

CITY OF WILDOMAR CITY COUNCIL
Agenda Item #1.2
CONSENT CALENDAR
Meeting Date: October 13, 2010

TO: Mayor and City Council Members
FROM: Gary Nordquist, Assistant City Manager
SUBJECT: Warrant Registers and Payroll Register

STAFF REPORT

RECOMMENDATION:

That the City Council approve:

1. Warrant Register dated September 23, 2010 in the amount of \$169,510.67;
2. Warrant Register dated September 30, 2010 in the amount of \$298,987.01;
3. Warrant Register dated October 7, 2010 in the amount of \$155,918.72; and
4. Payroll Register dated October 1, 2010 in the amount of \$18,343.66.

BACKGROUND:

The City of Wildomar 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.

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 Fiscal Year 2010-11 Budget.

ALTERNATIVES:

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

Submitted by:

Approved by:

Gary Nordquist
Assistant City Manager

Frank Oviedo
City Manager

		City of Wildomar	
		Payroll Warrant Register	
		October 1, 2010	
ACH Date	Payee	Description	Amount
10/1/2010	Payroll People	9/11-9/24/10 Staff and council	18,343.66
		TOTAL	18,343.66

		City of Wildomar	
		Warrant Register	
		September 23, 2010	
Num	Name	Memo/Description	Amount
2693	AFLAC, Remittance Processing Services	Insurance Premium for City Council & City Clerk - Oct 2010	604.74
2694	DirecTV	Monthly Office Television Service - 9/12/10 - 10/11/10	83.99
2695	Guardian	Insurance Payment - October 2010	1,211.05
2696	Marathon Reprographics	Plans sent to Elsinore Valley water, sidewalks to Schools Project	24.51
2697	Martin & Chapman Company	City Clerks Directory 2010	26.58
2698	North County Times	Public Hearing Notice, Ordinance No. 43, 41,40,44	1,980.70
2699	OnTrac	Overnight Delivery Services	57.35
2700	Aetna	Insurance Premium for City Council & City Clerk - Oct 2010	5,326.00
2701	DMN Publishing	Shop Wildomar Ad in Wildomar Gazette	196.00
2702	Interwest Consulting Group	Various Municipal Services for Aug 2010	159,999.75
		TOTAL	169,510.67

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
200001	9/30/2010	000007	ANIMAL FRIENDS OF THE VALLEY,, INC. AUG-10		ANIMAL SRVC AUG 10	7,500.00
					Total :	7,500.00
200002	9/30/2010	000114	CHANG, RONNIE	2045	REIMB FOR BUS REG	45.00
					Total :	45.00
200003	9/30/2010	000047	COUNTY OF RIVERSIDE, SHERIFF'S DEI SH-15124		LAW ENFORC 7/29-8/25/10	264,100.37
					Total :	264,100.37
200004	9/30/2010	000035	COUNTY OF RIVERSIDE, TLMA	TL-7477	SLF BILLING JUN 10	727.66
					Total :	727.66
200005	9/30/2010	000002	CRYSTAL CLEAN MAINTENANCE	1003	JANIT SRVC CITY HALL OCT 10	698.00
					Total :	698.00
200006	9/30/2010	000037	DATA TICKET, INC.	32925	CODE ENF WESBITE AUG 10	100.00
					Total :	100.00
200007	9/30/2010	000075	DOGGIE WALK BAGS, INC.	0018652-IN	DISPENSER BAGS	282.59
					Total :	282.59
200008	9/30/2010	000076	EDC OF SOUTHWEST CALIFORNIA	092310-38	EDC MTG- MARSHA SWANSON	40.00
					Total :	40.00
200009	9/30/2010	000022	EDISON	9-16-10	ELEC SRVC 7/16-9/15/10	6,416.67
					Total :	6,416.67
200010	9/30/2010	000061	INLAND EMPIRE MEDIA GROUP,, INC.	26384	OCT 10 ISSUE- AD	795.00
					Total :	795.00
200011	9/30/2010	000113	LEAGUE OF CALIFORNIA CITIES	9-20-10	DIVISION BREAKFAST	80.00
					Total :	80.00
200012	9/30/2010	000084	MUNISERVICES, LLC	23056	SUTA SRVC FOR TAX QRT ENDING	1,987.16
					Total :	1,987.16
200013	9/30/2010	000004	NAPLES PLAZA, LTD-OAK CREEK II, C/O 000340		CITY HALL LEASE OCT 10	10,114.56

Bank code : wf

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
200013	9/30/2010	000004	000004 NAPLES PLAZA, LTD-OAK CREEK II, (Continued)			
200014	9/30/2010	000064	TYLER TECHNOLOGIES			
			35672		LICENSE FEES	4,000.00
			35684		BUDGET PREP/CORE FIN 9/1-12/3	1,350.00
			35724		SETUP ASST- EDEN	750.00
					Total :	10,114.56

14 Vouchers for bank code : wf

Bank total : 298,987.01

14 Vouchers in this report

Total vouchers : 298,987.01

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
200015	10/7/2010	000008 AT&T MOBILITY	9282010		COUNCL PHONES 8/21-9/20/10	528.66
					Total :	528.66
200016	10/7/2010	000043 CHENG, MISTY V.	9/30/2010		ACCOUNTING SVC SEPT 2010	9,340.00
					Total :	9,340.00
200017	10/7/2010	000074 CHUNG AND CHUNG ACCOUNTANCY, C	10930		ACCNTS ASST. 8/31-10/4/10	2,350.00
					Total :	2,350.00
200018	10/7/2010	000059 DIAMOND W. EVENTS	20109		CONTRCTL SRVCS SEPT 2010	7,488.72
					Total :	7,488.72
200019	10/7/2010	000116 EARTHQUAKE MANAGEMENT	3547		CERT STRT KIT & SRVCS	1,257.73
					Total :	1,257.73
200020	10/7/2010	000012 ELSINORE VALLEY MUNICIPAL, WATER	4617094		WATER SVC HERITAGE 8/19-9/16/10	1,827.37
			4617095		WATER SVC WINDSONG 8/20-9/17/10	2,667.02
			4617096		WATER SVC MARNA 8/19-9/16/10	68.35
			4617097		WATER SVC MARNA 8/19-9/16/10	7,037.97
			4617098		WATER SVC CSA103 8/20-9/17/10	109.83
			4617099		WATER SVC CSA103 8/20-9/17/10	328.43
					Total :	12,038.97
200021	10/7/2010	000077 EXEC-U-CARE	09-20-10		MEDICAL INS OCT 2010	1,304.13
					Total :	1,304.13
200022	10/7/2010	000119 FX SIGNS	10-0179		REIMBURSEMENT OF UNUSED DEI	245.00
					Total :	245.00
200023	10/7/2010	000079 LAN WAN ENTERPRISE	38461		MAINT SVC CONTRACT EDEN OCT	450.00
					Total :	450.00
200024	10/7/2010	000026 PROTECTION RESCUE SECURITY, SER	10-275-H		SECURITY SVC VARIOUS PARKS S	425.00
					Total :	425.00
200025	10/7/2010	000042 PV MAINTENANCE, INC.	005-112		PW MAINT JULY 2010	28,471.31
			005-113		PW MAINT AUG 2010	26,455.71

Bank code :	wf			Invoice	PO #	Description/Account	Amount
Voucher	Date	Vendor					
200031	10/7/2010	000006	WELLS FARGO PAYMENT REMITTANCE, (Continued)				
			09-10-10			OFFICE SUPPLIES	114.54
			09-13-10A			NON DEPT OFFICE SUPP	75.18
			09-15-10			CTY COUNC TRVL- LEAGUE CA CO	237.78
			09-15-10			CTY MNGR TRVL-LEAGUE CA CON	561.22
			09-15-10			OFFICE SUPPLIES	50.97
			09-15-10A			CTY CLRK TRAVEL- LEAGUE CA CC	270.61
			09-15-10B			CTY COUNC TRVL- LEAGUE CA CO	493.22
			09-15-10C			CTY COUNC TRVL- LEAGUE CA CO	732.04
			09-15-10D			CTY COUNC TRVL- LEAGUE CA CO	597.01
			09-16-10			CTY COUNC TRVL- LEAGUE CA CO	212.78
			09-16-10			OFFICE SUPPLIES	23.45
			09-17-10			FIRE STATION SUPPLIES	190.06
			09-18-10			MAYOR'S BALL SUPP	19.97
			09-20-10			CTY CLRK MEMB DUES	180.00
			1223			MAYOR'S BALL SUPP	821.33
			9-16-10			EMERGENCY SUPPLIES	157.85
						Total :	7,228.66
200032	10/7/2010	000006	WELLS FARGO PAYMENT REMITTANCE, 09-08-10			MEETING SUPPLIES	5.98
			09-13/10			CTY CLRK OFFICE SUPPLIES	10.86
			09-13-10B			NON DEPT OFFICE SUPP	5.29
			09-17-10			OFFICE SUPPLIES	13.88
						Total :	36.01
200033	10/7/2010	000131	WESTERN RIVERSIDE COUNTY, REGIOI 10/4/2010			MSHCP MITIGATION FEE JULY-AUG	36,827.37
						Total :	36,827.37
200034	10/7/2010	000078	WILDOMAR AWARDS AND TROPHIES WAT0000026			ADULT SOFTBALL STAFF	900.00
						Total :	900.00
200035	10/7/2010	000055	WRCOG 10-6-2010			TUMF FEE JULY-AUG 2010	12,714.81
						Total :	12,714.81
						Bank total :	155,918.72
						Total vouchers :	155,918.72

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #1.3
CONSENT CALENDAR
Meeting Date: October 13, 2010

TO: Mayor and City Council Members
FROM: Debbie A. Lee, City Clerk
SUBJECT: Planning Commission Vacancies

STAFF REPORT

RECOMMENDATION:

Staff recommends that the City Council:

1. Declare three vacancies on the Planning Commission (seats currently held by Gary Andre, Ben Benoit, and Michael Kazmier); and
2. Direct the City Clerk to advertise the vacancies, starting October 15, 2010, for a period of 30 calendar days (October 15 – November 15).

DISCUSSION:

In June, 2010, the City Council adopted Ordinance No. 51 relating to establishment of a Planning Commission. One of the items adopted in Ordinance No. 51, was Section 2, stating that the term of office for Planning Commissioners shall run concurrently with the term of office of the City Council member who appointed the Commissioner and shall expire 60 days after the end of the appointing Council Member's term of office or the vacancy is filled, whichever occurs first.

We currently have three City Council seats being voted upon at the November 2, 2010 election. These seats are currently held by Mayor Pro Tem Swanson, and Council Members Ade and Farnam. Since the Planning Commission terms run concurrent with the appointing Council Member terms, the appointees of these three Council Members will also have their terms expire. These three seats are currently held by Gary Andre, Michael Kazmier, and Ben Benoit.

By declaring the vacancies now, the City Clerk can take applications for a period of 30 calendar days. In this case the open filing period will be October 15 – November 15, which is actually 32 days. By the end of the period the election will have taken place and the City will know who the Council Member-Elects will be. Additionally, those Commissioners currently holding the seats that will be appointed must submit an application to receive consideration for continued service on the Commission.

All applications received will be forwarded to the three Council Member-Elects and this will give them approximately 3 ½ weeks to interview potential Commissioners for appointment. It is anticipated that appointments will be made on December 8, 2010, when the Council Member-Elects will be sworn in.

FISCAL IMPACT:

Minimal cost for advertising.

Submitted by:

Approved by:

Debbie A. Lee, CMC
City Clerk

Frank Oviedo
City Manager

ORDINANCE NO. 51

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AMENDING SECTIONS 17.04.042, 17.04.043, 17.04.045, 17.04.046 AND 17.04.047 OF THE WILDOMAR MUNICIPAL CODE RELATING TO THE ESTABLISHMENT OF A PLANNING COMMISSION

THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. ENVIRONMENTAL FINDINGS. The City Council finds and determines that the project consists of a zoning ordinance amendment related to the operation of the planning commission and has no potential to impact the environment. Consequently, the proposed ordinance is exempt from CEQA review pursuant to Section 15061(b)(3) which states that if an activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

SECTION 2. Section 17.04.042.A of the Wildomar Municipal Code is hereby amended to read as follows:

 "A. Terms of members of the commission shall run concurrently with the term of office of the city council member who appointed the commission member and shall expire sixty (60) days after the end of the appointing Councilmembers term of office or the vacancy is filled, whichever occurs first."

SECTION 3. Section 17.04.043 of the Wildomar Municipal Code is hereby amended to read as follows:

"Members of the Planning Commission may be removed from office, or their offices declared vacant, for the following reasons and in the following manners.

- A. A member of the commission may be removed from office by the City Council for failure to meet any of the requirements for membership as defined in Section 17.04.041. The vacancy created shall be filled in the manner described in Section 17.04.041."
- B. A member of the commission is automatically removed from office if the member has an unexcused absence from three consecutive regular meetings of the commission. An unexcused absence shall be defined as a failure to attend a regular meeting without providing prior notice to the Commission Chairman or Planning Director. Following the third consecutive unexcused absence the Planning Director shall notify the City Council that, according to the terms of this Section, the commissioner's position is now vacant. The vacancy created shall be filled in the manner described in Section 17.04.041.

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #1.4
CONSENT CALENDAR
Meeting Date: October 13, 2010

TO: Mayor and City Council Members

FROM: Tim D'Zmura, Public Works Director

SUBJECT: Substitution of Subdivision Agreement and Securities – Tract 31345, Canyon Village (D.R. Horton)

STAFF REPORT

RECOMMENDATION:

Approve the Agreement and authorize the City Manager to enter into the Subdivision Agreement for Tract 31353, Canyon Village.

BACKGROUND:

In February 2010, D.R. Horton purchased the existing RC Hobbs subdivision located off of Canyon Drive, west of Elsinore High School. The original developer has partially completed the improvements as required under their subdivision agreements with the County of Riverside but as part of the purchase agreement, D.R. Horton is required to substitute agreements and bond. As the project is now within the City of Wildomar, the City has provided DR Horton with our standard subdivision agreement. As most of the improvements have been constructed, the City agreed with DR Horton that a reduction in the original bonding amounts were warranted. It is estimated that \$48,600.00 of improvements and warranty work remains and DR Horton has posted bonds to that extent.

D.R. Horton has submitted all the required documents. Once the project improvements are completed, staff will return to the City Council for acceptance of the improvements and authorization to release the bonds, with the exception of a warranty bond that will remain in effect for one year after acceptance by the City Council.

FISCAL IMPACTS:

The costs associated with the inspection of City facilities will be reimbursed (total cost recovery) by the developer through plan check and inspection fees. The maintenance of the City facilities, upon acceptance, will be provided within the Public Works Department's maintenance program.

Submitted by:

Approved by:

Tim D'Zmura
Public Works Director

Frank Oviedo
City Manager

ATTACHMENTS:

1. Executed Subdivision Agreement and Securities (Bonds)– Tract 31345 Canyon Village

**RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:**

(Document exempt from recording fees
pursuant to Cal. Gov. Code § 27383)

CITY OF WILDOMAR
Attn: City Engineer
23873 Clinton Keith Rd., Suite 201
Wildomar, California 92595

THIS SPACE FOR RECORDER'S USE ONLY

SUBDIVISION IMPROVEMENT AGREEMENT

FINAL TRACT MAP 31345

By and Between

**THE CITY OF WILDOMAR,
a municipal corporation**

and

D.R. Horton Los Angeles Holding Company, Inc.

A California corporation

DATED September 16, 2010

SUBDIVISION IMPROVEMENT AGREEMENT

FINAL TRACT MAP 31345

This Subdivision Improvement Agreement ("Agreement") is entered into as of this 10th day of September, 2017 by and between the City of Wildomar, a municipal corporation ("City") and D.R. Horton Los Angeles Holding Company, Inc., a California corporation ("Developer"). City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. Developer has submitted to City an application for approval of a final tract map for real property located within City, a legal description of which is attached hereto as Exhibit "A". The tract map is identified in City records as Tract Map No. 31345

B. Developer has not completed all of the work or made all of the Public Improvements required by the Subdivision Map Act (Government Code sections 66410 et seq.), ("Map Act") the City Ordinances, the conditions of approval for Tract No. 31345, or other ordinances, resolutions, or policies of City requiring construction of improvements in conjunction with the subdivision of land.

C. Pursuant to City Ordinances and the applicable provisions of the Map Act, Developer and City enter into this Agreement for the timely construction and completion of the Public Improvements and the furnishing of the security therefor, acceptable to the City Engineer and City Attorney, for Tract No. 31345.

D. City has authority to enter into this Subdivision Improvement Agreement pursuant to Government Code Sections 66499 – 66499.10.

E. Pursuant to Government Code Section 66499, Developer's execution of this Agreement and the provision of the security are made in consideration of City's approval of the final map for Tract No. 31345.

DEFINED TERMS

"Developer" shall mean D.R. Horton Los Angeles Holding Company, Inc., a California corporation. The term "Developer" shall also include all assignees, to the extent permitted under this Agreement, of the rights and obligations of Developer under this Agreement, and any successor-in-interest to Developer having a legal and/or equitable interest in the Property.

"Estimated Costs" shall mean the City Engineer's approximation of the actual cost to construct the Public Improvements, including the replacement cost for all landscaping.

"Litigation Expenses" shall mean all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a party in good faith in the prosecution of an action or

proceeding, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs and any other cost or expense, the award of which a court of competent jurisdiction may determine to be just and reasonable.

"Map Act" shall mean the Subdivision Map Act, Government Code Sections 66410 et seq.

"Property" shall mean the all of the real property contained within the boundaries of Tract Map No. 31345 located in the City of Wildomar, California, as is more particularly described in the legal description and tract diagram attached hereto and incorporated hereby by reference at Attachment "A".

"Public Improvements" shall include, but not be limited to, all grading, roads, streets, paving, curbs and gutters, sidewalks, paseos, pathways, trails, sanitary sewers, utilities, storm drains, detention and retention basins and other drainage facilities, traffic controls, landscaping, street lights and all other facilities required to be constructed and dedicated to the City or other public entity as conditions of approval of Tentative Tract Map No. 31345 and as shown in detail on the plans, and specifications which have been approved by the City and incorporated into Tract Map No. 31345. The Parties agree that the Public Improvements to be completed by Developer are more specifically described in the diagram or plan attached hereto and incorporated herein by reference as Attachment "B. Notwithstanding, Attachment "B", Developer shall remain obligated to construct and complete all of the Public Improvements required as conditions of approval for Tentative Tract Map 31345.

"Required Insurance" shall mean the insurance required to be maintained by Developer under Section 17.

"Security" shall mean surety bonds in the amounts and under the terms of Section 12 or other security approved by City Engineer or City Attorney.

"Tract No 31345." shall mean the final map prepared and approved by the City for tentative tract map no. 31345.

"Warranty" shall mean the one year period following completion of the Public Improvements by Developer and the acceptance of the Public Improvements by the City in which Developer warrants and guarantees all Public Improvements.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **EFFECTIVENESS.** This Agreement shall not be effective unless and until all four (4) of the following conditions are satisfied in the order provided:

1.1 **Security.** Developer provides City with the Security of the type and in the amounts required by this Agreement;

1.2 **Final Map and Agreement Approval.** The City Council of the City ("City Council") approves the final map for Tract No. 31345 and this Agreement;

1.3 **Record Agreement.** Developer and City execute the Agreement and City records this Agreement in the Recorder's Office of the County of Riverside; and

1.4 **Record Final Map.** Developer records the final map for Tract No. 31345 in the Recorder's Office of the County of Riverside.

If the above described conditions are not satisfied in the order, manner and within the time provided under this Agreement, this Agreement shall automatically terminate without need of further action by either City or Developer.

2. **PUBLIC IMPROVEMENTS.** Developer shall construct or have constructed at its own cost, expense, and liability the Public Improvements, as defined herein, within the time and in the manner required under this Agreement. Construction of the Public Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. The Developer shall be responsible for the replacement, relocation, or removal of any component of any irrigation water or sewer system in conflict with the construction or installation of the Public Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of the City Engineer and the owner of such water or sewer system. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary or required by City to fully and adequately complete the Public Improvements.

2.1 **Prior Partial Construction of Public Improvements.** Where construction of any Public Improvements has been partially completed prior to this Agreement, Developer agrees to complete such Public Improvements or assure their completion in accordance with this Agreement.

2.2 **Permits; Notices; Utility Statements.** Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and approvals and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or approval issued to Developer. Prior to commencing any work, Developer shall file a written statement with the City Clerk and the City Engineer, signed by Developer and each utility which will provide utility service to the Property, attesting that Developer has made all deposits legally required by the utility for the extension and provision of utility service to the Property.

2.3 **Pre-approval of Plans and Specifications.** Developer is prohibited from commencing work on any Public Improvement until all plans and specifications for such Public Improvement have been submitted to and approved by the City Engineer, or his or her designee. Approval by the City Engineer shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.4 **Quality of Work; Compliance With Laws and Codes.** The construction plans and specifications for the Public Improvements shall be prepared in accordance with all

applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The Public Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 **Standard of Performance.** Developer and its contractors, if any, shall perform all work required to construct the Public Improvements under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 **Alterations to Improvements.** All work shall be done and improvements made and completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation of the Public Improvements it is determined that the public interest requires alterations in the Public Improvements, Developer shall undertake such design and construction changes as may be reasonably required by City. Any and all alterations in the plans and specifications and the Public Improvements to be completed may be accomplished without giving prior notice thereof to Developer's surety for this Agreement.

2.7 **Other Obligations Referenced in Conditions of Tentative Map Approval.** In addition to the foregoing, Developer shall satisfy all of the conditions of approval on the tentative map for the Property. The conditions of approval which have not been satisfied prior to the date of this Agreement are identified on Exhibit "D" hereto.

3. **MAINTENANCE OF PUBLIC IMPROVEMENTS AND LANDSCAPING.** City shall not be responsible or liable for the maintenance or care of the Public Improvements until City formally approves and accepts them in accordance with its policies and procedures. City shall exercise no control over the Public Improvements until approved and accepted. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all the Public Improvements in a state of good repair until they are completed by Developer and approved and accepted by City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing, and maintaining in good and safe condition all streets and street improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this

Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance.

4. **CONSTRUCTION SCHEDULE.** Unless extended pursuant to this Section 4.1 of this Agreement, Developer shall fully and adequately complete or have completed the Public Improvements within two years (24 months) following approval of this agreement.

4.1 **Extensions.** City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. It is understood that by providing the Security required under Section 12.0 et seq. of this Agreement, Developer and its surety consent in advance to any extension of time as may be given by City to Developer, and waives any and all right to notice of such extension(s). Developer's acceptance of an extension of time granted by City shall constitute a waiver by Developer and its surety of all defense of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by City following the date on which the Public Improvements were to have been completed hereunder. In addition, as consideration for granting such extension to Developer, City reserves the right to review the provisions of this Agreement, including, but not limited to, the construction standards, the cost estimates established by City, and the sufficiency of the improvement security provided by Developer, and to require adjustments thereto when warranted according to City's reasonable discretion.

4.2 **Accrual of Limitations Period.** Any limitations period provided by law related to breach of this Agreement or the terms thereof shall not accrue until Developer has provided the City Engineer with written notice of Developer's intent to abandon or otherwise not complete required or agreed upon Public Improvements.

5. **GRADING.** Developer agrees that any and all grading done or to be done in conjunction with construction of the Public Improvements or development of Tract No. 31345 shall conform to all federal, state, and local laws, ordinances, regulations, and other requirements, including City's grading regulations. All grading, landscaping, and construction activities shall be performed in a manner to control erosion and prevent flooding problems. The City Engineer shall have the authority to require erosion plans to prescribe reasonable controls on the method, manner, and time of grading, landscaping, and construction activities to prevent nuisances to surrounding properties. Plans shall include without limitation temporary drainage and erosion control requirements, dust control procedures, restrictions on truck and other construction traffic routes, noise abatement procedures, storage of materials and equipment, removal of garbage, trash, and refuse, securing the job site to prevent injury, and similar matters. In order to prevent damage to the Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the time schedule for completion of the Public Improvements established by this Agreement, and prior to City's approval and acceptance of the Public Improvements and release of the Security as set forth in Section 12.0 et seq. of this Agreement.

6. **UTILITIES.** Developer shall provide utility services, including water, sewer, power, gas, and telephone service to serve each parcel, lot, or unit of land within Tract No. 31345 in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the regulations, schedules and fees of the utilities or agencies providing such services. Except for commercial or industrial properties, Developer shall also

provide cable television facilities to serve each parcel, lot, or unit of land in accordance with all applicable federal, state, and local laws, rules, and regulations, including, but not limited to, the requirements of the cable company possessing a valid franchise with City to provide such service within City's jurisdictional limits. All utilities shall be installed underground.

7. **FEES AND CHARGES.** Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, and other service fees, and any impact or connection fees established by City ordinance, resolution, regulation, or policy, or as established by City relative to Tract No. 31345, or as required by other governmental agencies having jurisdiction over Tract No. 31345.

8. **CITY INSPECTION OF PUBLIC IMPROVEMENTS.** Developer shall, at its sole cost, expense, and liability, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur. If the City inspector requests it, the Developer at any time before acceptance of the Public Improvements shall remove or uncover such portions of the finished work as may be directed which have not previously been inspected. After examination, the Developer shall restore said portions of the work to the standards required hereunder. Inspection or supervision by the City shall not be considered as direct control of the individual workmen on the job site. City's inspector shall have the authority to stop any and all work not in accordance with the requirements contained or referenced in this Agreement. The inspection of the work by City shall not relieve Developer or the contractor of any obligations to fulfill this Agreement as herein provided, and unsuitable materials or work may be rejected notwithstanding that such materials or work may have been previously overlooked or accepted.

9. **ADMINISTRATIVE COSTS.** If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10. **ACCEPTANCE OF IMPROVEMENTS; AS-BUILT OR RECORD DRAWINGS.** The City Council may, in its sole and absolute discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements within the time required by this Agreement.

10.1 **Developer's Notice of Completion.** Upon the total or partial acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted Public Improvements in accordance with California Civil Code section 3093, at which time the accepted Public Improvements shall become the sole and exclusive property of City without payment therefore.

10.2 **City Acceptance of Public Improvements.** If Tract No. 31345 was approved and recorded as a single phase map, City shall not accept any one or more of the

improvements until all of the Public Improvements are completed by Developer and approved by City. Issuance by City of occupancy permits for any buildings or structures located on the Property shall not be construed in any manner to constitute City's acceptance or approval of any Public Improvements.

10.3 **Developer's Obligation to Provide As-Built or Record Drawings.**

Notwithstanding the foregoing, City may not accept any Public Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City Engineer for all such Public Improvements. The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

11. **WARRANTY AND GUARANTEE.** Developer hereby warrants and guarantees all Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of all landscaping within the Property in a vigorous and thriving condition reasonably acceptable to City, for a period of one (1) year following completion of the work and acceptance by City. During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Public Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of City, and to the approval of the City Engineer. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City's acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

12. **SECURITY; SURETY BONDS.** Prior to City's approval and execution of this Agreement, Developer shall provide City with surety bonds in the amounts and under the terms set forth below. The amount of the Security shall be based on the City Engineer's Estimated Costs. If City determines at any time prior to Developer's completion of the Public Improvements under Section 4 [Construction Schedule], in its sole and absolute discretion, that the Estimated Costs have changed, Developer shall adjust the Security in the amount requested by City. Developer's compliance with this provision (Section 12.0 et seq.) shall in no way limit or modify Developer's indemnification obligation provided in Section 16.0 of this Agreement.

12.1 **Performance Bond.** To guarantee the faithful performance of the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 18.0 et seq. of this Agreement, and to secure Developer's one-year guarantee and warranty of the Public Improvements, including the maintenance of all landscaping in a vigorous and thriving condition, Developer shall provide City a faithful performance bond in the amount of Forty-Eight Thousand Six Hundred dollars and zero cents (\$48,600.00), which sum shall be not less than one hundred percent (100%) of the Estimated Costs.

12.2 **Partial Release.** The City Council may, in its sole and absolute discretion and upon recommendation of the City Engineer, partially release a portion or portions of the Security provided under this section as the Public Improvements are accepted by City, provided that Developer is not in default on any provision of this Agreement or condition of approval for Tract No. 31345, and the total remaining Security is not less than twenty-five percent (25%) of the Estimated Costs. All Security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement or condition of approval for Tract No. 31345.

12.3 **Labor & Material Bond.** To secure payment to the contractors, subcontractors, laborers, material men, and other persons furnishing labor, materials, or equipment for performance of the Public Improvements and this Agreement, Developer shall provide City a labor and materials bond in the amount of Forty-Eight Thousand Six Hundred dollars and zero cents (\$48,600.00), which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The Security provided under this section may be released by written authorization of the City Engineer after six (6) months from the date City accepts the final Public Improvements. The amount of such Security shall be reduced by the total of all stop notice or mechanic's lien claims of which City is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of City's anticipated administrative and legal expenses arising out of such claims.

12.4 **Additional Requirements.** The surety for any surety bonds provided as Security shall have a current A.M. Best's rating of no less than A:VIII, be a bank or insurance company licensed to transact surety business in California, and shall be satisfactory to City. As part of the obligation secured by the Security and in addition to the face amount of the Security, the Developer or its surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. The Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the plans and specifications for the Public Improvements shall in any way affect its obligation on the Security.

12.5 **Form of Security.** The evidence of the Security shall be provided on the forms set forth in Attachment "C", unless other forms are deemed acceptable by the City Engineer and the City Attorney, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Attachment "C" and incorporated herein by this reference.

12.6 **Developer's Liability.** While no action of Developer shall be required in order for City to realize on its security under any Security instrument, Developer agrees to cooperate with City to facilitate City's realization under any Security instrument, and to take no action to prevent City from such realization under any Security instrument. Notwithstanding the giving of any Security instrument or the subsequent expiration of any Security instrument or any failure by any surety or financial institution to perform its obligations with respect thereto, Developer shall be personally liable for performance under this Agreement and for payment of the cost of the labor and materials for the improvements required to be constructed or installed hereby and shall, within ten (10) days after written demand therefor, deliver to City such substitute Security as City shall require satisfying the requirements in this Section 12.

13. **MONUMENT SECURITY.** Prior to City's execution of this Agreement, to guarantee payment to the engineer or surveyor for the setting of all subdivision boundaries, lot corners, and street centerline monuments for Tract No. 31345 in compliance with the applicable provisions of City's Municipal and/or Development Code ("Subdivision Monuments"), Developer shall deposit cash with City in the amount of Zero Dollars (\$0.00), which sum shall not be less than one hundred percent (100%) of the costs of setting the Subdivision Monuments as determined by the City Engineer. Said cash deposit may be released by written authorization of the City Engineer after all required Subdivision Monuments are accepted by the City Engineer, City has received written acknowledgment of payment in full from the engineer or surveyor who set the Subdivision Monuments, and provided Developer is not in default of any provision of this Agreement or condition of approval for Tract No. 31345. Said Monuments have been set prior to this agreement.

14. **LIEN.** To secure the timely performance of Developer's obligations under this Agreement, including those obligations for which security has been provided pursuant to Sections 12.0 et seq. and 13.0 of this Agreement, Developer hereby creates in favor of City a lien against all portions of the Property not dedicated to City or some other governmental agency for a public purpose. As to Developer's default on those obligations for which security has been provided pursuant to Sections 12.0 et seq. and 13.0 of this Agreement, City shall first attempt to collect against such security prior to exercising its rights as a contract lienholder under this section.

15. **SIGNS AND ADVERTISING.** Developer understands and agrees to City's ordinances, regulations, and requirements governing signs and advertising structures. Developer hereby agrees with and consents to the summary removal by City, without notice to Developer, of all signs or other advertising structures erected, placed, or situated in violation of any City ordinance, regulation, or other requirement. Removal shall be at the expense of Developer and its surety. Developer and its surety shall indemnify and hold City free and harmless from any claim or demand arising out of or incident to signs, advertising structures, or their removal.

16. **INDEMNIFICATION.** Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the Public Improvements, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused solely and exclusively by the gross negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify City shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

17. INSURANCE.

17.1 **Types; Amounts.** Developer shall procure and maintain, and shall require its contractors to procure and maintain, during construction of any Public Improvement pursuant to this Agreement, insurance of the types and in the amounts described below. If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

17.1.1 **General Liability.** Developer and its contractors shall procure and maintain occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than \$3,000,000 per occurrence for bodily injury, personal injury, and property damage.

17.1.2 **Business Automobile Liability.** Developer and its contractors shall procure and maintain business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any vehicle owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

17.1.3 **Workers' Compensation.** Developer and its contractors shall procure and maintain workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than \$1,000,000 per occurrence, at all times during which insured retains employees.

17.1.4 **Professional Liability.** For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than \$1,000,000 per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

17.2 **Deductibles.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

17.3 **Additional Insured; Separation of Insureds.** The Required Insurance shall name City, its elected officials, officers, employees, agents, and volunteers as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insured provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, agents, and volunteers.

17.4 **Primary Insurance; Waiver of Subrogation.** The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, agents, and volunteers. All policies for the Required

Insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.

17.5 **Certificates; Verification.** Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

17.6 **Term; Cancellation Notice.** Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on 30 days' prior written notice to City.

17.7 **Insurer Rating.** Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least A:VIII.

18. **DEFAULT; NOTICE; REMEDIES.**

18.1 **Notice.** If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation. Developer shall commence the work required to remedy the default or violation within ten (10) days of the written demand from the City. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the demand verbally, and Developer shall commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the demand to remedy the default, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs expenses as provided for in Section 9.0 of this Agreement.

18.2 **Failure to Remedy; City Action.** If the work required to remedy the noticed default or violation is not diligently prosecuted to a substantial completion acceptable to City within a reasonable time designated by the City, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require

all work by Developer or its surety to cease in order to allow adequate coordination by City. Notwithstanding the foregoing, if conditions precedent for reversion to acreage can be met and if the interests of City will not be prejudiced thereby, City may also process a reversion to acreage and thereafter recover from Developer or its surety the full cost and expense incurred.

18.3 **Other Remedies.** No action by City pursuant to Section 18.0 *et seq.* of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

19. GENERAL PROVISIONS.

19.1 **Authority to Enter Agreement.** Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

19.2 **Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

19.3 **Construction; References; Captions.** It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and subcontractors of Developer, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

19.4 **Notices.** All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

CITY:

City of Wildomar
Attn: City Manager
23873 Clinton Keith Rd., Suite 111
Wildomar, CA 92595

DEVELOPER:

D.R. Horton Los Angeles Holding Company
Attn: Barbara M Murakami
2280 Wardlow Circle, Ste. 100
Corona, CA 92880

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent provided the original is contemporaneously deposited with United States Postal Service and delivered by regular mail; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

19.5 **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

19.6 **Waiver.** City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional. Developer agrees to waive, as a defense, counterclaim or set off, any and all defects, irregularities or deficiencies in the authorization, execution or performance of the Public Improvements or this Agreement, as well as the laws, rules, regulations, ordinances or resolutions of City with regards to the authorization, execution or performance of the Public Improvements or this Agreement.

19.7 **Assignment or Transfer of Agreement.** Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement.

19.8 **Binding Effect.** Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

19.9 **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

19.10 **Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

19.11 **Consent to Jurisdiction and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is

involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

19.12 **Attorneys' Fees and Costs.** If any arbitration, lawsuit, or other legal action or proceeding is brought by one Party against the other Party in connection with this Agreement or the Property, the prevailing party, whether by final judgment or arbitration award, shall be entitled to and recover from the other party all Litigation Expenses. Any judgment, order, or award entered in such legal action or proceeding shall contain a specific provision providing for the recovery of Litigation Expenses.

19.13 **Relationship Between The Parties.** The Parties hereby mutually agree that neither this Agreement, any map related to Tract No. 31345, nor any other related entitlement, permit, or approval issued by City for the Property shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

19.14 **Counterparts.** This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

19.15 Effective Date of Agreement. This Agreement shall not become effective until the date it has been formally approved by the City and executed by the appropriate authorities of City and Developer.

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

CITY OF WILDOMAR

By: _____
Frank Oviedo, City Manager

APPROVED AS TO FORM

ATTEST:

By: _____
Julie Hayward Biggs
City Attorney

Debbie Lee
City Clerk

D.R. HORTON LOS ANGELES HOLDING COMPANY, INC.:

By: _____
Keith Alex
Its: Vice President

Barbara M. Murakami
Its: Asst. Vice President

NOTE: DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY
TRACT NO. 31345

To be added

EXHIBIT "B"
LIST OF PUBLIC IMPROVEMENTS
TRACT NO. 31345

All grading, improvement, utility and landscape improvements plans and approved revisions as designed and constructed for Tract 31345 all as approved by the County transportation department and the City of Wildomar City Engineer.

EXHIBIT "C"

SURETY BONDS AND OTHER SECURITY

TRACT NO. 31345

As evidence of understanding the provisions contained in this Agreement, and of the Developer's intent to comply with same, the Developer has submitted the below described security in the amounts required by this Agreement, and has affixed the appropriate signatures thereto:

PERFORMANCE BOND PRINCIPAL AMOUNT: \$ _____

Surety: _____

Attorney-in-fact: _____

Address: _____

MATERIAL AND LABOR BOND PRINCIPAL AMOUNT: \$ _____

Surety: _____

Attorney-in-fact: _____

Address: _____

CASH MONUMENT SECURITY: \$ _____

Amount deposited per Cash Receipt No. _____ Date: _____

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

CITY OF WILDOMAR
TRACT MAP NO. 31345 IMPROVEMENTS
FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of Wildomar, California ("City") and _____ ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. _____ ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Subdivision Improvement Agreement dated _____, 2005 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed there under.

NOW, THEREFORE, Principal and _____ ("Surety"), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact surety business under the laws of the State of California, are held and firmly bound unto City in the sum of _____ Dollars (\$ _____), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents, as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499 *et seq.* of the Government Code of California as security for performance of the Improvement Agreement and security for the one-year guarantee and warranty of the Public Improvements.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at _____, this _____ day of _____, _____.

Principal	Surety
By: _____ Its: Managing Member	By: _____ Attorney-In-Fact
(print name)	(print name)

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

CITY OF WILDOMAR

TRACT MAP _____ IMPROVEMENTS

FORM OF LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of Wildomar California ("City") and _____ ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. _____ ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Subdivision Improvement Agreement dated _____, 2005 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the Improvement Agreement providing that if Principal or any of its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for, or about the performance of the Public Improvements, or for any work or labor done thereon of any kind, or for amounts due under the provisions of Title 15 (commencing with section 3082) of Part 4 of Division 3 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, Principal and _____ ("Surety"), a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of _____ Dollars (\$ _____), said sum being not less than 100% of the total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

This bond is executed and filed to comply with Section 66499 et seq. of the California Government Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Improvement Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at _____; this _____ day of _____, _____.

Principal

Surety

By: _____
Its: Managing Member

By: _____
Attorney-In-Fact

(print name)

(print name)

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.

EXHIBIT "D"

**LIST OF TRACT MAP CONDITIONS
OF APPROVAL NOT SATISFIED**

None

BOND NO. 929499164
INITIAL PREMIUM: \$340.00
SUBJECT TO RENEWAL

CITY OF WILDOMAR
TRACT MAP NO. 31345 IMPROVEMENTS
FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of Wildomar, California ("City") and D.R. Horton Los Angeles Holding Company ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. 31345 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Subdivision Improvement Agreement dated _____, 2005 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required by the Improvement Agreement to provide a good and sufficient bond for performance of the Improvement Agreement, and to guarantee and warranty the Public Improvements constructed there under.

NOW, THEREFORE, Principal and The Continental Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of PA, and duly authorized to transact surety business under the laws of the State of California, are held and firmly bound unto City in the sum of Forty Eight Thousand Six Hundred and 00/100 Dollars (\$48,600.00), said sum being not less than one hundred percent (100%) of the total cost of the Public Improvements as set forth in the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Improvement Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents, as stipulated in the Improvement Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

This bond is executed and filed to comply with Section 66499 et seq. of the Government Code of California as security for performance of the Improvement Agreement and security for the one-year guarantee and warranty of the Public Improvements.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Westmont, IL, this 16th day of September, 2010.

D.R. Horton Los Angeles
Holding Company

Principal

By:

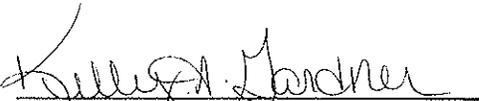

Its: Managing Member

Barbara M. Murakami
(print name)

The Continental Insurance Company

Surety

By:


Attorney-In-Fact

Kelly A. Gardner
(print name)

NOTE: APPROPRIATE NOTARIAL ACKNOWLEDGMENTS OF EXECUTION BY PRINCIPAL AND SURETY, AND A COPY OF THE POWER OF ATTORNEY TO LOCAL REPRESENTATIVES OF THE BONDING COMPANY MUST BE ATTACHED TO THIS BOND.

Local Surety Office: CNA Surety
4150 N. Drinkwater Blvd., Ste. 410
Scottsdale, AZ 85251
Phone: 866-521-3309
Fax: 480-941-3251

BOND NO. 929499164
INITIAL PREMIUM: Included in performance bond
SUBJECT TO RENEWAL

CITY OF WILDOMAR

TRACT MAP 31345 IMPROVEMENTS

FORM OF LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the City of Wildomar California ("City") and D.R. Horton Los Angeles Holding Company ("Principal"), have executed an agreement for work consisting of, but not limited to, the furnishing all labor, materials, tools, equipment, services, and incidentals for all grading, roads, paving, curbs and gutters, pathways, storm drains, sanitary sewers, utilities, drainage facilities, traffic controls, landscaping, street lights, and all other required facilities for Tract Map No. 31345 ("Public Improvements");

WHEREAS, the Public Improvements to be performed by Principal are more particularly set forth in that certain Subdivision Improvement Agreement dated _____, 2005 ("Improvement Agreement");

WHEREAS, the Improvement Agreement is hereby referred to and incorporated herein by reference; and

WHEREAS, Principal is required to furnish a bond in connection with the Improvement Agreement providing that if Principal or any of its subcontractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for, or about the performance of the Public Improvements, or for any work or labor done thereon of any kind, or for amounts due under the provisions of Title 15 (commencing with section 3082) of Part 4 of Division 3 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, Principal and The Continental Insurance Company ("Surety"), a corporation organized and existing under the laws of the State of PA, and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto City and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the Public Improvements, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to the Public Improvements to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid excepting the Principal, the sum of Forty Eight Thousand * Dollars (\$ 48,600.00), said sum being not less than 100% of the total cost of the Public Improvements under the terms of the Improvement Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents. *Six Hundred and No/100

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal, his or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Public Improvements, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

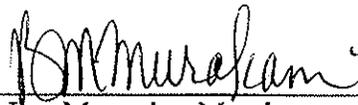
This bond is executed and filed to comply with Section 66499 *et seq.* of the California Government Code as security for payment to contractors, subcontractors, and persons furnishing labor, materials, or equipment for construction of the Public Improvements or performance of the Improvement Agreement. It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

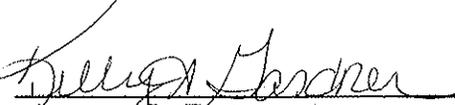
Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Improvement Agreement, or to any plans, profiles, and specifications related thereto, or to the Public Improvements to be constructed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition.

IN WITNESS WHEREOF, the seal and signature of the Principal is hereto affixed, and the corporate seal and the name of the Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact at Westmont, IL, this 16th day of September, 2010.

D.R. Horton Los Angeles
Holding Company
Principal

The Continental Insurance Company
Surety

By: 
Its: Managing Member

By: 
Attorney-In-Fact

Barbara M. Murakami
(print name)

Kelly A. Gardner
(print name)

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Bonnie Kruse, Stephen T Kazmer, Dawn L Morgan, Peggy Faust, Kelly A Gardner, Melissa Schmidt, Elaine Marcus, Jennifer J McComb, Mary Beth Peterson, Joel E Speckman, Tariese M Pisciotto, Heather A Beck, James I Moore, Individually

of Westmont, IL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 13th day of May, 2010.



The Continental Insurance Company

Jacquelyne M. Belcastro Senior Vice President

State of Illinois, County of Cook, ss:

On this 13th day of May, 2010, before me personally came Jacquelyne M. Belcastro to me known, who, being by me duly sworn, did depose and say: that she resides in the City of Chicago, State of Illinois; that she is a Senior Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that she knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that she signed her name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires September 17, 2013

Eliza Price Notary Public

CERTIFICATE

I, Mary A. Ribikawskis, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance company printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this 16th day of September, 2010.



The Continental Insurance Company

Mary A. Ribikawskis Assistant Secretary

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On September 17, 2010 before me, Heather D. Reid, Notary Public

personally appeared Barbara M. Murakami



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

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

WITNESS my hand and official seal.

Signature Heather D. Reid
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

CITY OF WILDOMAR – COUNCIL
Agenda Item #1.5
CONSENT CALENDAR
Meeting Date: October 13, 2010

TO: Mayor and City Council Members
FROM: Frank Oviedo, City Manager
SUBJECT: Second Reading of Ordinance No. 53 - Personnel Rules

STAFF REPORT

RECOMMENDATION:

That the City Council adopt an Ordinance entitled:

ORDINANCE NO. 53
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, AMENDING CHAPTER 2.06 OF THE WILDOMAR MUNICIPAL CODE
ESTABLISHING THE CITY OF WILDOMAR PERSONNEL RULES

BACKGROUND:

This is the second reading of Ordinance No. 53.

FISCAL IMPACT:

There is no fiscal impact for implementing the City's Personnel Rules. However, significant time and expense were incurred drafting the ordinance by staff and the City Attorney's Office.

ATTACHMENTS:

Ordinance No. 53

Submitted and Approved By:

Frank Oviedo
City Manager

ORDINANCE NO. _____53

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, REPEALING ORDINANCE 08-14 AND ADDING CHAPTER 2.07 TO
THE WILDOMAR MUNICIPAL CODE ESTABLISHING THE CITY OF WILDOMAR
PERSONNEL RULES**

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS
FOLLOWS:

SECTION 1. Repeal of Ordinance 08-14. The City Council of Wildomar previously adopted Ordinance 08-14 establishing personnel rules for the City of Wildomar and codifying them purportedly as Chapter 2.06 of the Wildomar Municipal Code. It has now been determined that the codification chapter number was assigned in error. Accordingly, Ordinance 08-14 is hereby repealed in its entirety.

SECTION 2. Addition of New Chapter 2.07. Chapter 2.07, "Personnel Rules," in Title 2, "Administration and Personnel," is hereby added to the Wildomar Municipal Code, reading in its entirety as follows:

"Chapter 2.07

PERSONNEL RULES

Sections:

- 2.07.010 General Provisions.
- 2.07.020 Classification
- 2.07.030 Compensation
- 2.07.040 Applications, Recruitment and Examining
- 2.07.050 Appointments
- 2.07.060 Performance Evaluations
- 2.07.070 Hours of Work/Overtime
- 2.07.080 Leaves of Absence
- 2.07.090 Layoff/Separation/Retirement
- 2.07.100 Ethical Standards
- 2.07.110 Disciplinary Actions
- 2.07.120 Grievance Procedure
- 2.07.130 Employment Benefits

2.07.140 Drug/Alcohol Policy

2.07.150 Policy Against Harassment, Discrimination, and Retaliation

2.07.160 Educational Assistance

2.07.170 Uniforms and Equipment

2.07.180 Electronic Communications Policy

2.07.010 General Provisions.

(a) *Purpose.* These Personnel Rules are intended to establish and maintain an efficient and uniform personnel program for the City of Wildomar.

(b) *Nature of Employment.* All employees of the City of Wildomar are at-will employees. Their employment can be terminated by the City or the employee at any time, with or without cause, with or without notice, and with or without the right of appeal. Nothing in these Personnel Rules, or any other policy adopted by the City, should be interpreted in a manner that would cause the employee's employment to be other than at-will.

(c) *Applicability.* Unless otherwise specifically stated, the provisions of these Personnel Rules apply to all employees of the City of Wildomar.

(d) *Not an Employment Contract.* None of these Personnel Rules shall be deemed to create a vested contractual right for any employee.

(e) *Amendment of Personnel Rules.* The City Council shall have authority to adopt, amend, or repeal these Personnel Rules. The Human Resources Officer shall have authority to prepare and recommend revisions to the Personnel Rules.

(f) *Adoption of Administrative Policies.* The Human Resources Officer is hereby authorized to adopt administrative policies, so long as said administrative policies are not in direct conflict with these Personnel Rules.

(g) *Delegation of Authority.* Except as otherwise provided, any duties, responsibilities, powers, and authority granted by these Personnel Rules or the Personnel Ordinance to the Appointing Authority, Human Resources Officer, Department Head, or any other person may be delegated, in writing, to any other employee at the discretion of the delegating individual.

(h) *Changes to the Law.* When any local, state, or federal ordinance, regulation, or law that is incorporated in the Personnel Rules or upon which the Personnel Rules rely is amended, the Personnel Rules shall be deemed amended in conformance with those amendments.

(i) *Severability*. If any section, subsection, sentence, clause, or phrase of the Personnel Rules is found to be illegal by a court of competent jurisdiction, such findings shall not affect the validity of the remaining portions of the Personnel Rules.

(j) *Definitions*.

(i) *General Definitions*. All words and terms used in these Personnel Rules and in any resolution or ordinance dealing with personnel policies, system, or procedures shall be defined as they are normally and generally defined in the field of personnel administration.

(ii) *Specific Definitions*.

(1) "Acting Appointment". A temporary appointment of a person who possesses at least the minimum qualifications established for a particular class and who is appointed to a position in that class in the absence of available eligible incumbents, or on an interim basis pending later appointment of an eligible person.

(2) "Advancement". A salary increase within the limits of a pay range established for a class.

(3) "Allocation". The assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.

(4) "Appointing Authority". The City Manager or his/her designee.

(5) "At-Will Employee". An employee whose employment can be terminated by the City or the employee, at any time, with or without cause and with or without notice.

(6) "Class". All positions sufficiently similar in duties, authority, and responsibility, to permit grouping under a common title in the application with equity of common standards of selection, transfer, demotion and salary.

(7) "Compensation". The salary, wage, allowance, and all other forms of valuable consideration earned by or paid to any employee by reason of service in any position, but does not include expenses authorized and incurred incidental to employment.

(8) "Continuous Service". Service in the employ of the City without a break or interruption. A severance of the employee from his/her employment initiated by either the City or the employee for periods of more than 15 days constitutes a break in continuous service.

(9) "Council". The City Council of the City of Wildomar.

(10) "Day" or "Days". Calendar day(s), unless otherwise stated.

(11) "Demotion". The movement of an employee from one class to another class having a lower maximum base rate of pay.

(12) "Disciplinary Action". The discharge, demotion, reduction in pay, suspension, or reprimand of an employee for punitive reasons.

(13) "Eligibility List". The list which contains the names of successful applicants according to relative performance on the total weighted examinations.

(14) "Full-Time Employees". Employees whose positions require the employee work at least 40 hours in a workweek. All positions shall be full-time unless otherwise designated, or unless the compensation is fixed upon the basis of part-time work.

(15) "Human Resources Officer". The City Manager or his/her designee.

(16) "Lay-Off". The separation of employees from the active work force due to lack of work or funds, or to the abolition of positions by the City Council for the above reasons or due to organization changes.

(17) "Part-Time Employees". Employees whose positions work less than 1,000 hours per year, are paid on an hourly basis and only receive fringe benefits that are specifically provided to part-time employees by resolution of the City Council.

(18) "Position". A group of duties and responsibilities in the service of the City requiring the full-time or part-time employment of one person.

(19) "Promotion". The movement of an employee from one class to another class having a higher maximum base rate of pay.

(20) "Provisional Appointment". A temporary appointment of a person who possesses the minimum qualifications established for a particular class and who has been appointed to a position in that class in the absence of available eligible employees.

(21) "Reinstatement". The restoration without examination of a former employee to a classification in which the employee formerly served.

(22) "Suspension". The temporary separation from service of an employee without pay for disciplinary purposes.

(23) "Temporary Employee". An employee who is appointed to a non-position for a limited period of time and is only entitled to benefits as provided by resolution of the City Council.

(24) “Transfer”. The movement of an employee from one position to another position in the same class or to another class with the same maximum base rate of pay.

(k) *Equal Employment Opportunity*. The City is committed to a policy of equal employment opportunity for applicants and employees. It does not discriminate against qualified applicants or employees with respect to terms or conditions of employment based on race, color, ancestry, sex, sexual orientation, gender identity, age, religious or political affiliation or belief, ethnicity, national or geographical origin, creed, physical or mental disability, medical condition, marital status, pregnancy, childbirth, or related medical conditions, membership in or attitude toward any employee organization, or any other characteristic protected by state or federal law or local ordinance.

(l) *Disabled Applicants and Employees*. The City has a commitment to ensure equal opportunities for disabled applicants and City employees. Every reasonable effort will be made to provide an accessible work environment for such employees and applicants. Employment practices (e.g., hiring, training, testing, transfer, promotion, compensation, benefits, and disciplinary action) will not discriminate against disabled employees.

(i) The City will engage in the interactive process, as defined by the Americans with Disabilities Act (“ADA”) and the Fair Employment and Housing Act (“FEHA”), to determine whether an applicant or employee is able to perform his/her essential functions. During this process, the City will examine possible reasonable accommodations that will make it possible for the employee or applicant to so perform. Such interactive process will include a meeting with the employee or applicant, the City, and, if necessary, the employee or applicant’s health care provider.

(ii) Reasonable accommodation can include, but is not limited to job restructuring, reassignment to a vacant position for which the employee is qualified and making facilities accessible. Examples of accommodations that are considered unreasonable include, but are not limited to, promotion, the creation of a new position, or the reassignment of essential functions of the position.

2.07.020 Classification.

(a) *Preparation of Plan*. The Human Resources Officer shall ascertain and record the duties, responsibilities, minimum standards, and minimum qualifications of all positions in the City and shall recommend a classification/compensation plan for all positions. The classification/compensation plan need not be contained in only one document, but may be comprised of various documents. The classification/compensation plan shall consist of classes of positions defined by class specifications, including the title. The classification/compensation plan shall be so developed and maintained that all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same class, and that the same schedules of compensation may be made to apply with equity under similar working conditions to all positions in the same class. The classification/compensation plan will contain the General Salary Schedule and a General Benefits Schedule.

(b) *Allocation of Positions.* Following the adoption of the classification/compensation plan, the Human Resources Officer shall allocate every position in the employment of the City to one of the classes established by the plan.

(c) *New Positions.* A new position shall not be created and filled until the classification/compensation plan has been amended to provide for such position and an appropriate eligibility list is established for such position.

(d) *Reclassification.* Positions, the assigned duties of which have been materially changed by the City so as to necessitate reclassification, whether new or already created, shall be allocated by the Human Resources Officer to a more appropriate class. Reclassifications shall not be used for the purpose of avoiding restrictions concerning demotions and promotions, or to effect a change in salary in the absence of a significant change in assigned duties and responsibilities.

2.07.030 Compensation.

(a) *Salary on Appointment.*

(i) *New Employees.* New employees shall be paid at the first step of the salary range for the position to which the employee is appointed except as approved by the City Manager or his/her designee.

(ii) *Advanced Step Hiring.* The Human Resources Officer may appoint a new employee to an advanced step of the pay range if it is determined that qualified applicants cannot be successfully recruited at the first step of the salary range.

(iii) *Reemployment / Reinstatement.* A person who previously held a position with the City and resigned in good standing may, at the discretion of the City Manager, when re-employed in the same or a comparable position held at separation, be appointed at the same salary rate which was paid at the effective date of the person's termination or the nearest lower applicable step for the range to which the person is appointed.

(b) *Salary Anniversary Dates.* Employees shall have a salary anniversary date on the date of his/her most recent appointment, promotion, demotion, reinstatement or reemployment. The salary anniversary date may be modified by the action of the appointing authority under Section 2.07.070(f)(i)(4).

(c) *Increases Within Salary Range.* Employees will normally become eligible for a merit adjustment in pay after 12 months of service. The adjustment shall be made only if recommended by the applicable department head, and, if approved, by the City Manager. The subsequent adjustments are based on performance evaluation, to encourage an employee to perform at his/her highest level, and to recognize seniority and increased skill on the job. Employees are normally eligible for these adjustments any time after the completion of 12 months of service. This period may be modified in conjunction with the performance report recommendations and as approved by the City Manager.

(d) *Salary Upon Promotion.* Except in instances where the granting of a full step increase would result in a salary in excess of the top step of the range, any employee who is promoted to a position in a class with a higher salary range shall be placed on the step in the new higher range which is at least equal to an advancement of a full step over the step he/she held in his/her former range. If the maximum of the range would be exceeded by such advancement, the employee shall receive the top step of the range. An employee thus promoted is assigned to a new salary anniversary date effective on the date of promotion.

(e) *Salary Upon Transfer.* Any employee who is transferred from one position to another position in the same class, or to another position in a class having the same salary range, shall be compensated at the same step the salary range as he/she previously received and his/her salary anniversary date shall not change.

(f) *Salary on Change in Range Assignment.* Whenever a class is reassigned to either a higher or lower salary range by the Council, the salary of each incumbent in such class on the date the reassignment is effective shall be adjusted to the salary position in the new range that corresponds to the salary he/she was receiving in the former range and he/she shall retain the same salary anniversary date.

(g) *Salary on Reallocation of Position.* If the position is reallocated to a class having the same salary range, the salary and the salary anniversary date of the incumbent shall not change. If the position is reallocated to a class which has a higher salary range, the City Manager shall adjust the salary of the incumbent employee to fit the higher salary range which is at least as much as he/she was receiving in the former range and he/she shall retain the same salary anniversary date. If the position is reallocated to a class with a lower salary range, and the employee's salary exceeds the top step of the class to which his/her position is reallocated, his/her salary shall not change until it is exceeded by the top step of the class. The employee's salary anniversary date shall not change.

(h) *Salary on Demotion.* Any employee who is demoted to a position in a class with a lower salary range shall have his/her salary adjusted by one the following three methods:

(i) If a disciplinary demotion, the employee's salary may be reduced. A new salary anniversary date shall be established on the basis of the demotion.

(ii) If a non-disciplinary demotion, the employee's salary may be reduced. He/she shall retain his/her salary anniversary date.

(iii) In the discretion of the Human Resources Officer, a demoted employee's salary may be y-rated. A y-rated salary is one that is paid above the maximum established salary range for the incumbent's classification. An employee whose salary is y-rated will retain his/her current rate of pay until such time that the class has a higher maximum salary rate.

(i) *Acting Pay.* An employee who is required on the basis of an acting appointment to serve in a class with a higher salary range than that of the class in which

he/she is normally assigned, shall receive the entrance salary rate of the higher salary range or one rate higher than the rate he/she normally receives, whichever is greater, provided the employee shall perform all the duties and assume all the responsibilities of the higher class, and only after the employee has served for ten (10) consecutive working days in the higher classification.

(j) *Monthly Salary.* Monthly salary rates are based on a 40-hour work week and no authorization may be made for an employee to work less than such work week without a directly proportionate decrease in compensation.

(k) *Special Salary Adjustments.* Notwithstanding anything in these Personnel Rules to the contrary, in order to correct gross inequities, or to reward outstanding achievement and performance, the City Manager may adjust the salary rate of an incumbent of a particular position to any step within the salary range for the class to which the position is allocated.

(i) *Pay Periods.* The salaries and wages of all employees shall be paid bi-weekly. In the event a pay day falls on one of the holidays listed in these Personnel Rules, or on a Saturday or Sunday, the immediately previous working day shall become the pay day.

2.07.040 Applications, Recruitment and Examining.

(a) *Vacancies.* Vacant positions may be filled only by selection from an eligibility list, by acting appointment, by transfer, by reinstatement, or by demotion. Selection of employees is made by the department director for the position, subject to approval by the City Manager. Selection of department heads is made by the City Manager.

(b) *Announcement of Vacancies / Acceptance of Applications.* When a position becomes vacant, the applicable department head shall notify the Human Resources Officer. All positions shall be publicized by such methods as the Human Resources Officer deems appropriate. The announcements shall specify the title and pay range of the class; the nature of the work to be performed; the experience and education requirements; the knowledge, skills, and abilities desirable for the performance of the work; how to apply; the application deadline date; that a post-offer, pre-employment physical examination is required, which may include a drug test; and other relevant information. Applications will also be available in the office of the Human Resources Officer. Applications will be collected by the Human Resources Officer until the closing date for acceptance of applications.

(c) *Disqualification of Applicants.* The Human Resources Officer may reject any application which indicates on its face that the applicant does not possess the minimum qualifications required for the position, or because the applicant has failed to fully complete the application or submit all required materials.

(d) *Ineligibility for Employment.* Further examination or consideration for employment of any applicant may be discontinued, and any temporary employment of

any person may be terminated, when any of the following has been determined to the satisfaction of the Human Resources Officer:

(i) That the applicant has been convicted of a felony and such felony conviction, in the opinion of the Human Resources Officer, is contrary to the qualifications for the functions and duties of the position for which the employment application is made;

(ii) That the applicant has been convicted of a misdemeanor involving moral turpitude, dishonesty, fraud, or deceit; or

(iii) That the applicant has lied on his/her application for employment or the accompanying documentation.

(e) *Selection Process.* The selection process shall be impartial and relate to those subjects which, in the opinion of the Human Resources Officer, fairly measure the relative capacities of the applicants to execute the duties and responsibilities of the class to which they seek to be appointed. The selection process may include but is not necessarily limited to achievement, aptitude, and other written tests, personal interview, performance tests, physical agility tests, evaluation of daily work performance, work samples, medical tests (including a drug test), successful completion of prescribed training, or other selection techniques as determined by the Human Resources Officer. The selection process shall be designed to provide equal opportunity to all candidates by being based on an analysis of the essential requirements of the class, covering only factors related to such requirements. The City also retains the right to conduct a thorough background check of each applicant.

The Human Resources Officer may enter into a contract with any competent agency or individual for the preparing and/or administering portions of the selection process. If the Human Resources Officer does not contract these duties to an agency or individual, then the Human Resources Officer shall ensure that such duties are performed.

(f) *Creation of Eligibility List.* As soon as possible after the completion of a recruitment, the Human Resources Officer shall prepare and maintain an eligibility list consisting of the names of candidates who qualified as finalists. Eligibility lists shall remain in effect for up to 12 months unless the Human Resources Officer abolishes the eligibility list after determining that the abolition of the list is in the best interest of the City. The name of any person appearing on an eligibility list shall be removed by the Human Resources Officer if the person requests in writing that his/her name be removed or if the person fails to respond to a notice of certification mailed to the last designated address. Persons on eligibility lists as a result of an internal recruitment who leave the service of the City for any reason shall automatically be dropped from such lists.

(g) *Physician's Examination.* All job applicants are required to submit to a physician's examination at the City's expense upon being made a conditional offer of employment. The physician's examination shall include a drug and alcohol test for positions that are (1) safety-sensitive; or (2) involve a position of influence over children.

When a drug and alcohol test is required, applicants shall be made aware of that in the announcement published under 2.07.040(b). No job commitment shall be made until a negative drug screen result is obtained and a physician has certified that the applicant is medically qualified to perform the essential functions of the position. When the applicant reports to the medical facility for the scheduled examination, personal identification shall be provided to the facility in the form of a photograph and verifiable signature (for example, a driver's license). All test results will be kept confidential. The applicant will be told whether the tests were passed or failed, but only the Human Resources Officer and his or her assistant will have access to the test results. If required, the drug/alcohol examination shall be administered in accordance with the City's Drug Free Workplace Policy.

2.07.050 Appointments.

(a) *Appointment of New Employee.* The hire date of a new employee shall be that of the first day actually worked.

(b) *Provisional Appointments.* It shall be the policy of the City to require all department heads and other appointing authorities, whenever possible to notify the Human Resources Officer of impending or anticipated vacancies in their departments sufficient in advance so as to allow for the establishment of an appropriate eligibility list. However, when the demands of the services are such that it is not practicable to give such notification and if it is not practicable to delay appointment until a new eligibility list can be certified, the appointing authority may make a provisional appointment to the position. As soon as practicable, but not longer than six months after a provisional appointment has been made, the Human Resources Officer may cause an examination to be prepared, and all positions filled provisionally shall be filled by an appointment from an eligibility list. No person shall be employed by the City under provisional appointment for a total of more than six months in any fiscal year except that the Human Resources Officer may extend the period of any provisional appointment for not more than 90 days by any one action; provided; however, no provisional appointment shall exceed a total of 12 months.

A person appointed to a position on a provisional basis shall not be entitled to credit for the time served under the provisional appointment toward if the employee is awarded the position on a non-provisional basis.

No special credit shall be allowed in any examination or the establishment of any eligibility lists for services rendered under a provisional appointment.

(c) *Acting Appointments to a Higher Class.* An acting appointment may be made to a higher class or position occupied by a person on temporary leave or disability. Such acting appointment shall not exceed six months. The Human Resources Officer may extend acting appointments for successive 30-day periods. Acting appointments shall be made in accordance with the provisional appointments section of these Personnel Rules. Upon the return of the incumbent from leave or disability, the acting appointment shall be immediately terminated, and the appointee shall resume regular duties, compensation and privileges as if he/she had continued his/her duties in his/her regular classification.

(d) *Reinstatement.* With the approval of the Human Resources Officer, an employee who has completed at least 12 months of service and who has resigned in good standing may be reinstated within one year of the effective date of resignation to a vacant position in the same or comparable class. For purposes of reinstatement, “good standing” shall mean that the employee was not terminated for cause under these Personnel Rules, did not resign in lieu of termination, provided the required amount of notice of resignation, and was evaluated at least as “fully meets job standards” or an equivalent rating on his/her last performance evaluation. No credit for former employment shall be granted in computing salary, vacation, sick leave, retirement benefits, or other benefits except on the specific written direction of the Human Resources Officer at the time of reinstatement. Such reinstatement action may, at the discretion of the Human Resources Officer, take precedence over any eligibility list except a reemployment list.

(e) *Transfer.* The Human Resources Officer may transfer an employee from one position to another in the same class or a comparable class at the same salary level. While the Human Resources Officer retains the right to order the transfer, consideration will be given to the affected employee’s and the department directors’ wishes.

(f) *Nepotism.*

(i) *Definition* - For the purpose of this Section, the definition of “relative” or “relationship” shall include persons related in the following contexts by blood, marriage, domestic partnership or adoption, including step and half relationships: spouse/domestic partner, child, sibling, parent, grandparent, grandchild.

(ii) *Inconsistent Relationships.* The City retains the right:

(1) To refuse to place one party to a relationship under the direct supervision of the other party to a relationship where such has the potential for creating adverse impact on supervision, safety, security or morale.

(2) To refuse to place both parties to a relationship in the same department, division or facility where such has the potential for creating adverse impact on supervision, safety, security or morale, or involves potential conflicts of interest.

(iii) *Creation of Relationship - Current Employees.* Upon the marriage or registered domestic partnership of two City employees or any other creation of relationships between two City employees due to a marriage or domestic partnership, the Human Resources Officer shall be notified in writing by the employees involved. Notification of new or impending relationships shall include the anticipated effect of the relationship and recommendation as to possible action to be taken in assuring continued efficient departmental operation(s). A relationship created between an employee and the City Manager or an elected or appointed City official will be evaluated on the same basis as the creation of a relationship between City employees. The Human Resources Officer and/or designated representative shall consult with the department head(s) and/or specific employees in reaching a recommendation in

accordance with previously stated guidelines and the following suggested options. The City Manager shall be the final determining authority in such matters.

(1) *Acceptable Relationships.* The employment relationship is acceptable (a) if the relationship is not an inconsistent relationship as defined under section 2.07.050(f)(ii), (b) if no adverse impact is anticipated, related employees are not in a supervisory relationship, (c) if related employees are not in direct contact in the same or related departments; or (d) the relationship will in no way detrimentally affect departmental operations.

(2) *Determination of an Inconsistent Relationship.* If the City Manager determines that an inconsistent relationship exists, the City will remedy the inconsistent relationship by one of the following methods:

a. *Transfer.* Transferring one relative to an unrelated department may be approved where problems occur or are anticipated.

b. *Shift Adjustment.* Adjustment of shifts may be approved if it is believed the relationship will interfere with the work environment.

c. *Resignation/Termination.* Termination of one of the related employees may be recommended if the department head(s) finds the problems involved in the employment relationship are not solvable. If the City finds that termination is necessary, the involved employees will first be notified of that decision, and the employees shall be given a reasonable amount of time to choose which one of them will voluntarily resign their employment. Should the employees fail to come to decision within a reasonable amount of time, the City Manager will determine which employee will be terminated, and will notify the employee to be terminated of the same.

(iv) *Job Applicants.* The City retains the right to disqualify any applicant for employment, if the applicant has an inconsistent relationship, as defined in Section 2.07.060(f)(ii), with a current City employee or official.

2.07.060 Performance Evaluations

(a) *Policy.* It is the policy of the City that regular evaluations be made as to the efficiency, competency, conduct and merit of its employees. To this end, it is the responsibility of the City Manager, the department heads and their subordinate supervisors that these evaluations be made. It is the responsibility of the Human Resources Officer to provide and prescribe the forms and procedures to be used in such evaluations of performance and to assist in the training of supervisory personnel so that the program of performance evaluation will be carried on in a sound and effective manner.

(b) *Authority to Make Evaluations.* The City Manager or his/her designee shall have the authority to prepare performance evaluations. He/she may, however, delegate such authority to such subordinate supervisory employees who are most familiar with work of the employees to be evaluated, provided that he/she shall review and approve all performance evaluations of personnel under his/her jurisdiction.

(c) *Time for Performance Evaluation.* An annual performance evaluation may be prepared and received before the employee's salary anniversary date, and shall evaluate the employee's performance in the last year. If the employee receives a rating of (or equivalent to) "improvement needed" or "unsatisfactory" in his/her annual performance evaluation, his/her supervisor shall be responsible for conducting an additional performance evaluation three months from receiving such rating and again three months subsequent to that. In addition, the employee may be given a performance evaluation at any other time during the year at the discretion of the appointing authority.

(d) *Postponement of Performance Evaluation.* An employee's performance evaluation due date shall be extended when the employee takes one or more leaves of absence totaling more than 15 days. The employee's performance evaluation due date shall be extended by the same period of time that the employee was absent.

(e) *Review with Employee.* Each performance evaluation shall be presented by the supervisor who prepared it and discussed with the employee. The employee shall sign the evaluation to acknowledge its contents. Such signature shall not necessarily mean the employee endorses the content of the evaluation. Employees may not appeal or grieve the contents of a performance evaluation or the rating(s) received by the employee. Employees who disagree with the contents of their performance evaluation shall have the right to attach a written statement explaining the basis of their disagreement to the performance evaluation.

(f) *Retention of Performance Evaluation.* After review and approval of the appointing authority, the performance evaluation, as well as any written statement provided by the employee, shall be made a part of the employee's personnel file.

(g) *Performance Ratings.*

(i) *Effects of "Improvement Needed" and "Unsatisfactory" Ratings.*

(1) Any employee who receives an "unsatisfactory" or "improvement needed" rating will not be eligible to be appointed off of any eligibility list until a satisfactory rating is established.

(2) Any employee who receives an "unsatisfactory" or "improvement needed" rating will not receive any merit salary increase during the period following the report, except as provided in subsection 3 below.

(3) If an employee who has been denied a merit salary increase improves his/her performance to such an extent that the appointing authority believes a merit salary increase is now justified, the appointing authority shall indicate the improvement on a report of performance form and may specifically award a merit salary increase. Additionally, in awarding the merit salary increase under this subsection, the appointing authority may change the merit salary increase anniversary date to the date of the award of the merit salary increase or may permit the anniversary date to remain the same. Any merit salary increase awarded under this subsection shall not be made retroactive.

2.07.070 Hours of Work/Overtime

(a) *FLSA Classification.* The Human Resources Officer shall designate those positions which are exempted from the provisions of the Fair Labor Standards Act ("FLSA") based on an assessment of the duties of each position.

(b) *Workweek.* It is the policy of the City that eight hours shall constitute a day's work and five days shall constitute a week's work, for all full-time employees, except that work days and work weeks of a different number of hours may be established in order to meet the varying needs of the different City departments. The work period shall be seven consecutive 24-hour periods. Full-time employees are expected to work 40 hours during this period. The standard period of work shall be five, eight-hour days in a seven day period. For employees who work this standard period of work, the workweek is defined as commencing on 12:01 a.m. on Monday and ending at 12:00 a.m. on the following Monday. Alternative workweeks shall be designated by administrative policy adopted by the City Manager.

(c) *Daily Hours Of Work.* Daily hours of work or shifts for employees within departments shall be assigned by department heads as required to meet the operational requirements of such departments. The normal work shift for full-time employees is eight hours per day. Exceptions to the standard eight-hour workday may be made in writing by the City Manager.

(d) *Change in Working Hours.* The City reserves the right to regulate and/or change the designation of the specific hours or days to be worked by any employee, and no such change in the scheduling of days or hours worked shall be deemed to constitute overtime, provided the total number of hours and days does not exceed those specified as constituting the standard work year, work period, work week and workday hereunder.

(e) *Overtime.* A non-exempt employee shall be entitled to overtime at the rate of one and one-half his/her regular hourly rate of pay for each hour worked in excess of 40 hours in any one workweek. Exempt employees are not eligible to receive overtime compensation.

(i) *Approval of Overtime.* It is the policy of the City to avoid the necessity for overtime work whenever possible. All employees are required to get the approval of their respective department heads prior to working more than 40 hours in a workweek. Department heads are required to notify the Finance Department of any approved overtime at the end of the workday in which overtime is worked.

(ii) *Calculation of Hours Worked.* For the purposes of overtime compensation, "hours worked" shall only include those periods of time that the employee is required to be on duty or to be on the City's premises or at a prescribed workplace, and all time during which an employee is suffered or permitted to work. As such, time spent on a paid leave of absence shall not be included in the calculation of hours worked.

(f) *Meal Periods.* No monetary compensation or compensatory time off for overtime, or any other compensation in addition to the employee's basic pay for overtime, shall be given to any employee for or on account of any of his/her meal periods.

2.07.080 Leaves of Absence.

(a) *Effect of Leave of Absence.*

(i) *Effect of Leave of Absence on Employment Benefits.*

(1) *Fully Paid Leave.* Unless otherwise required by law, an employee on a leave of absence who continues to receive full compensation through the use of his/her accrued leave banks will continue to receive full employment benefits. Such employment benefits, may include, but are not limited to, the accrual of paid leaves, accrual of seniority, and cafeteria contributions which remain at the rate the employee would receive if he/she was working their normal work schedule.

(2) *Partially Paid Leave.* Unless otherwise required by law, an employee on a paid leave of absence who is receiving less than full compensation from the City through the use of his/her accrued paid leaves shall receive a pro-rated share of his/her employment benefits, including, but not limited to, the accrual of paid leaves, accrual of seniority, cafeteria contributions, or supplemental pay.

(3) *Unpaid Leave.* Unless otherwise required by law, an employee on an unpaid leave of absence shall not accrue any employment benefits, including, but not limited to, the accrual of paid leaves, accrual of seniority, cafeteria contributions, and supplemental pay.

(ii) *Effect of Leave on Performance Evaluations and Merit Increases.*

An employee on one or more leaves of absence lasting longer than 15 days shall have his/her performance evaluation and merit increase, if relevant, postponed by an amount equal to the amount of leave taken.

(b) *Unauthorized Absences.* Any employee absent from his/her job for more than two consecutive working days without prior permission of the department director may be considered to have voluntarily resigned from his/her employment with the City. Any unauthorized absence may be cause for disciplinary action as provided in these Personnel Rules.

(c) *Holidays.*

(i) The following days shall be recognized and observed as paid holidays:

- (1) New Years Day (January 1)
- (2) Martin Luther King Jr.'s Birthday
- (3) President's Day

- (4) Memorial Day
- (5) Independence Day (July 4)
- (6) Labor Day
- (7) Veteran's Day (November 11)
- (8) Thanksgiving Day
- (9) Day After Thanksgiving Day
- (10) Christmas Eve (December 24)
- (11) Christmas Day (December 25)

(ii) Employees shall receive one day's pay for each of the holidays listed above for the number of hours they would have been regularly scheduled to work.

(iii) When a holiday falls on Saturday, the preceding Friday shall be observed as a holiday. When a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(iv) If any employee works on the day the City observes any of the holidays listed above, he/she shall be paid for all hours worked at the rate of two times his/her regular rate of pay and shall be granted eight hours of floating holiday time. Employee must take this day off by December 31. If the employee does not, the floating holiday shall be cashed out at the employee's then-current rate of pay.

(d) *Vacation.*

(i) Full-time employees in all classifications shall accrue vacation, on a daily basis, according to the following schedule:

(1) From the date of hire through five years of service: 80 hours per year.

(2) Beginning the sixth year through ten years of service: 120 hours per year.

(3) Beginning the eleventh year of employment: 160 hours per year.

(ii) Vacation accrues on a pro rata basis during each pay period.

(iii) The maximum number of vacation days that may be accumulated by an employee is 240 hours. Once an employee reaches the maximum accumulation, he/she shall cease vacation accrual until his/her total number of vacation hours falls below the maximum allowable.

(iv) A maximum of 40 hours of vacation per calendar year may be converted to compensation and shall be paid at the employee's rate of pay at the time of the conversion with a balance of 40 hours payable the first pay period December.

(v) At termination of employment for any reason, the City shall compensate the employee for the employee's accumulated vacation time at the employee's base rate of pay at the time of termination.

(vi) If a holiday falls on a work day during an employee's vacation period, that day shall be considered as a paid holiday and not vacation time.

(vii) Vacations may be scheduled at any time during the year upon approval of the City Manager or his/her designee.

(viii) Part-time employees shall accrue vacation leave on a prorata basis based on the number of hours they are regularly scheduled to work.

(e) *Sick Leave.*

(i) Sick leave may only be taken for absences from duty made necessary by:

(1) The employee's illness, injury, incapacity, or quarantine due to exposure to a contagious disease. When an injury or illness is job-related, the employee shall be charged with sick leave usage only to the extent that their salary is not covered by Worker's Compensation.

(2) Medical, dental or eye examination or treatment for which appointment cannot be made outside of working hours.

(3) When the employee's presence is needed to attend to the illness or injury of a member of his/her immediate family. For purposes of sick leave, immediate family shall be defined as spouse, domestic partner, parent (including a biological, foster, or adoptive parent, a stepparent, or a legal guardian), child (including a biological, foster, or adopted child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing in loco parentis), brother, sister, grandparent, father-in-law, mother-in-law, sister-in-law, brother-in-law, or any other person who is a legal dependent of the employee. Exceptions to this definition shall be reviewed and possibly approved by the City Manager.

(ii) Sick leave is not a privilege which an employee may use at his/her discretion, but shall be allowed only in case of necessity and actual sickness or disability of the employee, or because of illness in his/her immediate family (as defined in paragraph viii).

(iii) Full-time employees shall earn sick leave at the rate of eight hours per month. Part-time employees do not accrue sick leave. The maximum number of sick days that may be accumulated by an employee is 240 hours. Once an employee

reaches the maximum accumulation, he/she shall cease sick accrual until his/her total number of sick hours falls below the maximum allowable.

(iv) In order to receive compensation while on sick leave, the employee shall notify his/her supervisor prior to the time for beginning the regular work day, or as soon thereafter as practical.

(v) The City Manager or supervisor may require a doctor's verification the employee's inability to work due to illness or injury when an employee has been absent due to illness or non-job related injury.

(vi) Sick leave may also be used for bereavement leave in the event of death in the immediate family, as long as the employee has exhausted all other available paid leaves of absence.

(f) *Military Leave.* Military leave with pay shall be granted in accordance with Section 395 of the California Military and Veteran's Code and the Uniformed Services Employment and Reemployment Rights Act.

(g) *Jury Duty.* This policy shall apply to employees in all classifications. An employee summoned for jury duty will immediately notify the City Manager. While serving on a jury, he/she will be given a leave of absence with pay for the duration of such jury duty. Such leave of absence with pay is conditional upon the employee returning to work upon his/her dismissal each day to complete his normal work day. Employees who fail to return to work are required to use other accrued paid leaves for that period of the employee's absence. Such leave is also conditional upon the employee's conveyance to the City of any compensation received as a juror, not including any travel allowance received.

(h) *Pregnancy Disability Leave.* Employees who are disabled due to pregnancy, childbirth, or related medical conditions shall be granted leave in accordance with the California Pregnancy Disability Leave Law, the Family Medical Leave Act, and the California Family Rights Act. The full provisions governing such leave will be set forth in an administrative policy.

(i) *Family Care and Medical Leave.* Employees shall be granted family care or medical leave in accordance with the Family Medical Leave Act and the California Family Rights Act. The full provisions governing such leave will be set forth in an administrative policy.

(j) *Leave of Absence Without Pay.* The Human Resources Officer, in his/her discretion, may grant an employee leave of absence without pay for up to three months. After the initial three months of leave of absence without pay, the Human Resources Officer may, in his/her discretion, extend the leave for an up to nine additional months in a maximum of three-month increments. However, unless otherwise required by law, in no circumstances shall the total amount of unpaid leave be longer than 12 months. The Human Resources Officer may require sufficient documentation establishing the employee's need for leave.

(i) *Exhaustion of Paid Leaves.*

(1) *Nonmedical Leave of Absence Without Pay.* An employee requesting leave under this section for nonmedical reasons is required to fully exhaust all of his/her paid leaves, except sick leave, in order to be eligible to receive a leave of absence without pay.

(2) *Medical Leave of Absence Without Pay.* An employee requesting leave under this section for medical reasons is required to fully exhaust all of his/her paid leaves, including sick leave, in order to be eligible to receive a leave of absence without pay.

(ii) *Accrual of Benefits.* Leave of absence without pay shall not be construed as a break in service or employment, and rights accrued at the time of leave is granted shall be retained by the employee; however, vacation credits, sick leave credits, increases in salary and other similar benefits shall not accrue to a person granted such leave during the period of absence. An employee reinstated after leave of absence without pay shall receive the same step in the salary range he/she received when he began his/her leave of absence. Time spent on such leave without pay shall not count toward service for increases within the salary range, and the employee's salary anniversary date shall be set forward one month for each 30 consecutive days taken.

(iii) *Failure to Return from Leave.* If an employee takes any action during his/her leave that is inconsistent with an intention to return to employment with the City, such as accepting full-time employment with another employer, he/she will be considered to have voluntarily terminated his/her employment. Failure of the employee to return to his/her employment upon the termination of any authorized leave of absence shall constitute an automatic termination from City service of that employee, unless such leave is extended. .

(k) *Management Leave.* Department heads shall receive 40 hours of management leave per calendar year. During their first year as a department head, they shall obtain a prorata amount of management leave commensurate with the time remaining in the fiscal year. Management leave cannot be carried forward from year to year.

(l) *Part-Time Employees.* Employees who work less than 40 hours per workweek, including those on a temporarily reduced schedule, shall accrue all leaves of absence on a pro rata basis, based on the number of hours they work per workweek.

2.07.090 Layoff/Separation/Retirement.

(a) *Layoff.* Whenever, in the judgment of the City Manager, it becomes necessary to abolish any position or employment, the employee holding such position or employment, may be laid off without disciplinary action and without the right of appeal. The City Manager shall determine the class and number of positions within each class to be affected, as well as the effective date of the layoff.

(i) *Notification.* Employees to be laid off shall be given, whenever possible, at least 14 days prior notice.

(ii) *Order of Layoff.* In each class of position, employees shall be laid off according to the needs of the service as determined by the Department Head and the Human Resources Officer.

(iii) *Reemployment List.* The names of persons laid off or demoted in accordance with this Section shall be entered upon a reemployment list. Lists from different departments or at different times for the same class of position shall be combined into a single list. Such list shall be used by every Department Head when a vacancy arises in the same or lower class of position before certification is made from an eligible list or starting a recruitment. Names of persons laid off shall be carried on a reemployment list for one year, except that persons appointed to a position of the same level as that which laid off, shall, upon such appointment, be dropped from the list. Persons who refuse reemployment shall be dropped from the list. Persons reemployed in a lower class, or on a temporary basis, shall be continued on the list for the higher position for one year.

(b) *Resignations.* Resigning employees shall be required to file a written resignation stating the effective date and reason(s) at least two weeks prior to leaving the City's service, unless the time limit is waived by the City Manager. The resignation date should be the last day the employee actually worked.

(c) *Terminations.* The City Manager may terminate any employee at any time with or without cause and with or without notice.

(d) *Retirement/Disability Retirement.* In accordance with the City's contract with the California Public Employees' Retirement System (CalPERS), employees who meet the age and service credit minimums may qualify for a service retirement from CalPERS. Under CalPERS laws, an employee who is unable to perform his/her job because of an illness or injury which is expected to be permanent or last indefinitely, may be entitled to receive a disability retirement.

2.07.100 Ethical Standards.

(a) *Outside Employment, Enterprise, or Activity.* In accordance with California Government Code Title 1, Division 4, Chapter 1, Article 4.7, no employees may engage in any outside employment, enterprise, or activity that is inconsistent, incompatible, in conflict with, or adverse to his/her employment, their ability to perform their duties and responsibilities, including performance of overtime work and emergency duties, or any other aspect of City operations.

(i) Employees are required to notify their Department Head in writing of all outside employment in which they are engaged, regardless of when that outside employment began, so that the City may assess whether such outside employment conflicts with the employee's City employment. An employee's outside employment, enterprise, or activity will be prohibited when any of the following are present:

(1) It involves the use for private gain or advantage of his/her City time, facilities, equipment and/or supplies; or the badge, uniform, prestige, or influence of his/her City employment;

(2) It involves the receipt or acceptance by the employee of any money or other consideration from anyone other than the City for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of his/her City employment or as part of his/her duties as a City employee;

(3) It involves the performance of an act, in other than his/her capacity as a City employee, which may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee of the City; or

(4) It involves the time demands as would render performance of his/her duties as a City employee less efficient.

(ii) When outside employment is reported to a Department Head, the Department Head shall notify the Human Resources Officer of all pertinent details of the outside employment. The Human Resources Officer shall determine whether the employee's outside employment conflicts with the performance of his/her duties, and shall advise the employee and the Department Head of his/her determination in writing. An employee who is unsatisfied with the decision of the Human Resources Officer may appeal the decision to the City Manager. An employee wishing to appeal this determination must file a written appeal to the City Manager within ten days of receipt of the Human Resources Officer's decision. The City Manager shall meet with the employee and determine whether the employee's outside employment conflicts with the performance of his/her duties. The City Manager shall advise the employee, the Department Head, and the Human Resources Officer of his/her determination in writing within 15 days of meeting with the employee.

(b) *Political Activities.* Consistent with the provisions of California Government Code Title 1, Division 4, Chapter 9.5, employees may not engage in political activity during working hours, while on City property on which members of the public would not be entitled to engage in political activities, or while in uniform.

(c) *Contracts and Conflicts of Interest.* In accordance with California Government Code Title 1, Division 4, Chapter 1, Article 4, no City employee can be financially interested in any contract made by him/her in his/her official capacity, or by any body or board of which he/she is a member. All employees of the City are required to adhere to the provisions of Article 4 of Title 1, Division 4, Chapter 1 of the *Government Code*.

(d) *Conduct During the Workday.* During the workday, employees are expected to devote their full time in the performance of their assigned duties. Any approved outside work, part-time job, hobbies, or personal business must be performed during off duty hours. Off duty hours include unpaid lunch break periods, but do not include other rest or break periods during which the employee continues to receive pay.

(e) *Employees with Access to Confidential Information.* In performing their duties, employees may have access to confidential information, including employees' personnel files and the personal or financial information of other City employees or persons who do business with the City. In addition, some City employees will be involved in some communications with the City Attorney's Office, which can be protected by the attorney-client privilege. Employees with such access are required to keep such information confidential.

(f) *Solicitation of Political Contributions.* Consistent with the provisions of California Government Code Title 1, Division 4, Chapter 9.5, no City employee may knowingly, directly or indirectly, solicit a political contribution from a City employee, City officer, or person on an employment list. However, this does not prohibit City employees from requesting political contributions if the solicitation is part of a solicitation made to a significant segment of the public, which may include City employees. This also does not prohibit a City employee from soliciting or receiving political funds or contributions to promote the passage of or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of City employees, provided that such solicitation cannot occur during working hours or while on City property. For purposes of this Section, "contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

2.07.110 Disciplinary Actions.

(a) *Reason for Disciplinary Action.* Disciplinary measures may be taken for any good and sufficient cause. Cause may include violation of the Personnel Ordinance or of these Personnel Rules or any policies, procedures, Personnel Rules and/or regulations of the employee's department, any act of insubordination or act detrimental to the public service, refusal or inability to comply with the duties of the position occupied by the employee, or any other type of misfeasance, malfeasance or nonfeasance relating to his/her duties, office or position.

(b) *Types of Disciplinary Actions.* The City employs a disciplinary system, which includes a variety of levels of disciplinary actions, up to and including termination of employment. However, nothing in this disciplinary policy should be interpreted in any way that would affect the employee's at will employment status. Notwithstanding any provision of this policy, all employees may be terminated at any time, with or without notice, and with or without cause. The City may take any of the following types of disciplinary actions against its employees:

(i) *Verbal Reprimand.* Verbal reprimand as a disciplinary action means the employee is informed of his/her poor performance verbally by his/her supervisor.

(ii) *Written Reprimand.* Written reprimand as a disciplinary action means an official notification to the employee that there is cause for dissatisfaction with his/her services and that further disciplinary measures may be taken if such cause is

not corrected. Official reprimand shall be given in the manner and on forms prescribed by the Human Resources Officer. Reprimand notices shall be made a part of the employee's official personnel record.

(iii) *Suspension Without Pay.* Suspension without pay shall be a temporary separation from City service.

(iv) *Reduction In Range.* Reduction in step within range as a disciplinary measure is the withdrawal of increments granted for merit, efficiency and length of service. Reduction in pay shall become effective on the first pay period following the effective date of the disciplinary action.

(v) *Involuntary Demotion.* Demotion without consent shall include a reduction in classification or rank, with commiserate reduction in salary.

(vi) Termination means the permanent dismissal of an employee from the City service and approved by the City Manager.

(c) *Authority for Disciplinary Actions.*

(i) The department heads and/or City Manager shall have authority to take disciplinary action and they may delegate to certain of their subordinate supervisory employees the authority to make official reprimands. Only the City Manager may terminate employees.

(ii) The Human Resources Officer shall be notified of any contemplated disciplinary action prior to the time it is taken.

(d) *Notice of Disciplinary Action.* When disciplinary action is to be taken against an employee, the department head or City Manager shall notify the employee in writing of the disciplinary action to be taken, the reasons for the disciplinary action, and the effective date of such disciplinary action, if applicable. Because all employees are at-will, there is generally no right to challenge disciplinary action. However, in certain circumstances, the employee may be entitled to a name-clearing hearing before the Human Resources Officer. If the employee satisfies the criteria in Section 2.07.110(e)(i), the City shall provide the employee with at least five days notice of their intent to discipline the employee. During those five days, the employee may request a name-clearing hearing. If the employee does not request a name-clearing hearing, then he/she will have been deemed to have waived his/her right to said hearing. If the employee requests a hearing in accordance with Section 2.07.110(e), then the Human Resources Officer will make all necessary arrangements for the hearing prior to imposing the disciplinary action. If the employee does not meet the criteria set forth in Section 2.07.1210(e)(i), then he/she is not entitled to any hearing, appeal, or waiting time before the disciplinary action is imposed on the employee.

(e) *Name-Clearing Hearing.* In certain circumstances, an employee may be entitled to a name-clearing hearing before the disciplinary action is imposed by the City. In such circumstances, the employee will be entitled to a name-clearing hearing in accordance with this section 2.07.110(e).

(i) *Criteria for Entitlement to a Name-Clearing Hearing.* When the following three elements are present, the employee is entitled to a name-clearing hearing:

- (1) A stigmatizing charge.
- (2) The employee's denial of the stigmatizing charge.
- (3) Public disclosure of the stigmatizing charge.

(ii) *Name-Clearing Hearing.* If the employee has satisfied all three criteria set forth in Section 2.07.110(e)(i), then the employee is entitled to a hearing in order to clear his/her name. If the employee desires a name-clearing hearing, he/she must file a written request with the Human Resources Officer within five days of receiving notice from the City of its intent to impose disciplinary action. Failure to timely request a hearing shall constitute a waiver of the right to a hearing. The hearing shall be before the Human Resources Officer. The employee is not entitled to a full evidentiary hearing, but is only entitled to the opportunity to clear his/her name of the stigmatizing charge(s). All name-clearing hearings shall be held in private unless the employee requests a public hearing in writing.

2.07.120 Grievance Procedure.

(a) *Purpose of the Grievance Procedure.* The grievance procedure shall be used to resolve employee complaints regarding an alleged violation or interpretation of the City's Personnel Ordinance or these Personnel Rules. Specifically excluded from the grievance procedure are:

- (i) Performance evaluations;
- (ii) Deferred merit salary increases;
- (iii) Verbal counseling;
- (iv) Policy decisions of the City Council;
- (v) Disciplinary actions;
- (vi) Transfer to another position without a loss of pay; and
- (vii) Matters for which there is a separate appeal.

(b) *Grievance Procedure.*

(i) Step 1. The employee shall inform, in writing, his/her immediate supervisor of his/her grievance and relevant facts within seven days after the employee knew, or in the exercise of reasonable diligence should have known, of the events giving rise to the grievance. The grievance must include a statement of the event causing the grievance; the Personnel Rule or provision of the Personnel Ordinance alleged to have been violated; the relief sought by the employee; and any potential

witnesses. Failure to fully complete the grievance form may result in a delay in processing the grievance. At least one conference shall be held between the employee and his/her immediate supervisor after the employee has expressed his/her grievance. The supervisor shall advise the employee of his/her decision within 14 days following notification of the grievance.

(ii) Step 2. If the grievance is not satisfactorily resolved in Step 1, the grievant may, within seven days after receipt of his/her supervisor's response, submit the grievance to his/her department head. Such submittal shall be in writing and include the original of the grievance form. The grievance must include a statement of the event causing the grievance; the Personnel Rule or provision of the Personnel Ordinance alleged to have been violated; the relief sought by the employee; and any potential witnesses. After receipt of the grievance, the department head will meet with the grievant and make such investigation as is required. Within seven days of his/her meeting with the grievant, the department head shall return the original of the grievance form to the employee along with his/her written decision on the grievance.

(iii) Step 3. If the grievance is not satisfactorily resolved in Step 2, the grievant may, within seven days of receipt of the department head's decision, submit the grievance to the Human Resources Officer for consideration by the City Manager. Such submittal shall include the original of the grievance form, a statement of the event causing the grievance; the Personnel Rule or provision of the Personnel Ordinance alleged to have been violated; the relief sought by the employee; and any potential witnesses; a written statement of any issues which are still in dispute; and the specific basis upon which the grievant takes issues with the position of his/her department head. The City Manager or his/her designee shall take such review and investigative action as he/she deems necessary and inform the grievant of his/her decision within 14 days of receipt of the grievance. The decision of the City Manager is final and no further appeal may be had by the employee.

(c) *General Provisions.*

(i) No retribution or prejudice shall be suffered by employees making good faith use of the grievance procedure.

(ii) Failure by management at any step of this procedure to communicate the decision of the grievance within the specified time limits shall permit the grievant to proceed to the next step.

(iii) The grievant shall be entitled to be present at all steps of the procedure.

(iv) Failure at any step of this procedure to appeal a decision on a grievance within specified time limits shall be deemed acceptance of the decision rendered, and the grievant waives all further appeal of the matter.

(v) The time limits specified at any step in this procedure may be extended by mutual written agreement.

(vi) The original of the grievance form shall accompany all requests for institution of the next step in the grievance procedure, and shall be maintained in the employee's personnel file at the completion of the grievance procedure.

(vii) Communication with grievant shall be processed by personal signed receipt of document, certified mail or registered mail.

2.07.130 Employment Benefits.

(a) *Health Benefits.*

(i) Accident, health, hospital, dental and vision insurance to cover non-occupational injuries and sickness for employees in all job classifications, and one dependent shall be provided by the City. The scope of coverage and the payment of premiums is subject to periodic review by the City Council.

(b) *Retirement Benefits.* The City has contracted with the California Public Employees' Retirement System (CalPERS) for the 2.7% at age 55 retirement plan.

2.07.140 Drug/Alcohol Policy. It is the desire of the City that all work environments of employees be safe and productive and free of the influence of drugs and alcohol. The City is concerned with the physical safety of all employees, potential damage to property and equipment, mental and physical health of employees, productivity and work quality, medical insurance costs, and the harm done to employees and their families by drug and alcohol abuse. The full provisions regarding drugs and alcohol in the workplace will be set forth in an administrative policy.

2.07.150 Policy Against Harassment, Discrimination and Retaliation. City policy prohibits unlawful harassment and discrimination based on an employee's race, religion, color, creed, national origin, sex, gender, sexual orientation, marital status, age, mental or physical disability, and/or any other category protected by federal and/or state law. In addition, City policy prohibits retaliation because of the employee's opposition to a practice the employee reasonably believes to constitute employment discrimination or harassment or because of the employee's participation in an employment discrimination investigation, proceeding or hearing. The City's full policy against unlawful harassment, discrimination, and retaliation will be set forth in an administrative policy.

2.07.160 Educational Assistance.

(a) *Educational Reimbursement for Training and Advancement.*

(i) The responsibility for developing training programs for employees is with the City Manager and department directors, jointly. When an educational course to be taken by an employee will benefit the City, the City Manager may authorize payment by the City of tuition charges and books. An "educational course" may include courses that are in furtherance of a degree, other college-credit courses, or training. In order to be eligible for educational reimbursement, the employee must

obtain written approval of the City Manager prior to enrolling in any courses. Educational reimbursement shall not exceed \$1,500 in any fiscal year.

(ii) If an employee is entitled to additional compensation by earning a degree, as specified in their job description, it will be the responsibility of the employee to pay all fees for their courses and upon completing the course and earning a grade of C or better, to submit a cancelled check and receipt for reimbursement of the tuition charges and books. After the above information has been submitted to the City, the employee shall begin receiving any additional compensation that he/she is entitled to in the next pay period, and shall receive the educational reimbursement, if any, that he/she is entitled to under this Section.

(b) *Licenses and Certification Assistance.*

(i) In cases of enrollment for any certification which is a condition of employment, the City shall pay required application fees in advance.

(ii) The cost of licensing fees, renewal fees, and test fees for all levels of certification are reimbursable, upon receipt of the certification or license. To obtain reimbursement after successful completion of the test/renewal/license process, the employee is responsible for submitting proof of payment for test fees, renewal fees, and license fees, along with proof of the certification or license, to the City Manager. In unusual circumstances, the City Manager may authorize the payment of the test/renewal/license fees in advance.

2.07.170 Uniforms and Equipment.

(a) *Uniforms.* The cost of such uniforms as employees are required to wear shall be borne by the City.

(b) *Equipment.* The City shall provide employees with the essential equipment to perform the duties of their positions. Employees are responsible for requesting training on equipment that they are unfamiliar with. Also, employees are responsible for the proper operation and maintenance of all equipment.

(c) *Safety Equipment and Protective Clothing.* Certain employees will be required to wear approved safety shoes and other safety equipment and protective clothing. Such employees failing or refusing to wear such safety equipment and protective clothing as appropriate will be subject to disciplinary action up to and including termination. If any employee is unable to wear such safety equipment and protective clothing for medical reasons, the employee must submit to the City a doctor's statement covering the reasons."

2.07.180 Electronic Communications Policy. The City provides its employees with certain electronic communications devices. Employees should be aware that no computer usage including messages transmitted or received on the computer system are private or confidential. The City's full policy regarding the use of electronic communications equipment will be set forth in an administrative policy.

SECTION 3. Intent to Supersede County and City Ordinances. The provisions of this ordinance shall supersede County Ordinance No. 440, as amended, as County Ordinance No. 440 was adopted by City Ordinance No. 08-01. The provisions of this ordinance shall also supersede City Ordinance No. 08-14.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance shall take immediate effect upon its passage by the City Council.

SECTION 6. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933. The City Clerk shall certify the passage of this ordinance and shall cause the same to be posted as required by law.

PASSED, APPROVED, AND ADOPTED this 13th day of October, 2010.

Bridgette Moore, Mayor

ATTEST:

Debbie A. Lee, City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

CITY OF WILDOMAR – COUNCIL
Agenda Item #1.6
CONSENT CALENDAR
Meeting Date: October 13, 2010

TO: Mayor and City Council Members
FROM: Frank Oviedo, City Manager
SUBJECT: Southern California Association of Governments Economic Development Principles

STAFF REPORT

RECOMMENDATION:

That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, IN SUPPORT OF “BUSINESS FRIENDLY PRICIPLES” AS PART
OF SCAG’S DEVELOPMENT OF A SOUTHERN CALIFORNIA ECONOMIC
GROWTH STRATEGY

BACKGROUND:

SCAG Regional Council is planning a “Southern California Economic Road to Recovery” on December 2, 2010 with the Governor-elect, state leaders, business leaders, and member agencies.

The purpose of the Summit is to share with the Governor-elect and state leaders information about the potential actions that can be taken to remove impediments to economic growth for cities in Southern California.

The goal is to have all 190 cities within the region adopt the resolution and present at the Summit in order to demonstrate to the Governor-elect and state legislative leaders that Southern California communities are committed to working together with the state to keep businesses within California and find ways to reduce or remove economic impediments to growth.

By adopting this resolution Council will be showing support for SCAG’s efforts to advance sound economic principles.

FISCAL IMPACT:

There is no fiscal impact by the Council adopting a resolution of support.

Submitted and Approved By:

Frank Oviedo
City Manager

ATTACHMENTS:
Resolution No. 2010 - _____

RESOLUTION NO. 2010 - _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, IN SUPPORT OF “BUSINESS FRIENDLY PRICIPLES” AS
PART OF SCAG’S DEVELOPMENT OF A SOUTHERN CALIFORNIA
ECONOMIC GROWTH STRATEGY**

WHEREAS, the City of Wildomar is a member of the Southern California Association of Governments (SCAG) who is engaged in the development of a Southern California Economic Growth Strategy;

WHEREAS, the City of Wildomar supports working with SCAG and other key economic stakeholders to improve the Southern California economy;

WHEREAS, the City of Wildomar is a business friendly municipality and has numerous practices in place to encourage economic growth within its community;

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

1. That the City of Wildomar supports the following “Business Friendly Principles” as part of SCAG’s development of a Southern California Economic Growth Strategy:

Principle One – Economic Development as a Priority

The City of Wildomar strives to demonstrate commitment to economic development as a priority.

Principle Two - Business Partnership

The City of Wildomar strives to provide quality municipal services to attract and retain businesses and employees.

Principle Three-Business Responsive Processes

The City of Wildomar strives to communicate effectively with businesses including processes to increase its responsiveness to businesses that are seeking or doing business within its jurisdiction (commitments include responding to business inquires within an established time period and offering an expedited permitting process for new businesses).

Principle Four – Attractiveness to Business Investment

The City of Wildomar strives to streamline operations for efficient and responsive business assistance in areas of licensing, permitting, inspections and other municipal services and will seek to improve its attractiveness to new and existing businesses within its jurisdiction (commitments include striving to maintain competitive taxes and fees and

establishing good communications with business base via newsletter or website).

2. That the City of Wildomar authorizes its staff to submit a copy of this resolution to SCAG in time for SCAG's Regional Economic Summit currently scheduled for December 2, 2010.

PASSED, APPROVED AND ADOPTED this 13th day of October, 2010.

Bridgette Moore
Mayor

APPROVED AS TO FORM: ATTEST:

Julie Hayward Biggs
City Attorney

Debbie A. Lee, CMC
City Clerk

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #1.7
CONSENT CALENDAR
Meeting Date: October 13, 2010

TO: Mayor and City Council Members
FROM: Tim D'Zmura, Public Works Director
SUBJECT: Federal and State Funded Projects Signature Authorization

STAFF REPORT

RECOMMENDATION:

That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, AUTHORIZING THE CITY MANAGER OR PUBLIC WORKS
DIRECTOR TO EXECUTE AGREEMENTS AND PROGRAM SUPPLEMENT
AGREEMENTS (AND RELATED AMENDMENTS) FOR FEDERAL AND STATE
FUNDED PROJECTS

BACKGROUND:

The City of Wildomar is responsible for developing, operating and maintaining roadway transportation improvements within the city limits. Currently, city staff manages existing grant funding sources and continue to seek out additional grant funding opportunities from Federal and State programs. Successful grants will extend and enhance the City's revenue sources.

Before federal and state funds are made available for a project, the City of Wildomar and the granting agency (which may be a state or federal agency) are required to enter into agreements. These agreements establish terms and conditions applicable to the City when receiving federal and state funds for a designated project. New provisions and individual projects require agreements to be executed and, from time to time, to be amended.

The city currently has a grant with the State of California Department of Transportation (Caltrans) for the Safe Routes to School Program. As with all funding programs administered by Caltrans, a prerequisite for invoicing the State for these funds requires the execution of funding agreements with Caltrans. In order for the agreements to be executed, it must include a resolution that authorizes the staff person to sign the agreements.

ANALYSIS:

By authorizing the City Manager or Public Works Director to execute these agreements and related amendments, it will allow staff to:

- Expedite the availability of funds.
- Expedite the approval process between the City and the granting agency for the design phase.
- Expedite the approval process between the City and grant agency for the bidding and construction phase of projects.
- Reduce the number of reports reviewed by City Council on these administrative tasks.

FISCAL IMPACTS:

None. Cost savings and schedule time savings will be achieved through the delegation of authority.

Submitted by:

Approved by:

Tim D'Zmura
Development Services

Frank Oviedo
City Manager

ATTACHMENTS:

Resolution No. 2010 - _____

RESOLUTION NO. 2010 - _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, AUTHORIZING THE CITY MANAGER OR PUBLIC WORKS
DIRECTOR TO EXECUTE AGREEMENTS AND PROGRAM SUPPLEMENT
AGREEMENTS (AND RELATED AMENDMENTS) FOR FEDERAL AND STATE
FUNDED PROJECTS**

WHEREAS, the City of Wildomar ("City") is eligible to receive Federal and/or State funding for certain transportation projects through various state and federal agencies; and

WHEREAS, among the state agencies is the State of California Department of Transportation ("Caltrans"); and

WHEREAS, There are various funding agreements to identify the funding commitments from state or federal funds, include but are not limited to, Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements and/ or Fund Transfer Agreements; and

WHEREAS, these agreements need to be executed with Federal or State Agencies, and/or the California Department of Transportation (as applicable depending on the grant) before such federal or state grant funds can be claimed; and

WHEREAS, disbursement of Federal (include Federal-Aid) and State grant funds for a project may require execution of one or more Program Supplement Agreement(s) with the State of California for each federal or state funded project; and

WHEREAS, the City wishes to delegate authorization to execute these federal and state grant related agreements and associated amendments to the City Manager or Public Works Director.

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

1. The City Council authorizes the City Manager or Public Works Director to sign and execute all Master Agreements, Program Supplemental Agreements, Fund Exchange Agreements, Fund Transfer Agreements, and/or any other agreement/amendment related to Federal and State funded Projects between the City and state agencies, federal agencies, and/or the California Department of Transportation.

PASSED, APPROVED, AND ADOPTED this 13th day of October 2010.

Bridgette Moore
Mayor

APPROVED AS TO FORM:

ATTEST:

Julie Hayward Biggs
City Attorney

Debbie A. Lee, CMC
City Clerk

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #3.1
CONSENT CALENDAR
Meeting Date: October 13, 2010

TO: Mayor and City Council Members
FROM: Julie Hayward Biggs, City Attorney
CONTACT: Debbie Lee, City Clerk
SUBJECT: Request for Police Services to be Provided at No Cost

STAFF REPORT

RECOMMENDATION:

That the City Council adopt a Resolution requesting that the County of Riverside provide law enforcement services without cost up to the maximum dollar value of the augmentation payment that was recently invalidated by the court in the case of Ste. Marie v. County of Riverside (RIC484325).

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, REQUESTING THE COUNTY OF RIVERSIDE TO PROVIDE
CONTINUATION OF LAW ENFORCEMENT SERVICES WITHOUT CHARGE UP
TO THE DOLLAR VALUE OF REDUCED COSTS TO THE COUNTY OF
RIVERSIDE RESULTING FROM THE INCORPORATION OF THE CITY OF
WILDOMAR PURSUANT TO THE PROVISIONS OF GOVERNMENT CODE
SECTIONS 56815 AND 57384

DISCUSSION:

During the incorporation process, negotiations were undertaken with the County of Riverside relating to revenue neutrality requirements of Government Code §56815. That statute provides as follows:

“(a) It is the intent of the Legislature that any proposal that includes an incorporation should result in a similar exchange of both revenue and responsibility for service delivery among the county, the proposed city, and other subject agencies. It is the further intent of the Legislature that an incorporation should not occur primarily for financial reasons.

(b) The commission shall not approve a proposal that includes an incorporation unless it finds that the following two quantities are substantially equal:

- (1) Revenues currently received by the local agency transferring the affected territory that, but for the operation of this section, would accrue to the local agency receiving the affected territory.

(2) Expenditures, including direct and indirect expenditures, currently made by the local agency transferring the affected territory for those services that will be assumed by the local agency receiving the affected territory.

(c) Notwithstanding subdivision (b), the commission may approve a proposal that includes an incorporation if it finds either of the following:

(1) The county and all of the subject agencies agree to the proposed transfer.

(2) The negative fiscal effect has been adequately mitigated by tax sharing agreements, lump-sum payments, payments over a fixed period of time, or any other terms and conditions pursuant to Section 56886.

(d) Nothing in this section is intended to change the distribution of growth on the revenues within the affected territory unless otherwise provided in the agreement or agreements specified in paragraph (2) of subdivision (c).

(e) Any terms and conditions that mitigate the negative fiscal effect of a proposal that contains an incorporation shall be included in the commission resolution making determinations adopted pursuant to Section 56880 and the terms and conditions specified in the questions pursuant to § 57134.”

In the course of the revenue neutrality negotiations, it became clear to the County of Riverside that it would experience a substantial decrease in the cost of providing services to the City of Wildomar upon incorporation. To assure that the incorporation was in fact revenue neutral, the County adopted a policy (Policy A-46) providing that “where a Comprehensive Fiscal Analysis (CFA) clearly demonstrates that a proposed incorporation will be revenue neutral or result in a reduction in net county cost, consideration may be given to negotiating a County contribution to the initial cost of city services” (Attachment A). In accord with the provisions of Government Code §56815(c)(2), the County agreed to make annual augmentation payments to the new City for a period of 10 years following the incorporation effective date to off-set the decrease in the cost of public services that would result to the County. That financial arrangement was reflected in the staff report and findings included in the Local Agency Formation Commission Resolution 2005-107 and set forth as Term and Condition d (Attachment B).

Prior to incorporation Mr. Gerard Ste. Marie filed a legal action challenging the action of the County in adopting Policy A-46 and attempting to invalidate the augmentation payment. The suit contended that the augmentation payment constituted a gift of public

funds. The trial court denied Ste. Marie's motion for summary judgment finding that the County's resolution did not violate any applicable laws. On appeal, the Court of Appeal reversed that determination, finding that while there was no gift of public funds, there was also no authorization in California law for a County to make cash payments to newly incorporated cities. The County has chosen not to appeal this ruling despite the language Government Code §56815 (c)(2) that appears to explicitly permit annual payments in situations where an incorporation reduces the costs to the County.

The Court of Appeal also determined, however, that there is authority for the County to continue to provide public services to a newly incorporated city upon request of that city under the provisions of Government Code §57384. In light of this determination, the County has chosen not to appeal the ruling, but instead to proceed under the provisions of Government Code §57384 and to provide public services at no cost up to the dollar amount previously determined to represent the decrease in cost of public services to the County resulting from the incorporation of the City.

In order to proceed in that direction, the City of Wildomar must adopt a resolution requesting continued public services at no cost up to the maximum value of the decrease in cost to the County. Resolution No. _____ will complete that step in the process that the Court of Appeal determined was authorized and appropriate.

ALTERNATIVES:

The Council could choose not to adopt the Resolution. The effect of not adopting the Resolution, however, will be to increase the cost of public services to the residents of Wildomar by the amount that the County has determined.

FISCAL IMPACTS:

If the Resolution is not adopted and no other action is taken to address the decrease in costs to the County resulting from the incorporation of the City of Wildomar, the City will be paying an average of \$270,000 more per year over the next eight years than its appropriate share of public service costs contrary to the determinations made in the CFA. Adoption of the Resolution complies with the mandate of Government Code §56815 that incorporation of a new city be revenue neutral as to the County and the City.

Submitted By:

Approved By:

Julie Hayward Biggs
City Attorney

Frank Oviedo
City Manager

RESOLUTION NO. 2010 - _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, REQUESTING THE COUNTY OF RIVERSIDE TO PROVIDE
CONTINUATION OF LAW ENFORCEMENT SERVICES WITHOUT CHARGE UP
TO THE DOLLAR VALUE OF REDUCED COSTS TO THE COUNTY OF
RIVERSIDE RESULTING FROM THE INCORPORATION OF THE CITY OF
WILDOMAR PURSUANT TO THE PROVISIONS OF GOVERNMENT CODE
SECTIONS 56815 AND 57384**

WHEREAS, in July of 2007, the County of Riverside (“County”) after reviewing the Comprehensive Fiscal Analysis prepared for the incorporation of the City of Wildomar (“City”), that if the incorporation effort was successful, it would result in a net decrease of costs for provision of public services to the incorporating area; and

WHEREAS, in July of 2007, in accord with the provisions of Government Code Section 56815 (c)(2), the County adopted Policy A-46 and determined and set the annual amount payable to the City necessary to off-set the decrease in costs for public services that would result from the incorporation of the City for the first 10 years of incorporation (the “Augmentation Payment”); and

WHEREAS, a legal challenge was brought against Policy A-46 and the Augmentation Payment entitled *Ste. Marie v. County of Riverside* (Superior Court Case No. RIC484325); and

WHEREAS, the trial court denied a motion for summary judgment and determined that Policy A-46 and the Augmentation Payment did not constitute a gift of public funds and were authorized under California law;

WHEREAS, the trial court ruling was appealed by the plaintiff; and

WHEREAS, during the pendency of the appeal, the incorporation effort moved forward and incorporation was approved by the voters on February 5, 2008; and

WHEREAS, the terms and conditions of approval for the City of Wildomar imposed by the Local Area Formation Commission included a provision to assure revenue neutrality as required by Government Code Section 56815 that required the County to augment the City of Wildomar’s general fund by the Augmentation Payment that had been authorized by the County as set forth on Attachment 1; and

WHEREAS, the City of Wildomar was incorporated under the general laws of the State of California effective July 1, 2008; and

WHEREAS, in June of 2010, the Fourth District Court of Appeal in the *Ste. Marie* action reversed the trial court’s determination and held that the cash transfer of funds to

the City from the County though not a gift of public funds, was nevertheless invalid because of the way it was structured and a remittitur was issued returning the case to the trial court for resolution consistent with that ruling; and

WHEREAS, the Court of Appeal held that while cash may not be transferred to the City by the County in the form of an augmentation payment, the County may agree to provide services free of charge to the City on such terms and conditions as the parties may approve in accord with the provisions of Government Code Section 57384(c) which reads as follows:

“At the request of the city council, the board of supervisors, by resolution, may determine to furnish, without charge, to the area incorporated all or a portion of services furnished to the area prior to the incorporation for an additional period of time after the end of the fiscal year during which the incorporation became effective. The additional period of time after the end of the fiscal year during which the incorporation became effective for which the board of supervisors determines to provide services, without charge, and the specific services to be provided shall be specifically stated in the resolution adopted by the board of supervisors.”

WHEREAS, the City by this resolution intends to request that the County provide law enforcement services free of charge up to the amount of the Augmentation Payment value in consideration of the reduction in costs to the County resulting from the incorporation of the City and in accord with the provisions of Government Code Sections 56815 and 57384(c).

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

Section 1. In order to assure revenue neutrality in the incorporation of the City of Wildomar as mandated by Government Code Section 56815, under the provisions of Government Code Section 57384(c) and in accord with the judicial ruling in the case of *Ste. Marie v. Board of Directors for the County of Riverside* (Superior Court Case No. RIC484325), the City of Wildomar hereby requests that the County continue to provide law enforcement services through the County Sheriff’s Department at no cost to the City up to the maximum values shown on Attachment 1 through the end of fiscal year 2017-2018.

Section 2. Any cost for law enforcement services above the amount shown on Attachment 1 for any fiscal year shall be paid by the City to the County.

PASSED, APPROVED, AND ADOPTED this 13th day of October, 2010.

Bridgette Moore
Mayor

APPROVED AS TO FORM:

ATTEST:

Julie Hayward Biggs
City Attorney

Debbie A. Lee, CMC
City Clerk

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



FROM: Supervisor Buster and Supervisor Stone

SUBMITTAL DATE:

July 20, 2007

SUBJECT: Allocation of Funds to Incorporating Cities in the Areas of Wildomar and Menifee Based On a Net Savings Calculation

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached recommended changes to Board Policy A-46 (Attachment A); and
2. Allocate the net savings calculation in Attachment B and Attachment C to the respective cities; and
3. Continue annual payments based on the attachments for ten (10) years, to be reduced annually by the amount of sales tax which exceeds the estimated amounts identified in the respective Comprehensive Fiscal Analysis (CFA) for the areas of Wildomar and Menifee submitted to the Local Agency Formation Commission (LAFCO) for approval; and
4. Direct the Executive Office to adjust net county cost allocations consistent with the proposed net savings displayed in the respective CFA.

BACKGROUND: In 1992, the State enacted legislation designed to reduce the negative fiscal impact incorporations can have on counties and other affected agencies. This legislation is termed "revenue neutrality."

Under the revenue neutrality law (§56815) the Local Agency Formation Commission (LAFCO) cannot approve a proposal for incorporation unless it finds that the amount of revenues the new city receives from the county and other affected agencies after incorporation would be substantially equal to the amount of savings the county or the affected agencies would attain from no longer providing services to the proposed incorporation area. A broad range of mitigation measures is permitted as is a less-than-substantially equal exchange if the county or affected agencies agree to the transaction.

Bob Buster

Bob Buster, Supervisor
1st District

Jeff Stone

Jeff Stone, Supervisor
3rd District

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.:

District:

Agenda Number:

3.2

Allocation of Funds to Incorporating Cities Based On a Net Savings Calculation
in the Areas of Wildomar and Menifee
Page 2

In simplest terms, revenue neutrality was designed to prevent incorporations from adversely impacting counties' and other affected agencies' budgets. The reduction in revenues should be offset by a reduction in service expenditures. If a loss to the affected county or agency is calculated during the incorporation process, the parties enter into revenue neutrality negotiations. A result of these negotiations can be an assessment of payments by the city to mitigate this imbalance.

In the cases of the current incorporation proposals for the communities of Wildomar and Menifee, revenue neutrality negotiations was deemed unnecessary, as the respective Comprehensive Fiscal Analysis (CFA) indicates the county's budget is not adversely affected by the incorporation. In fact, it is estimated that the county will have a net-savings if these incorporations occur.

Attachment B and Attachment C are calculations, which estimate the net-savings to the county. The action requested is for the county, upon the successful incorporation of the city, to annually submit payments for up to ten (10) years, with payments being reduced on an annual basis if there is an increase in the estimated sales tax above the amounts identified in the respective CFA for the areas of Wildomar and Menifee submitted to LAFCO for approval.

Recently, other communities have taken informal and formal steps towards incorporation. It is proposed that Board Policy A-46 be changed, so that future incorporation efforts are given the same consideration (Attachment A).

**COUNTY OF RIVERSIDE, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

<u>Subject:</u>	<u>Policy Number</u>	<u>Page</u>
BOARD OF SUPERVISORS' POSITION(S) ON LOCAL AGENCY FORMATION COMMISSION MATTERS	A-46	1 of 1

Purpose:

To establish direction for Board of Supervisors' position(s) on county boundary changes.

Policy:

The Board of Supervisors may elect to state its position in support of or opposition to any proposed or pending LAFCo action that the Board deems will adversely impact the County of Riverside. The Board position shall be based on findings that demonstrate a significant operational impact upon the county as a result of jurisdictional changes (e.g. major annexations and incorporations).

The Board may seek reconsideration of any matter which LAFCo approves that the Board determines will have a detrimental fiscal or operational impact upon the County of Riverside's budget or service delivery capability.

The Board may seek reimbursement and/or redress from cities or other agencies for the loss of investment in public works projects that would normally transfer to a city upon approval of a jurisdictional change.

Where a Comprehensive Fiscal Analysis (CFA) clearly demonstrates that a proposed incorporation will be revenue neutral or result in a reduction in net county cost, consideration may be given to negotiating a County contribution to the initial cost of city services.

Reference:

Minute Order 3.40 of 04/13/92

Minute Order 3.7 of 11/07/06

ATTACHMENT B

Wildomar Net Savings Calculations

Transition Year	2	3	4	5	6	7	8	9	10
FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 04/05	FY 15/16	FY 16/17	FY 17/18
\$237,579	\$244,706	\$252,048	\$259,609	\$267,397	\$275,419	\$283,682	\$292,192	\$300,958	\$309,987

ATTACHMENT C

Menifee Net Savings Calculations

Boundary 1

Transition Year	2	3	4	5	6	7	8	9	10
FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 04/05	FY 15/16	FY 16/17	FY 17/18
\$1,209,520	\$1,245,806	\$1,283,180	\$1,321,675	\$1,361,325	\$1,402,165	\$1,444,230	\$ 1,487,557	\$ 1,532,184	\$1,578,149

Boundary 2

Transition Year	2	3	4	5	6	7	8	9	10
FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 04/05	FY 15/16	FY 16/17	FY 17/18
\$ 505,950	\$ 521,129	\$ 536,762	\$ 552,865	\$ 569,451	\$ 586,535	\$ 604,131	\$ 622,255	\$ 640,922	\$ 660,150

Boundary 3

Transition Year	2	3	4	5	6	7	8	9	10
FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 04/05	FY 15/16	FY 16/17	FY 17/18
\$ 331,481	\$ 341,425	\$ 351,668	\$ 362,218	\$ 373,085	\$ 384,277	\$ 395,806	\$ 407,680	\$ 419,910	\$ 432,508

CITY OF WILDOMAR – COUNCIL
Agenda Item #3.2
GENERAL BUSINESS
Meeting Date: October 13, 2010

TO: Mayor and City Council Members
FROM: Frank Oviedo, City Manager
SUBJECT: SCAG Compass Blueprint Grant Program – Old Town Wildomar

STAFF REPORT

RECOMMENDATION:

That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
CALIFORNIA, PROVIDING FULL SUPPORT AND AUTHORIZING THE
CITY MANAGER TO SUBMIT AN APPLICATION FOR ASSISTANCE AS
PART OF THE SOUTHERN CALIFORNIA ASSOCIATION OF
GOVERNMENTS COMPASS BLUEPRINT PROGRAM FOR
IDENTIFYING AND DEVELOPING A VISION FOR THE CITY'S
HISTORIC AREAS

BACKGROUND:

On September 22, 2010, the City Council asked staff to bring back a report for the purpose of identifying an "old town" area of the City. Initially council was interested in hearing the item quickly so that the City could take advantage of the Southern California Association of Government's (SCAG) Compass Blueprint Grant and Assistance Program. The deadline for the program application is October 21, 2010.

Staff began evaluating how we might approach this project both from an overall strategy and a financial standpoint. Once staff reviewed the grant program it was clearer that the best approach would be to apply for the grant first. If successful we could receive either direct assistance or grant funding from SCAG thereby saving City staff time and money.

The Compass program came about as a result of a regional visioning process to address land use and transportation planning in southern California. The program allows cities to apply for direct assistance and/or grant funding to implement a demonstration project. The demonstration projects vary from application to application. In some cases they include transportation project planning. In other cases the program includes visioning and planning downtown areas.

Staff has assembled the application and is prepared to submit it to SCAG for the 2011 program cycle. As part of the application process a resolution of support from the governing board of the Agency applying for the grant is required. In addition to Council's resolution SCAG recommends the applying Agency submit a letter of support from our sub-regional agency, Western Riverside Council of Government (WRCOG). Staff has requested this letter and expects to submit it along with the application.

FISCAL IMPACT:

There is no fiscal impact by the Council adopting a resolution of support for the grant program.

Submitted by and Approved By:

Frank Oviedo
City Manager

ATTACHMENTS:

Resolution No. 2010 - _____

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, PROVIDING FULL SUPPORT AND AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION FOR ASSISTANCE AS PART OF THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS COMPASS BLUEPRINT PROGRAM FOR IDENTIFYING AND DEVELOPING A VISION FOR THE CITY'S HISTORIC AREAS

WHEREAS, prior to incorporation, Wildomar was an unincorporated area of Southwest Riverside County where its earliest settlers date back to 1886; and

WHEREAS, on July 1, 2008 the City of Wildomar incorporated and became the twenty fifth city in Riverside County; and

WHEREAS, residents of the City on October 25, 2008 expressed through a larger citywide visioning process a desire to have a central location or an "old downtown" that would include a city hall, fire department, police, and access to other government agencies; and

WHEREAS, residents described this vision for a community center as "Wildomar Village" where community members including teens, seniors, and visitors could be near centers for volunteering, accessing computers, recreation, education, social services, and career counseling; and

WHEREAS, the Wildomar City Council asked staff to pursue grant opportunities and specifically directed staff to bring back a report that would assist the Council in identifying its historic old town areas; and

WHEREAS, the Compass Blueprint Program is the perfect vehicle to help our young City plan for its future and get off to a good start by using the expertise of our regional agency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA AS FOLLOWS:

Supports and Authorizes the City Manager to submit an application on behalf of the City of Wildomar for visioning and future planning of our historic old town area of the City.

PASSED, APPROVED, AND ADOPTED this 13th day of October, 2010.

Bridgette Moore
Mayor

APPROVED AS TO FORM:

ATTEST:

Julie Hayward Biggs
City Attorney

Debbie A. Lee, CMC
City Clerk

CITY OF WILDOMAR – COUNCIL
Agenda Item #3.3
GENERAL BUSINESS
Meeting Date: October 13, 2010

TO: Mayor and City Council Members

FROM: Frank Oviedo, City Manager
Gary Nordquist, Assistant City Manager

SUBJECT: Save Our Parks (SOP) Strategy

STAFF REPORT

RECOMMENDATION:

Approve a "Save Our Parks" (SOP) Strategy for City Staff to implement.

BACKGROUND:

On September 20, 2010, the State Supreme Court denied hearing an appeal ruling to remove the assessment funding for the City's park operations. This final court action has caused the City to divert resources immediately to develop plans to avoid the eminent closure of the parks due to this loss of funding for park operations.

The City faces two challenges; (1) develop a plan to deal with the immediate impacts of no funding for current park operations (Now) and (2) develop a long term strategy to provide recurring funding for the city parks operations (Forever).

Last Wednesday, September 29, 2010, the City held a well attended Town Hall style meeting at Marna O'Brien Park. The purpose of the meeting was to provide a brief overview of the immediate and long term fiscal issues and to seek the resident's thoughts and ideas to deal with this latest challenge to the City.

Of the 300 attendees, over 40 residents came forward with their ideas for keeping the parks open "Now" and "Forever." A listing of ideas are provided as attachments "A" and "B". Additionally, 10 residents came forward during the meeting and pledged or donated a total of \$2,756.00 to the Save Our Parks program.

DISCUSSION:

The plan to develop a strategy for the Save Our Parks program focuses on four action items which should be reported back to the City Council the October 27, 2010 meeting:

Action Item #1

Establish a Blue Ribbon Parks Advisory Committee for the sole purpose of advising the City Council on two items:

1. *Develop a plan to address the current level of services at the parks; and*
2. *Develop a recommendation for a long term financing plan to provide a revenue source for funding parks operations and possible expansion in the future.*

Staff recommends the Committee be established by the next City Council meeting on October 27, 2010, and be given 45 days to report their recommendation to the Council or the soonest available Council meeting in the available timeframe.

Staff also is recommending the Council consider appointing a 15 member committee consisting of the following groups in the City:

- Youth
- Senior Citizen
- Chamber of Commerce
- Hospital/Medical Industry
- The Farm
- Wildomar Community Council
- Butterfield Trails
- Local Schools
- Home Owners Association (HOA)
- Civic Group (VFW/Elks/Rotary)
- PTA
- Little League/Softball
- Soccer
- Football
- Wildomar Resident at Large

In order to make the appointment process efficient and less time consuming, given the need to move quickly, staff is recommending the Council consider dividing up the responsibility of finding appointments for the first 5 bulleted seats (or a number the Council determines). Staff can then seek volunteers from the remaining 10 groups (or a number Council determines) so we can bring them back for Council's confirmation.

Consideration of qualifications of each member should be discussed and direction provided to staff with respect to current political/governmental involvement. For example Council might consider not appointing current candidates for political office, Planning Commissioners, or seated Council members given that we are in the final month of the election season. This would prevent the perception of an individual serving for ulterior reasons.

Action Item #2

Direct staff to continue working with groups and/or individuals who are interested in assisting in educating the public or establishing fundraisers to help provide the necessary funding to keep the City parks open.

Currently there are a number of individuals and organizations who have stepped up efforts specifically to help in educating and raising money for our parks operations in the City. To date a number of residents have already either donated or pledged funding of \$2,756. In order to offset expenses associated with keeping the parks open, events geared toward educating the community and fundraising will be crucial over the next 6-9 months until we can reestablish a new assessment program. For the month of October the following events include raising funds for the parks:

- October 9, Special Olympics softball tournament, Marna O'Brien Park
- October 15, 5pm-8pm Spaghetti dinner and Art Sale, Station 61
- October 23 & 24, softball tournament, Marna O'Brien Park
- October 29, Harvest Festival 5-8pm, Marna O'Brien Park

In addition to the set fundraisers a number of other events include a week long Halloween Haunt at the Pepper Tree Manor Haunt. This event is a haunted house that takes place prior to Halloween here in the City of Wildomar on 21390 Lemon Street. There will be a "Save Our City" collection bucket for patrons to donate. Also, silicone

Action Item #3

Authorize staff to issue a Request for Proposal (RFP) to qualified firms specializing in long term parks financing (capital and operations/maintenance).

This no cost activity can assist the staff and committee in determining the best funding option for long term operations, park expansion and other areas which the committee may want to consider.

Bracelets will be made and will be an ongoing fundraiser during this time period.

Action Item #4

Direct staff to work with the County Supervisor Bob Buster's Office to assist financially in bridging the budget gap between now and the time that we are able to reestablish a new assessment and bring a revised budget to the Council based on progress with cost cutting measures, recommendations from residents, and progress with the County request for assistance.

Staff is actively looking at all of our financial options including some of the ideas that our residents provided the City at the Town Hall meeting. Additionally, since this issue is evolving each week staff intends to bring the City Council a revised budget based on actions taken in the last week to adjust maintenance service levels at the parks, the

outcome of direction to staff this evening, and the recommendations of the Blue Ribbon Committee.

FISCAL IMPACT:

There is no immediate fiscal impact by implementing this strategy. As this issue takes form staff will be bringing back further information pertaining to the budget for items that have expenses associated with implementation.

Submitted and Approved by:

Frank Oviedo
City Manager

ATTACHMENTS:

- (A) Parks NOW ideas from Town Hall Meeting, 9/29/2010
- (B) Parks FOREVER ideas from Town Hall Meeting, 9/29/2010

Attachment "A"

Park Ideas

"NOW"

PARKS: NOW

- ❖ **Keep parks open!!**
- ❖ **Get Reduction in Utilities**
 - Edison donation?
 - EVMWD Fee
 - Reduction- Reclaimed water
 - EZ Turf donation?
 - Less water
 - Solar Energy
 - Gas Company
- ❖ **Raise Money**
 - Recycling Bin
 - Yearly Fundraiser Event
 - Dispensary
 - Stand
 - Education
- ❖ **Get Demographics**
 - Senior Fee Reduction
- ❖ **Education**
 - Meetings
 - Weekly? Monthly?
- ❖ **Fundraisers**
 - Dog show
 - Parks fund- \$28 Donation + commercial at park
 - Advertising on back stops
 - Save our parks T-Shirts
 - Donation challenge- \$1000
 - Recycling
- ❖ **Explore idea of general benefit/ specific benefit**
- ❖ **Use schools and churches to help get funds**
- ❖ **Use water bill mail out**
- ❖ **Bring back well**
- ❖ **Contract Media Radio T.V.**
- ❖ **Donation through sports team and Football Little League**
 - Sign up list
 - Go to CITYOFWILDOMAR.ORG
 - Donation Marker
 - Thermometer

Thursday, September 30, 2010

Attachment "B"

Park Ideas

"FOREVER"

PARKS: FOREVER

- ❖ Have SCE DROP RATES, donate
- ❖ Natural Gas Generators
- ❖ MWD Drop Water Rates
- ❖ Examine Turf Fields (easy turf)
- ❖ Solar Panels
- ❖ Annual Fundraiser
 - Chili cook off, etc.
- ❖ Funds from additional taxes (dispensaries)
- ❖ Organized recycling effort
- ❖ Solicit senior inputs and ideas
- ❖ Steel pylons to keep autos out
- ❖ Reclaimed water
- ❖ Dog type fundraiser
- ❖ Set up ongoing donation fund
- ❖ Bid out/ Rent out food services
- ❖ Advertising on backstops
- ❖ Find existing well and bring online
- ❖ Block captains for recycling
- ❖ Make resident benefit greater than non-resident
- ❖ Programs through schools and churches to raise funds
- ❖ Donation envelopes in utility bills
- ❖ Paypal account on website
- ❖ Wildomar Football Donation Letter concept
- ❖ Get the word out
 - Email
 - Media
- ❖ Donation Thermometer for status

Thursday, September 30, 2010