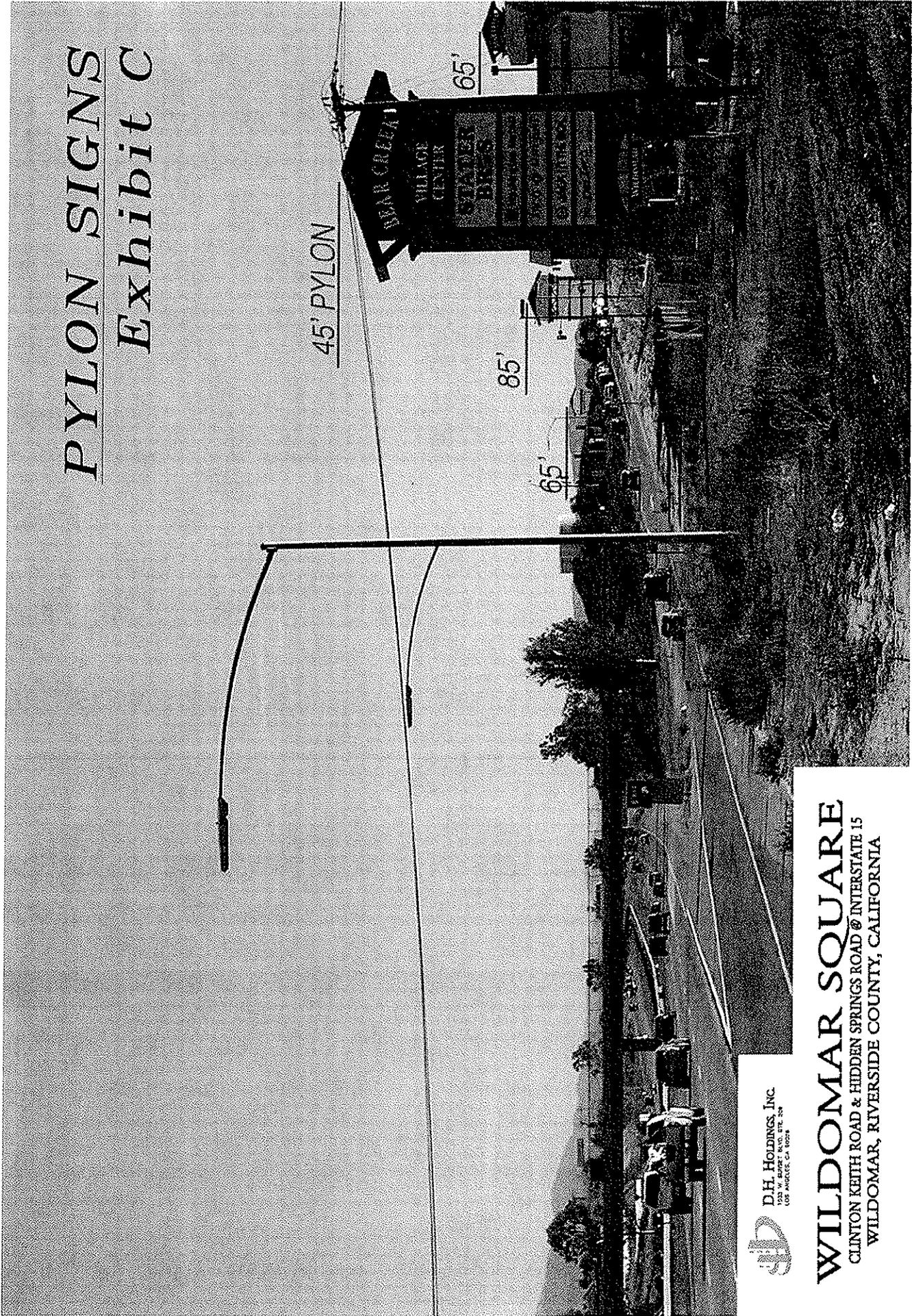
65'



D.H. Holdings, Inc.  
100 W. ANGELES CA 90015 TEL 328

## **WILDOMAR SQUARE**

CLINTON KEITH ROAD & HIDDEN SPRINGS ROAD @ INTERSTATE 15  
WILDOMAR, RIVERSIDE COUNTY, CALIFORNIA



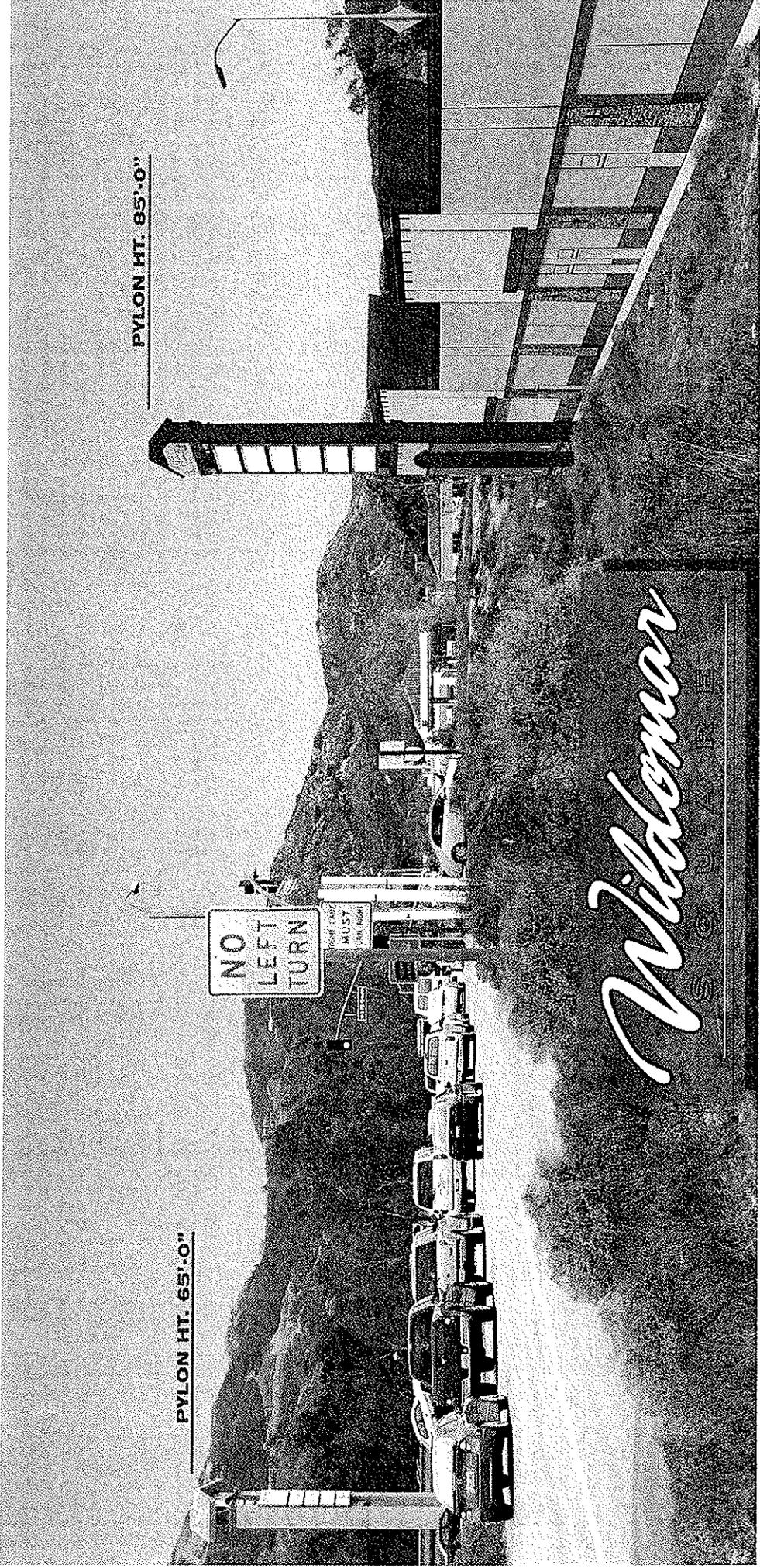
PYLON HT. 85'-0"

PYLON HT. 65'-0"

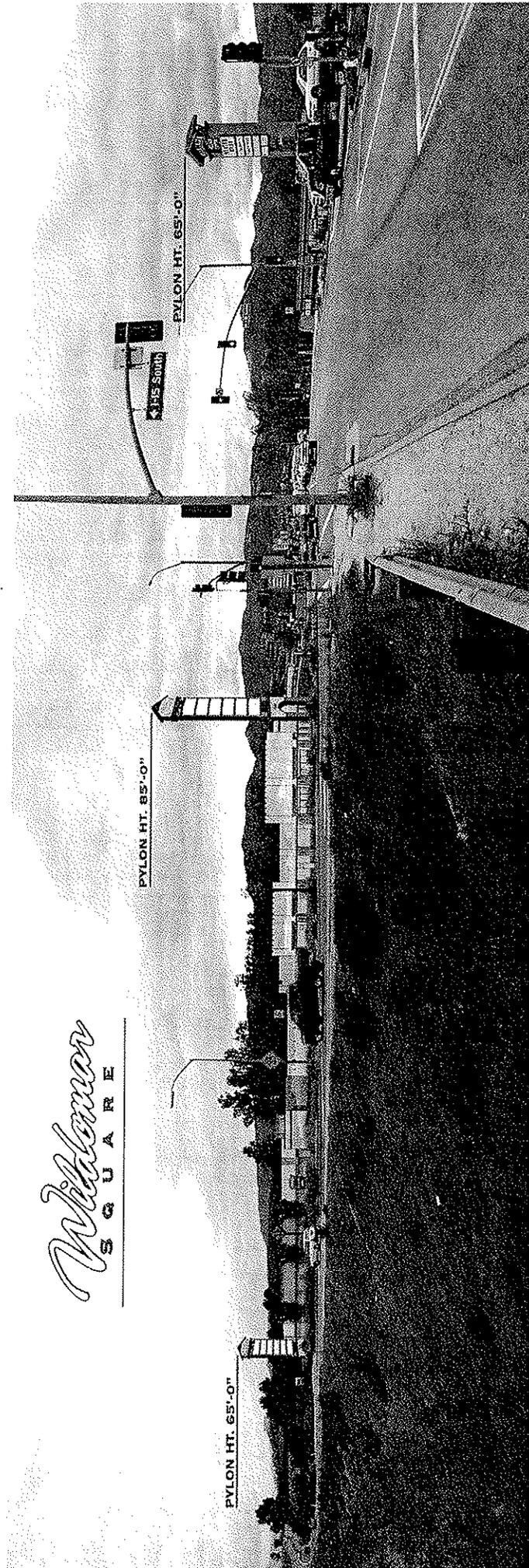
NO  
LEFT  
TURN

ALL VEHICLES  
MUST  
STOP HERE

*Wildomar*



*Wilman*  
S Q U A R E



**ATTACHMENT 3**  
**DRAFT PLANNING COMMISSION MINUTES**

**REGULAR MEETING  
CITY OF WILDOMAR  
PLANNING COMMISSION  
April 15, 2009**

**1.0 CALL TO ORDER**

The regular meeting of the Wildomar Planning Commission was called to order by Planning Commission Chairman Devine at 7:00 P.M. at Wildomar City Hall, Council Chambers.

**1.1 ROLL CALL OF PLANNING COMMISSION**

Present: Robert Devine, Chairman  
Harv Dykstra, Vice-Chairman  
Miguel Casillas, Commissioner  
Scott Nowak, Commissioner  
Gary Andre, Commissioner

Absent: None.

Staff Present: David Hogan, Assistant Planning Director  
Thomas Jex, Assistant City Attorney  
Sean del Solar, Planner

**1.2 PLEDGE OF ALLEGIANCE:**

Commissioner Nowak led the flag salute.

**2.0 COMMUNICATIONS FROM THE PUBLIC:**

Gina Castanan introduced herself and addressed the Commission. Ms. Castanan asked about the number of planners the City had on staff and questioned why the number of projects going forward to the City Council for approval had slowed.

Assistant Planning Director Hogan responded that the City has two Planners which staff the department regularly with the other Planning staff members exclusively dedicated to projects as needed. Mr. Hogan then explained the approval process for different application types.

**3.0 APPROVAL OF MINUTES:**

Commissioner Andre amended the minutes to include the word "pipe" in paragraph 8 on page 7.

Commissioner Andre moved to approve the amended Minutes of March 4, 2009. The motion was seconded by Vice-Chairman Dykstra. Motion carried, the following vote resulted:

AYES: Devine, Dykstra, Casillas, Nowak, and Andre.  
NOES: None.

ABSENT: None.  
ABSTAIN: None.

**4.0 CONTINUED PUBLIC HEARING ITEMS:**

None.

**5.0 PUBLIC HEARING ITEMS:**

5.1 VARIANCE NUMBER 08-0072.

Applicant: DH Holdings  
Location: Southeast corner of Clinton Keith Road and Hidden Springs Road (APN: 380-110-039).  
Proposals: Increase the height of one of two free-standing signs for the Wildomar Square commercial center from 65 feet to 85 feet within the Scenic Highway Commercial zone (C-P-S).  
Environmental Action: No California Environmental Quality Act (CEQA) compliance documentation has been provided at this time. If the Commission decides to consider approval of the variance request at a future date, the appropriate documentation will be provided.

Assistant Planning Director Hogan made the staff report.

Chairman Devine asked if the Planning Commission had any questions for Staff. None of the Commissioners had questions of Staff.

Chairman Devine opened the Public Hearing.

Applicant Horenstein introduced himself and addressed the Commission. Applicant Horenstein stated that the initial Variance was done without the benefit of engineering. He went on to explain that since the completion of site engineering, there was new information about the condition of the site. Applicant Hornstein stated that due to the expansion of Clinton Keith Road, and the height of the proposed sign panels, the sign will not be as visible as needed for proper identification. Applicant Hornstein concluded then his presentation and asked if the Commission had any questions.

Chairman Devine noted that the previously approved variances increased the sign area to several times the allowed area resulting in large individual sign panels. Chairman Devine asked the applicant if the size of the panels could be reduced to make all sign panels visible.

Applicant Horenstein replied that the County gave him direction to expand the area of the sign panels when variance number 1827 was granted to keep the sign in proportion.

Commissioner Nowak did not agree that the sign panels were kept proportional and referenced the design of the nearby Bear Creek Village Center sign which has smaller panels higher up on the sign. He went on to ask how many major tenants the proposed retail center would have.

Applicant Horenstein replied that there would be six large tenants.

Commissioner Andre inquired about the size of the Stater Brothers panel in the Bear Creek Village sign.

Applicant Horenstein responded that he was unaware of the panel sizes in the Bear Creek Village sign. In addition, the applicant offered to bring a crane to the site to create a real-life demonstration of the proposed sign.

Commissioner Andre stated that he had visited the site previously and supported the idea of a site visit by the Commission.

Chairman Devine asked the applicant if the size of the panels and other features of the sign could be reduced to make all the panels visible without increasing the size of the sign.

Applicant Horenstein invited the Commission to schedule a field trip to the site and make a decision at that time.

Assistant Planning Director Hogan explained that if it was the will of the Commission, a site visit could be arranged.

Chairman Devine asked if the Hearing would have to be continued to the next meeting if a site visit was desired by the Commission.

Assistant City Attorney Jex then discussed the legal requirements involved to conduct a site visit.

Chairman Devine recognized the receipt of a letter from Emilio and Judith Gonzales in opposition to the project.

Resident Judith Gonzales then addressed the Commission and identified herself as the author of the letter. Ms. Gonzales stated that she and a number of her neighbors had attended the County Board of Supervisors meeting where Variance Number 1827 was heard. She went on to state that the request before the Commission was for an additional variance and expressed concern over the precedence that would establish in Wildomar if the request was approved.

Chairman Devine closed the Public Hearing.

Commissioner Andre stated that he spoke with the Applicant earlier in the day and discussed the possibility of a site visit by the Commission. He went on to state his opposition to the 85' height of the proposed sign but expressed his interest in giving the applicant a fair chance.

Vice-Chairman Dykstra asked staff if there was another possible action the Commission could take on this item.

Assistant Planning Director Hogan responded that if the Commission can agree on an alternative action, they could ask the Applicant to modify their request.

Assistant City Attorney Jex agreed and added that the matter before the Commission was a request addressing the height of the sign. He advised that if an alternative

proposal addressed another aspect of the sign, the alternative action would need to be referred back to staff.

Vice-Chairman Dykstra suggested that in lieu of denying the request to increase the sign 20', the applicant could raise the sign 5' to overcome the unforeseen change in elevation and decrease the overall size of the panels.

Commissioner Nowak asked the applicant about the difference in the topography the site will have after development.

Applicant Horenstein responded that overall, the finished site would be lower, as the project would have a net export of soil.

Commissioner Nowak asked about the possibility of changing the overall grade of the site.

Assistant Planning Director Hogan responded that final grading plans had already been submitted for the project and that the on-site grades were established to adequately connect the site to Hidden Springs Road.

Commissioner Andre expressed concern with the precedence an approval of this variance could set.

Chairman Devine re-opened the Public Hearing.

Applicant Horenstein replied that due to the unique conditions of the site, there would not be a precedence set.

Commissioner Andre expressed his interest in going to the site to view a demonstration of the proposed sign.

Assistant Planning Director Hogan suggested that the Chairman poll the Commission to help determine the consensus of the group.

Chairman Devine recognized Commissioner Casillas.

Commissioner Casillas stated that he did not see a reason for granting the variance but he also indicated an interest in conducting a site visit.

Vice-Chairman Dykstra stated that he would be in opposition to the request because the panels are too large and smaller panels on the sign would correct any visibility problems created by the height of the building. He also stated that he was not opposed to a site visit but felt that it was not necessary.

Commissioner Andre stated that he felt that the Commission should conduct a site visit and stated that without a site visit he would not be inclined to increase the height of the sign.

Commissioner Nowak stated that the sign has plenty of visibility and that the panel sizes could be reduced slightly to overcome the visibility challenges of the site. In addition, he felt that the elevation of the site had not significantly changed since the first request for a

variance and the height issues should have been addressed then. Commissioner Nowak went on to state that he did not support a site visit.

Chairman Devine agreed with Commissioner Nowak.

Assistant Planning Director Hogan suggested that a site visit would involve a continuance and that a way to resolve the issue would be to get a motion and vote for a desired action.

MOTION: Commissioner Nowak motioned to deny variance number 08-0072, a request to extend the height of Sign A-1 to 85' with resolution PC09-005. The motion was seconded by Chairman Devine. Motion carried, the following vote resulted:

AYES:	Devine, Dykstra, Casillas, Nowak, and Andre.
NOES:	None.
ABSENT:	None.
ABSTAIN:	None.

**6.0 GENERAL BUSINESS ITEMS:**

None.

**7.0 ADMINISTRATIVE HEARINGS REPORT:**

Assistant Planning Director Hogan reported on the approval of Plot Plan application number 08-0227 at a Director Hearing on April 1, 2009.

**8.0 PLANNING DIRECTOR'S REPORT:**

Assistant Planning Director Hogan informed the Commission that the City's new website had launched. He went on to request that the Commissioners inform staff of their upcoming vacations to avoid scheduling conflicts with Planning Commission meetings.

Vice-Chairman Dykstra noted the absence of Gary Wayne and asked for information on the City's Planning Director.

Assistant Planning Director Hogan responded that due to personal reasons, Mr. Wayne would be taking an advisory role with the City and that Eric Norris would serve as the City's Planning Director.

**9.0 PLANNING COMMISSION COMMENTS:**

Commissioner Andre stated that he would be discussing both trails and bicycle lanes at the next City Council Meeting.

Commissioner Nowak discussed the use of striping on four and six lane roadways to denote the presence of bicycle lanes.

Vice-Chairman Dykstra expressed an interest to start a bicycle transportation plan as soon as possible. He also noted that the City's trail system was primarily for recreational purposes and that it would not adequately serve bicyclists.

Commissioner Nowak inquired about the status of updating the City's Municipal Code and General Plan.

Assistant Planning Director Hogan responded that a discussion about updating the General Plan was scheduled for an upcoming City Council norming session. He went on to inform the Commission that printed copies of the General Plan will be provided to the Commission next week. He added that the Council has avoided making any commitments until a final budget has been reached.

Commissioner Nowak requested that a General Plan update status report be included in every Planning Director's Report.

**10.0 ADJOURNMENT:**

The April 15, 2009 regular meeting of the Wildomar Planning Commission adjourned at 8:10 P.M.

Respectfully submitted:

David Hogan  
Commission Secretary

**ATTACHMENT 4**  
**SIGNED APPLICATION FOR APPEAL**



**CITY OF WILDOMAR**  
 23873 Clinton Keith Road  
 Wildomar, CA 92595  
 Tel. (951) 677-7751 Fax. (951) 6981463

For office use only.  
 08-0072  
 Project Account Number

## APPLICATION FOR APPEAL

In accordance with City of Wildomar Municipal Code Section 17.192.070, an appeal may be filed within 10 days after the notice of decision is made on an associated application. The appeal application must be accompanied by the applicable fee deposit as set forth in City of Wildomar Ordinance No. 671 along with the required Public Hearing Notice Label requirements.

### APPEAL INFORMATION

Appeal of Application Case No(s):  VARIANCE 08-0072
Appealing the Decision of (specify Director of Planning, Director's Hearing, or Planning Commission) and Decision Date:  PLANNING COMMISSION HEARING DATED APRIL 15TH 2009
Please state the basis for the appeal and include any supporting evidence if applicable (please attach additional sheets if necessary).  THEY DIDN'T UNDERSTAND THE RELEVANCE OF OUR REQUESTED VARIANCE.
RECEIVED APR 24 2009 CITY OF WILDOMAR

### APPELLANT CONTACT INFORMATION

Name D# HOLDINGS INC		
Mailing Address 7033 WEST SUNSET BLVD # 208 LOS ANGELES CALIF		
Telephone (949) 678-5846	Fax (323) 962-2818	Email DIBORSIE@D#HOLDINGS.COM
I hereby authorize the filing of this appeal in my name.		
Signature of Appellant 		Date 4-24-09

**CITY OF WILDOMAR – CITY COUNCIL**

**Agenda Item**

**ACTION ITEM: 3 A.**

**Meeting Date: June 10, 2009**

---

**TO:** Mayor and Members of the City Council

**FROM:** Gary Nordquist, Director of Finance

**SUBJECT:** Authorization of Additional Fees Related to Commercial Solid Waste Collection Services and Annual Rate Adjustment.

**STAFF REPORT**

**RECOMMENDATION:**

Adopt a Resolution authorizing the collection of additional fees by Waste Management for commercial solid waste collection services and the annual rate adjustment based on the Consumer Price Index (CPI).

**BACKGROUND/DISCUSSION:**

As a condition of the Agreement between the City and Waste Management for city-wide solid waste and recycling services, Waste Management can request changes to their fee schedule on an annual basis, however, those changes must be approved by the City Council.

City staff has received such a request from Waste Management on May 26, 2009 for the addition of a commercial customer HOC (Haul or Call) fee of \$25.00. This fee would be in effect when a customer's bin is not accessible at the time the driver arrives to service the container due to locked gates or a car or truck blocking the bin.

In addition to these new fees, an annual Consumer Price Index (CPI) increase, as noted in the attached Exhibit A, will be applied to the current fees as is permitted by agreement. This adjustment is minor, increasing residential rates an average of \$0.38 per month and commercial ranging from \$0.12 to \$0.73 per month. The CPI increase does not require City Council approval as it is considered in the contract to be a pass-through fee that the waste hauler is entitled to on an annual basis.

**FISCAL IMPACTS:**

Estimated fiscal impact to the City is less than \$100.00 for FY 2009/10. Annual impact to the residents of the City served by this provider is less than \$5.00 per year.

**ALTERNATIVES:**

1. Take no action
2. Provide staff with further direction.

Submitted by:

Approved by:

\_\_\_\_\_  
Gary Nordquist  
Finance Director

\_\_\_\_\_  
John Danielson  
City Manager

Reviewed by:

\_\_\_\_\_  
Julie Hayward Biggs  
City Attorney

**Attachments:** 1) A Resolution of the City of Wildomar authorizing the collection of additional fees related to Commercial Solid Waste Collection.

2) Revised rate schedule Waste Management (Exhibit A).

**RESOLUTION NO. 09 - 34**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE COLLECTION OF ADDITIONAL FEES RELATED TO COMMERCIAL SOLID WASTE COLLECTION SERVICES AND ANNUAL RATE ADJUSTEMENT**

WHEREAS, to protect the health and safety of the community, the City of Wildomar contracts with Waste Management for commercial solid waste hauling services; and

WHEREAS, Waste Management can annually request adjustments to their collection fees over and above the Consumer Price Index (CPI), which is considered a pass-through amount; and

WHEREAS, such requests for additional fees over and above the CPI by Waste Management are subject to the approval of the City Council; and

WHEREAS, Waste Management has requested additional fees related to commercial solid waste collection.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA that additional fees for the collection of commercial solid waste collection services, as described in Exhibit A, are authorized.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2009.

---

Scott Farnam  
Mayor

Approved as to form:

Attest:

---

Julie Hayward Biggs  
City Attorney

---

Debbie A. Lee, CMC  
City Clerk

EXHIBIT A



CITY OF WILDOMAR  
MAY 26 2009  
RECEIVED

WASTE MANAGEMENT OF THE INLAND EMPIRE

5005 Imperial Street  
Fountain, CA 92570  
(951) 780-5400  
www.wmte.com

May 22, 2009

Mr. Michael Kashiwagi  
Director of Public Works  
City of Wildomar  
23873 Clinton Keith Road, Suite 201  
Wildomar, Ca. 92595

Re: Rate Adjustment FY 2009-2010

Dear Mr. <sup>Mike</sup> Kashiwagi:

Waste Management of Inland Empire respectfully requests your favorable consideration of the enclosed annual rate adjustment. Our proposed adjustment will be comprised of changes in disposal costs for green waste and municipal solid waste as well as a .10% CPI increase to the service component of the rate. In addition we are proposing to add one new fee for commercial customers.

In an effort to address these adjustments, Waste Management would respectfully request your favorable consideration and support for the following items:

Summary of Proposed Adjustments

**CPI** - As discussed earlier, we are proposing an increase for FY 2009 -2010. This adjustment mechanism (December to December CPI of .10%) would impact the service component of your rates only.

**Disposal Cost** - Waste Management is requesting an adjustment in its rates to reflect Riverside County's proposed tipping fee increase of .13%. This is a pass through cost that will be reflected in the disposal portion of your rates.

**ADC Surcharge** - Waste Management is requesting an adjustment to reflect the new \$10.00 per ton Alternative Daily Cover (ADC) green waste surcharge that will go into effect in Riverside County on July 1, 2009. This surcharge was approved by the County of Riverside to partially offset the Riverside County Landfill System for the depletion of valuable air space.

**Tire Haul Fee** - Waste Management is requesting a tire haul fee only for those customers that may request this service.

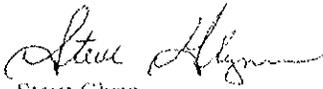
**HOC Fee (Haul or Call)** - One of the major operational challenges and costs that we face is when a customer's bin is not accessible at the time the driver arrives to service the container. This may be due to locked gates or a car or truck blocking the bin. A customer service protocol that we have established is while our driver is at the service location that cannot be serviced, our dispatcher attempts to contact the customer to see if the obstruction can be resolved while the driver is on site and we can service the container. If we are unable to make contact with the customer and the customer calls and requests that we

return later in the day or another day, a HOC fee would apply. The HOC fee that we request be established is \$25.00 per occurrence.

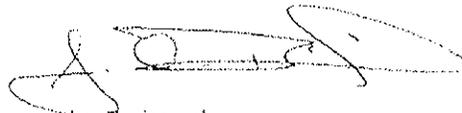
Waste Management respectfully requests your favorable consideration of our proposed rate adjustments. Detailed calculations of the rate adjustment calculations are included in the attached documents. These new rates are proposed to go into effect July 1, 2009 per our existing agreement.

Thank you in advance for your favorable review and consideration. We are available for further discussions or clarifications at your earliest convenience.

Sincerely,



Steve Glynn  
Representative to City of Wildomar



Alex Braicovich  
Director of Government Affairs

Cc: Sherry Kouba, Waste Management  
Steve Kanow, Waste Management

City of Wildomar Rate Comparison  
Effective July 1, 2009

<b>Residential</b>				
<b>Service Description</b>	<b>Proposed</b>	<b>Current</b>	<b>Change</b>	<b>% of Change</b>
Residential Collection - 96 Gallon Trash/Recycling/Greenwaste	\$ 21.94	\$ 21.56	\$ 0.38	1.8%
Residential Collection - Senior	\$ 21.07	\$ 20.69	\$ 0.38	1.8%
Extra 96 Gallon Recycling Cart	\$ 2.57	\$ 2.56	\$ 0.01	0.4%
Extra 96 Gallon Greenwaste Cart	\$ 5.23	\$ 4.87	\$ 0.36	7.4%
Extra 96 Gallon Trash Cart	\$ 6.42	\$ 5.54	\$ 0.88	15.9%

<b>Commercial</b>				
<b>Service Description</b>	<b>Proposed</b>	<b>Current</b>	<b>Change</b>	<b>% of Change</b>
3-Yrd Trash Collection - 1X per week	\$ 118.94	\$ 118.82	\$ 0.12	0.1%
3-Yrd Trash Collection - 2X per week	\$ 237.88	\$ 237.63	\$ 0.25	0.1%
3-Yrd Trash Collection - 3X per week	\$ 356.82	\$ 356.46	\$ 0.37	0.1%
3-Yrd Trash Collection - 4X per week	\$ 475.75	\$ 475.27	\$ 0.48	0.1%
3-Yrd Trash Collection - 5X per week	\$ 594.69	\$ 594.09	\$ 0.60	0.1%
3-Yrd Trash Collection - 6X per week	\$ 713.63	\$ 712.90	\$ 0.73	0.1%
Temporary Bin	\$ 100.57	\$ 100.47	\$ 0.10	0.1%

<b>Industrial</b>				
<b>Service Description</b>	<b>Proposed</b>	<b>Current</b>	<b>Change</b>	<b>% of Change</b>
Rolloff Container - Service	\$ 242.32	\$ 242.08	\$ 0.24	0.1%
Rolloff Container - Disposal - Per Ton	\$ 34.37	\$ 34.33	\$ 0.04	0.1%
Rolloff Container - Compactor Service	\$ 346.38	\$ 346.04	\$ 0.34	0.1%

City of Yakima  
Rate Schedule Effective July 1, 2009

Tip Fee Increase	0.11%
Fuel Surcharge	0.0%
GPI	0.1%

	Current Total	Current Service	Adjustment to Service	Current Landfill	Adjustment to Landfill	Adjusted Total
<b>Residential Services</b>						
Regular	\$16.24	\$13.68	\$3.01	\$4.58	\$0.01	\$19.26 <sup>1/2</sup>
Senior	\$17.37	\$12.79	\$3.01	\$4.58	\$0.01	\$17.39
Hard to Service	\$29.08	\$24.53	\$3.02	\$4.58	\$0.01	\$23.11
Extra Container	\$5.54	\$2.93	\$0.00	\$2.59	\$0.08	\$5.42
Green Waste	\$5.32	\$2.43	\$3.00	\$0.87	\$0.95	\$3.88 <sup>A</sup>
<b>Other Residential Services</b>						
Back Yard/Side Yard Collection	\$15.80	\$15.80	\$0.02			\$15.81 per month
Extra Recycling Cart	\$2.56	\$2.56	\$0.00			\$2.57 per month
Extra Green Waste Cart	\$4.87	\$4.87	\$0.00		\$0.35	\$5.23 per month
Exchanges (in excess of 1 per year)	\$15.80	\$15.80	\$0.02			\$16.61
Receiving Fee for Roll Cart	\$19.76	\$19.76	\$0.02			\$19.78
Reinstatement Fee	\$19.76	\$19.76	\$0.02			\$19.78
Scout Service	1.5 times residential rate					
Bulky Item Collection	\$19.76	\$19.76	\$0.02			\$19.78
CFC Removal Fee	\$26.33	\$26.33	\$0.03			\$26.36
Residential clean-up (\$50.00 minimum per callow)						
Labor	\$46.09	\$46.09	\$0.05			\$46.14 per man per hour
Forklift	\$65.83	\$65.83	\$0.07			\$65.90 per hour
Chainsaw	\$52.92	\$52.92	\$0.03			\$52.96 per hour
Electronic Waste	\$29.95	\$29.95	\$0.03			\$30.01
Residential Account Set Up Fee	\$13.63	\$13.63	\$0.01			\$13.67

City of Wildomar  
Rate Schedule Effective July 1, 2009

Roll-offs:							
10 to 40 cubic yard	\$242.08	\$342.08	\$0.24				\$242.32 per pull plus disposal
Roll off compactor:	\$346.04	\$346.04	\$0.35				\$346.38 per pull plus disposal
Minimum Pull Charge	\$220.32	\$220.32	\$0.22				\$220.55
<b>Commercial Bin Push Charges</b>							
Discount Distance (in feet)							
0 to 25'	\$0.00	\$0.00	\$0.00				\$0.00 Per collection per week
25 to 50	\$8.51	\$9.51	\$0.01				\$9.52
51 to 75	\$12.25	\$12.23	\$0.01				\$12.24
76 to 100	\$13.55	\$13.59	\$0.01				\$13.60
Additional Roll off fees							
Delivery	\$30.16	\$30.16	\$0.03				\$30.24
Extra Trip	\$30.16	\$30.16	\$0.03				\$30.24
Relocation	\$30.16	\$30.16	\$0.03				\$30.24
<b>Commercial Bulky Item Service</b>							
first item	\$33.97	\$33.97	\$0.03				\$34.00
second and third item	\$20.38	\$20.38	\$0.02				\$20.40
<b>Unscheduled Extra Bin Dumps</b>							
While on Site	\$46.25	\$39.20	\$0.04	\$8.97	\$0.01		\$46.30
Separate Trip	\$66.62	\$59.66	\$0.06	\$8.97	\$0.01		\$66.70
Unscheduled Compactor Dumps							
Commercial Can	\$40.37	\$38.69	\$0.04	\$1.69	\$0.00	actual cost	\$40.41 per month
<b>Temporary Bin Service</b>							
Up to Three (3) days:	\$100.47	\$93.50	\$0.09	\$6.97	\$0.01		\$100.57 Total if empty
<b>Temporary Bin Service</b>							
Up to Thirty (30) days:	\$266.00	\$238.12	\$0.24	\$27.89	\$0.03		\$266.27 Total if empties
Additional Scout Service							
	\$67.93	\$67.93	\$0.07				\$68.00 Per month per bin
<b>Bin Exchange (in excess of 1 per year)</b>							
	\$80.16	\$80.16	\$0.09				\$80.25
<b>Lost or Stolen Bin</b>							
	\$679.34	\$679.34	\$0.58				\$680.02
<b>Lost or Stolen Cart</b>							
	\$108.69	\$108.69	\$0.11				\$108.80
<b>Burned Bin</b>							
	\$380.43	\$380.43	\$0.38				\$380.81
<b>Bin or Cart Repair actual cost:</b>							
actual cost:							
Locking Lids	\$16.30	\$16.30	\$0.02				\$16.32 per month
Replacement Lock	\$33.97	\$33.97	\$0.03				\$34.00
Replacement Key	\$6.79	\$6.79	\$0.01				\$6.80
Haul or Call Fee	\$0.00	\$0.00	\$0.00				\$25.00 New fee
Tire Haul Charge	\$0.00	\$0.00	\$0.00				\$350.00 New fee
<b>Restart Fees - Administrative bin on site</b>							
	\$20.38	\$20.38	\$0.02				\$20.40
<b>Restart Fees - Includes bin redelivery</b>							
	\$101.50	\$101.00	\$0.10				\$102.00
<b>"Over Loaded Bin" Fee</b>							
	\$33.97	\$33.97	\$0.03				\$34.00 per bin
<b>Residential account set up fee</b>							
	\$28.45	\$28.45	\$0.03				\$28.46

City of Wildomar  
Rate Schedule Effective July 1, 2009

Bin Size	Frequency	Current Total	Current Service	Adjustment to Service	Current Landfill	Adjustment to Landfill	Adjusted Total
1.5	1	\$79.56	\$66.64	\$0.07	\$12.92	\$0.01	\$79.64
	2	\$159.11	\$133.29	\$0.13	\$25.62	\$0.03	\$159.28
	3	\$238.67	\$199.93	\$0.20	\$38.74	\$0.04	\$238.92
	4	\$318.23	\$268.57	\$0.27	\$51.66	\$0.05	\$318.55
	5	\$397.79	\$333.21	\$0.33	\$64.57	\$0.07	\$398.19
	6	\$477.35	\$399.87	\$0.40	\$77.48	\$0.09	\$477.63
2	1	\$96.11	\$78.89	\$0.08	\$17.22	\$0.02	\$96.21
	2	\$192.22	\$157.78	\$0.16	\$34.44	\$0.04	\$192.42
	3	\$288.33	\$236.68	\$0.24	\$51.66	\$0.06	\$288.63
	4	\$384.45	\$315.57	\$0.32	\$68.87	\$0.08	\$384.84
	5	\$480.56	\$394.46	\$0.39	\$86.09	\$0.09	\$481.05
	6	\$576.67	\$473.36	\$0.47	\$103.31	\$0.11	\$577.25
3	1	\$118.82	\$92.88	\$0.09	\$25.62	\$0.03	\$118.94
	2	\$237.63	\$185.96	\$0.19	\$51.66	\$0.06	\$237.88
	3	\$356.45	\$278.97	\$0.26	\$77.48	\$0.09	\$356.82
	4	\$475.27	\$371.96	\$0.37	\$103.31	\$0.11	\$475.75
	5	\$594.09	\$464.95	\$0.46	\$129.13	\$0.14	\$594.69
	6	\$712.90	\$557.94	\$0.56	\$154.97	\$0.17	\$713.63
4	1	\$150.95	\$116.51	\$0.12	\$34.44	\$0.04	\$151.10
	2	\$301.89	\$233.02	\$0.23	\$68.87	\$0.08	\$302.20
	3	\$452.84	\$349.53	\$0.35	\$103.31	\$0.11	\$453.30
	4	\$603.79	\$466.04	\$0.47	\$137.75	\$0.15	\$604.40
	5	\$754.73	\$582.55	\$0.58	\$172.19	\$0.19	\$755.50
	6	\$905.68	\$699.06	\$0.70	\$208.82	\$0.23	\$906.61
5	1	\$183.41	\$140.37	\$0.14	\$43.04	\$0.05	\$183.60
	2	\$366.81	\$280.72	\$0.28	\$86.09	\$0.09	\$367.19
	3	\$550.22	\$421.08	\$0.42	\$129.13	\$0.14	\$550.78
	4	\$733.63	\$561.44	\$0.56	\$172.19	\$0.19	\$734.30
	5	\$917.03	\$701.81	\$0.70	\$215.23	\$0.24	\$917.97
	6	\$1,100.44	\$842.16	\$0.84	\$258.28	\$0.28	\$1,101.57
6	1	\$212.56	\$160.90	\$0.16	\$51.66	\$0.06	\$212.78
	2	\$425.12	\$321.81	\$0.32	\$103.31	\$0.11	\$425.56
	3	\$637.68	\$482.71	\$0.48	\$154.97	\$0.17	\$638.33
	4	\$850.24	\$643.62	\$0.64	\$208.82	\$0.23	\$851.11
	5	\$1,062.80	\$804.52	\$0.80	\$258.28	\$0.28	\$1,063.89
	6	\$1,275.36	\$965.43	\$0.97	\$309.94	\$0.34	\$1,276.67

**CITY OF WILDOMAR – COUNCIL**  
**Agenda Item 3 B.**  
**DISCUSSION ITEM**  
**Meeting Date: JUNE 10, 2009**

---

**TO:** Honorable Mayor Farnam, Members of the City Council  
**FROM:** David Hogan, Assistant Planning Director  
**SUBJECT:** Transient Occupancy Tax Encouragement Program

**STAFF REPORT**

**RECOMMENDATION:**

The Mayor requests that the City Council discuss the proposal and provide direction to staff on the development of a program to encourage the development of new hotel and motel projects.

**BACKGROUND:**

At the request of the Mayor, staff has prepared this staff report on a program to encourage additional hotel/motel development within the City of Wildomar. The primary rationale supporting this kind of program is to encourage the construction and operation of additional hotels and motels within the City by reducing the costs of the City's application review and permitting processing. The primary advantage to increasing hotels and motels within the community are the creation of additional jobs and increased tax revenues. This proposal is one of the possible options to encourage beneficial new development within the community.

The initial proposal for discussion would be to credit the project \$10,000 against its permit and application processing expenses for businesses which would generate TOT when the project is completed. Both the exact amount and the timing for providing the TOT Encouragement contributions are flexible. Possible alternatives to the timing for providing the TOT processing contribution are listed below. Staff suggests that the TOT Enhancement contributions would most reasonably occur at the timing of Options 3 or 4 as described below.

1. When the planning application is submitted to the City.
2. When the City provides its initial comments on the project and determines that the project is feasible (consistent with the general plan and zoning ordinance, and is workable on the project site).

3. When the application is determined to be complete (i.e. just before the public hearing for project approval).
4. When application for a building permit is submitted to the Building Department.

To provide a point of comparison the anticipated TOT from the proposed Candlewood Suites project was determined. According to this quick evaluation, a project the size of the Candlewood Suites project would generate approximately \$63,800 per year. The estimated annual TOT tax from this project is calculated with the following assumptions:

- Size: 118 rooms (proposed by the Candlewood Suites project);
- Occupancy Rate: 66.0% (the statewide occupancy rate in 2008, regional rates throughout Southern California ranged from 57.1% to 76.7%);
- Typical Room Rate: \$82 per night (an average room rate in June from hotels.com and hotwire.com for seven motels along Interstate 15 between Fallbrook and Lake Elsinore); and
- Transient Occupancy Tax Rate: 10% (as established by Section 4.16 of the Riverside County Code, as adopted by the City of Wildomar).

**FISCAL IMPACT:**

Depending on the size of the hotel/motel the program has the potential to generate between \$35,000 and \$65,000 per year in revenue to the City per new hotel/motel that is opened for business within the City, depending on the number of rooms.

**ALTERNATIVES:**

1. Discourage the proposed approach.
2. Provide direction to staff.

**ATTACHMENTS:**

None.

Submitted by:

---

David Hogan  
Assistant Planning Director

**CITY OF WILDOMAR – COUNCIL**  
**Agenda Item 3 C.**  
**DISCUSSION ITEM**  
**Meeting Date: JUNE 10, 2009**

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**TO:** Honorable Mayor Farnam, Members of the City Council

**SUBJECT:** Proposed City Logo discussion and direction

**Attachments:**

Proposed City Logos



1886 • 2008



1886 • 2008



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Connections of Community, Heritage and Progress



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Tradition • Opportunity

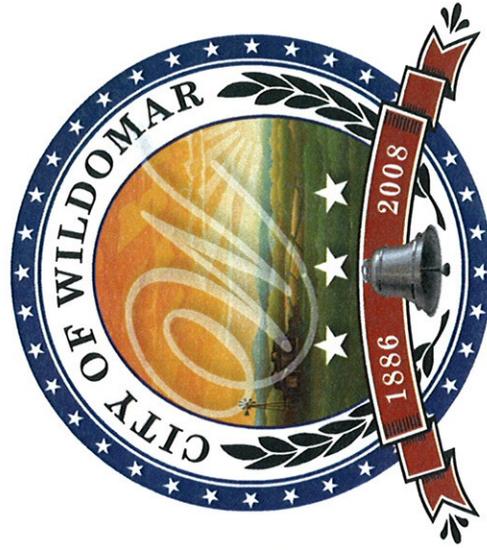


1886 • 2008

Where Tradition & Progress Meet



1886 • 2008



CITY OF WILDOMAR 50 YEAR SEAL

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OPTION A



OPTION B



OPTION C



OPTION D

OPTION E



OPTION G



OPTION F

CITY OF WILDOMAR MARKETING LOGO

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