



A G E N D A

**IMPERIAL BEACH CITY COUNCIL
REDEVELOPMENT AGENCY
PLANNING COMMISSION
PUBLIC FINANCING AUTHORITY**



SEPTEMBER 22, 2010

**Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

**CLOSED SESSION MEETING – 5:15 P.M.
REGULAR MEETING – 6:00 P.M.**

**THE CITY COUNCIL ALSO SITS AS THE CITY OF IMPERIAL BEACH REDEVELOPMENT AGENCY,
PLANNING COMMISSION, AND PUBLIC FINANCING AUTHORITY**

The City of Imperial Beach is endeavoring to be in total compliance with the Americans with Disabilities Act (ADA). If you require assistance or auxiliary aids in order to participate at City Council meetings, please contact the City Clerk's Office at (619) 423-8301, as far in advance of the meeting as possible.

CLOSED SESSION CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: 800 Seacoast Drive, Imperial Beach, CA 91932, APN 625-262-01-00

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Imperial Coast LTD Partnership

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: Unimproved site of 1.15 acres with a paved Class I bike path,
Imperial Beach, CA 91932, APN 616-021-10

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: San Diego County Regional Airport Authority

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(a):

Case Name: Imperial Beach Redevelopment Agency v. Shawki Bachoua dba Southbay
Drugs

Case No: 37-2010-00030617-CL-UD-SC

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9(c):

No. of Cases: 1

RECONVENE AND ANNOUNCE ACTION (IF APPROPRIATE)

REGULAR MEETING CALL TO ORDER BY MAYOR

ROLL CALL BY CITY CLERK

Any writings or documents provided to a majority of the City Council/RDA/Planning Commission/Public Financing Authority regarding any item on this agenda will be made available for public inspection in the office of the City Clerk located at 825 Imperial Beach Blvd., Imperial Beach, CA 91932 during normal business hours.

PLEDGE OF ALLEGIANCE

AGENDA CHANGES

**MAYOR/COUNCIL REIMBURSEMENT DISCLOSURE/COMMUNITY ANNOUNCEMENTS/
REPORTS ON ASSIGNMENTS AND COMMITTEES**

COMMUNICATIONS FROM CITY STAFF

PUBLIC COMMENT - *Each person wishing to address the City Council regarding items not on the posted agenda may do so at this time. In accordance with State law, Council may not take action on an item not scheduled on the agenda. If appropriate, the item will be referred to the City Manager or placed on a future agenda.*

PRESENTATIONS (1.1)

1.1* PRESENTATION OF FLAG TO DEE MCLEAN. (0410-30)

**No Staff Report.*

CONSENT CALENDAR (2.1 - 2.8) - *All matters listed under Consent Calendar are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items, unless a Councilmember or member of the public requests that particular item(s) be removed from the Consent Calendar and considered separately. Those items removed from the Consent Calendar will be discussed at the end of the Agenda.*

2.1 MINUTES. (0660-430)

City Manager's Recommendation: Approve the minutes of the Special City Council Meeting of July 13, 2010 and the Regular City Council Meetings of July 21 and August 4, 2010.

2.2 RATIFICATION OF WARRANT REGISTER. (0300-25)

City Manager's Recommendation: Ratify the following registers: Accounts Payable Numbers 71583 through 71678 with the subtotal amount of \$1,026,711.76 and Payroll Checks 43074 through 43138 for the pay period ending 08/26/10 with the subtotal amount of \$165,084.54, for a total amount of \$1,191,796.30.

2.3 RESOLUTION NO. 2010-6939 – AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE CITY OF IMPERIAL BEACH FOR THE REALLOCATION OF FISCAL YEAR 2008-2009 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FROM PUBLIC SAFETY/FIRE STATION ENHANCEMENTS AND EQUIPMENT UPGRADES PROJECT TO CIVIC CENTER CROSSWALK IMPROVEMENT PROJECT. (0650-33)

City Manager's Recommendation: Adopt resolution.

2.4 RESOLUTION NO. 2010-6945 – AUTHORIZING THE ACCEPTANCE OF CALTRANS RELINQUISHMENT OF PROPERTY TO FACILITATE THE REALIGNMENT OF THE PALM AVENUE/STATE ROUTE (SR) 75 INTERSECTION ADJACENT TO THE PROPOSED 9TH AND PALM REDEVELOPMENT PROJECT. (0150-30 & 0640-20)

City Manager's Recommendation: Adopt resolution.

2.5 RESOLUTION NO. 2010-6946 – DELEGATING TO CITY MANAGER AUTHORITY TO MAKE DISABILITY RETIREMENT DETERMINATIONS. (0520-95)

City Manager's Recommendation: Adopt resolution.

2.6 RESOLUTION NO. 2010-6943 – RATIFYING PEDESTRIAN AND VEHICULAR ACCESS AGREEMENT FOR FINAL MAP (TM 03-091) OF THE REDEVELOPMENT OF THE SEACOAST INN, A PROPOSED 78 ROOM HOTEL LOCATED AT 800 SEACOAST DRIVE, IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661. (0660-43)

City Manager's Recommendation: Adopt resolution.

(Continued on Next Page)

CONSENT CALENDAR (Continued)

2.7 RESOLUTION NO. 2010-6940 – APPROVING COUNCIL POLICY 613: POLICIES AND REGULATIONS GOVERNING BANNER HANGING PROCEDURES, FEES AND GUIDELINES. (0920-60 & 0920-70)

City Manager's Recommendation: Adopt resolution.

2.8 RATIFICATION OF COMMERCIAL ZONING REVIEW AD HOC COMMITTEE. (0410-50 & 0610-95)

City Manager's Recommendation: Ratify the formation of the committee and appointment of the members.

ORDINANCES – INTRODUCTION/FIRST READING (3.1)

3.1 ORDINANCE NO. 2010-1108 – AMENDING TITLE 12 – “STREETS, SIDEWALKS, AND PUBLIC PLACES” TO ADD CHAPTER 12.76 – “NEWS RACKS AFFECTING PUBLIC SAFETY” TO THE IMPERIAL BEACH MUNICIPAL CODE. (0720-95)

City Manager's Recommendation:

1. Receive report;
2. Mayor calls for introduction of Ordinance No. 2010-1108, amending Title 12 – “Streets, Sidewalks, and Public Places” to add Chapter 12.76 – “News racks Affecting Public Safety” to the Imperial Beach Municipal Code;
3. City Clerk reads title of Ordinance No. 2010-1108; and
4. Motion to dispense with first reading and introduction of Ordinance No. 2010-1108 by title only and waive further reading, set the matter for adoption at the next regularly scheduled City Council meeting, and authorize the publication in a newspaper of general circulation.

ORDINANCES – INTRODUCTION/FIRST READING/PUBLIC HEARING (3.2)

3.2 ORDINANCE NO. 2010-1111 – TO CORRECTLY STATE AND EXTEND THE PLAN EFFECTIVENESS AND TAX INCREMENT DEADLINES FOR THE REDEVELOPMENT PLAN FOR THE PALM AVENUE/COMMERCIAL REDEVELOPMENT PROJECT PERTAINING TO THE ORIGINAL PROJECT AREA AND THE ADDED AREA PURSUANT TO HEALTH AND SAFETY CODE SECTION 33333.2 (c). (0640-95)

City Manager's Recommendation:

1. Declare the public hearing open;
2. Receive report;
3. Receive public comment;
4. Close the public hearing;
5. Mayor calls for introduction of Ordinance No. 2010-1111, to correctly state and extend the plan effectiveness and tax increment deadlines for the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project pertaining to the Original Project Area and the added area pursuant to Health and Safety Code Section 33333.2 (c);
6. City Clerk reads title of Ordinance No. 2010-1111; and
7. Motion to dispense with first reading and introduction of Ordinance No. 2010-1111 by title only and waive further reading, set the matter for adoption at the next regularly scheduled City Council meeting, and authorize the publication in a newspaper of general circulation.

ORDINANCES – SECOND READING & ADOPTION (4.1 - 4.2)

- 4.1 ORDINANCE NO. 2010-1109 – AMENDING THE PROVISIONS OF THE CITY OF IMPERIAL BEACH MUNICIPAL CODE, AMENDING SECTION 1.12.020 OF CHAPTER 1.12 AND SECTIONS 1.22.030, 1.22.060, 1.22.070, 1.22.080, 1.22.100, 1.22.110, 1.22.120, AND 1.22.160 OF CHAPTER 1.22 OF THE IMPERIAL BEACH MUNICIPAL CODE REGARDING CIVIL PENALTIES, ADMINISTRATIVE CITATIONS, AND FINES. (0470-95)**

City Manager's Recommendation:

1. Receive report;
 2. Mayor calls for reading of the title of Ordinance No. 2010-1109, amending Section 1.12.020 of Chapter 1.12 and Sections 1.22.030, 1.22.060, 1.22.070, 1.22.080, 1.22.100, 1.22.110, 1.22.120, and 1.22.160 of Chapter 1.22 of the Imperial Beach Municipal Code regarding civil penalties, administrative citations, and fines;
 3. City Clerk reads title of Ordinance No. 2010-1109; and
 4. Motion to dispense with second reading and adopt Ordinance No. 2010-1109 by title only.
- 4.2 ORDINANCE NO. 2010-1110 – ADDING PROVISIONS TO THE CITY OF IMPERIAL BEACH MUNICIPAL CODE, ADDING CHAPTER 9.80 OF THE IMPERIAL BEACH MUNICIPAL CODE, PERTAINING TO ADULT ENTERTAINMENT ESTABLISHMENTS. (0280-95)**

City Manager's Recommendation:

1. Receive report;
2. Mayor calls for the reading of the title of Ordinance No. 2010-1110, adding Chapter 9.80 to the Imperial Beach Municipal Code pertaining to Adult Entertainment Establishments;
3. City Clerk reads title of Ordinance No. 2010-1110; and
4. Motion to dispense with second reading and adopt Ordinance No. 2010-1110 by title only.

PUBLIC HEARINGS (5.1 - 5.2)

- 5.1 RESOLUTION NO. R-10-227 – RESOLUTION OF NECESSITY OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY PERTAINING TO THE ACQUISITION OF CERTAIN PROPERTY OR INTEREST IN PROPERTY, LEASEHOLD INTEREST IN PROPERTY, IF ANY, AND LOSS OF GOODWILL PURSUANT TO SECTION 1263.510 OF THE CODE OF CIVIL PROCEDURE, IF ANY FOR USE BY THE AGENCY IN THE DEVELOPMENT OF 9TH & PALM REDEVELOPMENT PROJECT IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1245.230 OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA. (0640-20)**

City Manager's Recommendation:

1. Declare the public hearing open;
 2. Receive public comment;
 3. Close the public hearing; and
 4. Adopt resolution.
- 5.2 RESOLUTION NO. 2010-6942 – AUTHORIZING THE PUBLIC WORKS DIRECTOR TO SIGN AND FORWARD THE CITY'S JURISDICTIONAL URBAN RUNOFF MANAGEMENT PROGRAM (JURMP) ANNUAL REPORT FOR FISCAL YEAR 2009-2010 TO THE REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION. (0770-65)**

City Manager's Recommendation:

1. Declare the public hearing open,
2. Receive public comment;
3. Close the public hearing;
4. Direct Annual Report changes as appropriate and
5. Adopt resolution including corrections, additions or deletions as directed.

REPORTS (6.1 - 6.11)

- 6.1 RESOLUTION NO. 2010-6947 – AUTHORIZING THE CITY MANAGER TO EXECUTE THE EXCLUSIVE USE AND OCCUPANCY PERMIT BETWEEN THE CITY OF IMPERIAL BEACH AND THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY. (0680-10 & 0680-20)**
City Manager's Recommendation: Receive report and adopt resolution.
- 6.2 PROPOSED PROJECT PROPOSALS FOR THE FISCAL YEAR 2011-2012 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM. (0650-33)**
City Manager's Recommendation: Receive report, provide direction and set a public hearing for October 6, 2010.
- 6.3 RESOLUTION NO. 2010-6927 – ACCEPTING THE 2010 STORM DRAIN STUDY. (0770-90)**
City Manager's Recommendation: Receive report and adopt resolution.
- 6.4 RESOLUTION NO. R-10-229 – APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE RECREATIONAL TRAILS PROGRAM. (0390-86)**
City Manager's Recommendation:
 1. Receive report;
 2. Consider the Bayshore Bikeway Access Project merits relative to other projects proposed for RDA funds;
 3. Direct staff to proceed with the RTP grant application submission or direct staff to terminate the RTP grant application work; and
 4. If staff is directed to proceed with the RTP grant application for the FY 2010-2011 funding cycle, adopt resolution.
- 6.5 MONTHLY UPDATE REPORT ON THE REDEVELOPMENT OF THE SEACOAST INN HOTEL. (0640-43)**
City Manager's Recommendation: Receive the update report on the Seacoast Inn project and provide comment and input as necessary.
- 6.6 SEASIDE POINT NEIGHBORHOOD STOP SIGN ALIGNMENT. (0750-55)**
City Manager's Recommendation:
 1. Receive report;
 2. Evaluate the merits of the suggested stop sign reorientation within the blocks noted in the Seaside Point neighborhood;
 3. Provide direction to staff; and
 4. If the decision is to reorient stop signs within this neighborhood, direct staff to return to a future Council meeting with a resolution to affirm the stop sign realignment.
- 6.7 INSTALLATION OF SCULPTURAL URBAN TREE AT THE MARINA VISTA CENTER FRONTAGE OFF OF 8TH STREET. (0150-70 & 1000-10)**
City Manager's Recommendation:
 1. Receive this report,
 2. Review the four selected Urban Trees;
 3. Approve the location for installation of "Wind and Shadow" sculpture in front of the Marina Vista Center; and
 4. Authorize the City Manager or his designee to work with the Port of San Diego and the artist for the loan of the Urban Tree for the Urban Tree selected.
- 6.8 RESOLUTION NO. R-10-228 – AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A CONTRACT WITH STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF ACCEPTING THE FISCAL YEAR 2010-2011 ENVIRONMENTAL JUSTICE GRANT. (0390-86)**
City Manager's Recommendation: Receive report and adopt resolution.

Continued on Next Page

REPORTS (Continued)

Item No. 6.9 will be discussed at 8:00 p.m. – TIME SPECIFIC

- 6.9 RATIFICATION OF THE COMMERCIAL ZONING REVIEW RECOMMENDATIONS, INCLUDING REVISIONS PROPOSED BY THE AD HOC COMMITTEE. (0610-95)**
City Manager's Recommendation: Ratify and comment on the Commercial Zoning Review Recommendations document as presented by the ad hoc committee.
- 6.10 RESOLUTION NO. R-10-230 – AWARDED A CONTRACT FOR ELM AVENUE / 7TH STREET UNDERGROUND UTILITY DISTRICT STREET LIGHT TRENCH WORK, CONDUIT INSTALLATION AND LIGHT POLE FOUNDATIONS, AND TO RATIFY EXECUTION OF THE CONTRACT. (0720-60)**
City Manager's Recommendation: Receive report and adopt resolution.
- 6.11 RESOLUTION NO. 2010-6944 – AFFIRMING A SERVICE CONTRACT WITH STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS, INMATE COMMUNITY WORK CREWS (AGREEMENT NUMBER 5600001362). (0920-20)**
City Manager's Recommendation: Receive report and adopt resolution.

ITEMS PULLED FROM THE CONSENT CALENDAR (IF ANY)

ADJOURNMENT

The Imperial Beach City Council welcomes you and encourages your continued interest and involvement in the City's decision-making process.

FOR YOUR CONVENIENCE, A COPY OF THE AGENDA AND COUNCIL MEETING PACKET MAY BE VIEWED IN THE OFFICE OF THE CITY CLERK AT CITY HALL OR ON OUR WEBSITE AT

www.cityofib.com.

Jacqueline M. Hald, CMC
City Clerk

DRAFT

MINUTES

**IMPERIAL BEACH CITY COUNCIL
REDEVELOPMENT AGENCY
PLANNING COMMISSION
PUBLIC FINANCING AUTHORITY**

JULY 13, 2010

**City Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

SPECIAL MEETING – 6:00 P.M.

SPECIAL MEETING CALL TO ORDER

MAYOR JANNEY called the Special Meeting to order at 6:00 p.m.

ROLL CALL BY CITY CLERK

Councilmembers present:	Bragg, McCoy, Rose
Councilmembers absent:	None
Mayor present:	Janney
Mayor Pro Tem present:	King
Staff present:	City Manager Brown; City Attorney Lyon; City Clerk Hald

AGENDA CHANGES

None.

**MAYOR/COUNCIL REIMBURSEMENT DISCLOSURE/COMMUNITY ANNOUNCEMENTS/
REPORTS ON ASSIGNMENTS AND COMMITTEES**

MAYOR JANNEY thanked the Kiwanis Club for hosting an employee appreciation luncheon for City employees.

COMMUNICATIONS FROM CITY STAFF

None.

PUBLIC COMMENTS

None.

REPORTS

1. COMMERCIAL ZONING REVIEW. (0610-95)

The following items were submitted as Last Minute Agenda Information:

- 2010 Calendar
- Remaining Actions Before Council Review
- Timeframe

CITY MANAGER BROWN introduced the item.

COMMUNITY DEVELOPMENT DIRECTOR WADE gave a PowerPoint presentation on the design guidelines; he noted the purpose of these guidelines is to create a vibrant commercial retail experience for pedestrians and provide for good retail design. The topics covered included:

1. Relationship of building to site and surrounding area;
2. Commercial and mixed-use development;
3. Ground floor uses and street level design;
4. Landscape improvements and open space; and
5. Circulation and parking.

City Council supported the design guidelines, as well as adopting them concurrently with the other proposed zoning amendments.

COUNCILMEMBER MCCOY requested staff provide City Councilmembers with copies of the Seacoast Drive Landscape Design Manual.

In response to Councilmember Bragg, COMMUNITY DEVELOPMENT DIRECTOR WADE stated that outdoor display of merchandise is prohibited under the current code; there is a restriction that all business must be conducted indoors and, therefore, putting merchandise outdoors does not comply with that regulation; there is, however, a temporary outdoor sales permit allowing business to be conducted outside four times a year for up to 72 hours at a time; he noted that outdoor displays may be a challenge with narrow walkways, may impede pedestrian traffic, and may be difficult to regulate; if City Council supported outdoor displays of merchandise, he suggested displays be limited to a certain square footage and occur on private property; he further stated the displays cannot be in the public right-of-way nor impede public access.

Following extensive discussion, City Council expressed support for staff to return to City Council with innovative ideas on how to allow and regulate outdoor display of merchandise separate of the Commercial Zoning Review process.

City Council reviewed the Matrix of Recommendations and suggested the following changes:

Page 1 – City Council expressed concern regarding the recommendation that parking be reduced 25% for vertical mixed use; there was support for removing the recommendation from consideration at this time for later analysis.

In response to Councilmember McCoy, COMMUNITY DEVELOPMENT DIRECTOR WADE stated he would find out if the California Coastal Commission has approved any coastal cities' mixed use development projects with reduced parking by combining (or sharing) parking between business and residential.

Page 2 – Stepbacks and setbacks to be discussed at the July 21st City Council meeting.

Page 3 – Under New Zones, remove outdated note that states, "Presented, but no action taken. To be comprehensively presented at a future City Council meeting."

Page 4 – Under the First Floor Height Requirement, change Council Direction with the range of 12' to 15' to just 15'.

City Council discussed the community outreach possibilities, the methods by which staff would present the information and capture the community's input.

BRIAN JONES spoke for meaningful input from the public; he suggested the allowance of time for the public to review the information, have questions answered and then provide input; he expressed concern about the challenges the public may face in understanding the information.

MICHAEL CAREY spoke in support for a comprehensive and meaningful public review process similar to the one held for the 9th & Palm & project where the whole community was invited to participate; he stressed the importance of allowing the public time to digest the information.

JOHN CARR indicated a neutral position (was not available to speak).

MAYOR JANNEY spoke in support for bringing the item before the Design Review Board prior to holding the community discussion.

There was support for an explanatory document that encapsulates the pertinent changes. Consensus of City Council to review the explanatory document at the August 18th City Council meeting, as well as discuss the public review process.

ADJOURNMENT

MAYOR JANNEY adjourned the meeting at 7:49 p.m.

James C. Janney, Mayor

Jacqueline M. Hald, CMC
City Clerk

DRAFT

MINUTES

**IMPERIAL BEACH CITY COUNCIL
REDEVELOPMENT AGENCY
PLANNING COMMISSION
PUBLIC FINANCING AUTHORITY**

JULY 21, 2010

**Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

**CLOSED SESSION MEETING – 5:30 P.M.
REGULAR MEETING – 6:00 P.M.**

CALL TO ORDER

MAYOR JANNEY called the Closed Session Meeting to order at 5:31 p.m.

ROLL CALL

Councilmembers present: Bragg, McCoy, Rose
Councilmembers absent: None
Mayor present: Janney
Mayor Pro Tem absent: King

Staff present: City Manager Brown; City Attorney Lyon; City Clerk Hald

CLOSED SESSION

MOTION BY ROSE, SECOND BY BRAGG , TO ADJOURN TO CLOSED SESSION UNDER:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code section 54956.9(b)(3)(A)
No. of Cases: 1

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:
Property: Unimproved site of 1.15 acres with a paved Class I bike path,
Imperial Beach, CA 91932, APN 616-021-10
Agency Negotiator: City Manager and City Attorney
Negotiating Parties: San Diego County Regional Airport Authority
Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:
Property: Land for wireless facilities located in the southwestern corner of 825 Imperial
Beach Blvd., Imperial Beach, CA 91932, APN 632-111-27
Agency Negotiator: City Manager and City Attorney
Negotiating Parties: AT&T
Under Negotiation: Instruction to Negotiators will concern price and terms of payment

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:
Property: Land for wireless facilities located in the southwestern corner of 825 Imperial
Beach Blvd., Imperial Beach, CA 91932, APN 632-111-27
Agency Negotiator: City Manager and City Attorney
Negotiating Parties: Clearwire Corporation
Under Negotiation: Instruction to Negotiators will concern price and terms of payment

MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, MCCOY, ROSE, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	KING

MAYOR JANNEY adjourned the meeting to Closed Session at 5:32 p.m. and he reconvened the meeting to Open Session at 6:03 p.m. Reporting out of Closed Session, MAYOR JANNEY announced Council met earlier in Closed Session, received information from staff, gave direction and had no reportable action.

CITY ATTORNEY LYON announced the first Closed Session item was removed from the agenda and was not discussed.

REGULAR MEETING CALL TO ORDER

MAYOR JANNEY called the Regular Meeting to order at 6:05 p.m.

ROLL CALL

Councilmembers present:	Bragg, McCoy, Rose
Councilmembers absent:	None
Mayor present:	Janney
Mayor Pro Tem present:	King

Staff present: City Manager Brown; City Attorney Lyon; City Clerk Hald

PLEDGE OF ALLEGIANCE

MAYOR JANNEY led everyone in the Pledge of Allegiance.

AGENDA CHANGES

MAYOR JANNEY announced Item No. 6.3 – ARMY CORPS OF ENGINEERS SAN DIEGO HARBOR MAINTENANCE DREDGING PROJECT AND DRAFT MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE ARMY CORPS OF ENGINEERS AND THE CITY OF IMPERIAL BEACH will be moved to the August 4th City Council meeting agenda.

MAYOR/COUNCIL REIMBURSEMENT DISCLOSURE/COMMUNITY ANNOUNCEMENTS/REPORTS ON ASSIGNMENTS AND COMMITTEES

None.

COMMUNICATIONS FROM CITY STAFF

None.

PUBLIC COMMENT

None.

PRESENTATIONS (1.1)

1.1 JR. LIFEGUARDS ACHIEVEMENT AWARDS. (0220-40)

PUBLIC SAFETY DIRECTOR CLARK introduced the item.

JULIANNE CHARLAND, Beach Lifeguard II and Coordinator for the Jr. Lifeguard Program, and JIM SULLIVAN, Beach Lifeguard II, gave a PowerPoint presentation on the Jr. Lifeguard Program.

MAYOR JANNEY AND BEACH LIFEGUARD SULLIVAN presented achievement awards to the following Jr. Lifeguards: Natasha MacAskill, Michelle McDonald, Erin Sullivan, Julian Clement, and Shane Cunniff.

CONSENT CALENDAR (2.1 - 2.2)

COUNCILMEMBER BRAGG announced she has a potential conflict of interest on Item No. 2.2 due to the location of her previous employment.

MOTION BY MCCOY, SECOND BY ROSE, TO APPROVE CONSENT CALENDAR ITEM NO. 2.1. MOTION CARRIED UNANIMOUSLY.

WITH REGARD TO ITEM NO. 2.2, MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	MCCOY, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	NONE
DISQUALIFIED:	COUNCILMEMBERS:	BRAGG (DUE TO A POTENTIAL CONFLICT OF INTEREST)

2.1 RATIFICATION OF WARRANT REGISTER. (0300-25)

Ratified the following registers: Accounts Payable Numbers 71200 through 71242 with the amount of \$307,059.19 and 71243 through 71281 with the amount of \$103,382.19 for the subtotal amount of \$410,441.38; and Payroll Checks 42800 through 42865 for the pay period ending 07/01/10 with the subtotal amount of \$183,761.86 for a total amount of \$594,203.24.

2.2 RESOLUTION NO. 2010-6920 – RATIFYING THE PREVIOUS APPROVAL OF FINAL MAP FOR THE SEACOAST INN DEVELOPMENT PROJECT (TM 03-091), A PROPOSED 78-ROOM HOTEL LOCATED AT 800 SEACOAST DRIVE, IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661. (0660-43)

Adopted resolution.

ORDINANCES – INTRODUCTION/FIRST READING/PUBLIC HEARING (3)

None.

ORDINANCES – SECOND READING & ADOPTION (4)

None.

PUBLIC HEARINGS (5.1 - 5.2)

5.1 CODE ENFORCEMENT – WEED & RUBBISH ABATEMENT PUBLIC HEARING TO HEAR AND CONSIDER ALL OBJECTIONS TO THE PROPOSED REMOVAL OF WEEDS, RUBBISH, REFUSE, AND DIRT. (0250-70)

MAYOR JANNEY declared the public hearing open.

CITY MANAGER BROWN introduced the item.

CODE COMPLIANCE OFFICER GARCIAS gave a PowerPoint presentation on the item; he noted he was contacted today about a new owner for the property located at 1174 Florida Street.

JOHN PERNO suggested the City address the weed problem located at its own property on 10th Street; and he submitted a photo and duplicate photo of the properties on 10th Street and at 1174 Florida Street.

GERRY MIRANDA representing the new owner for 1174 Florida Street, requested additional time for the new owner, Chase Bank, to clean up the property.

Discussion ensued regarding the abatement process; there was support for a quicker process, to establish a roster of vendors, including local vendors, for future weed abatement cases.

MAYOR JANNEY closed the public hearing.

MOTION BY KING, SECOND BY MCCOY, TO ADOPT RESOLUTION NO. 2010-6918, AFTER HEARING AND CONSIDERING ALL OBJECTIONS, OVERRULES ALL OBJECTIONS AND HEREBY AUTHORIZES THE CITY MANAGER TO PROCEED AND PERFORM THE NECESSARY ABATEMENT OF THE NUISANCE AND AUTHORIZES THE CITY MANAGER TO SIGN ANY AGREEMENTS OR TAKE ANY OTHER STEPS NECESSARY TO REMOVE THE WEEDS, RUBBISH, REFUSE, AND DIRT FROM THE THE PROPERTIES LOCATED AT 1174 FLORIDA STREET, 1019 IRIS AVENUE, AND 336-338 DAISY AVENUE; AND HAVE STAFF RETURN TO CITY COUNCIL AT THE SEPTEMBER 1, 2010 COUNCIL MEETING WITH AN ABATEMENT COST REPORT ON EACH SEPARATE PARCEL OF LAND WHERE THE ABATEMENT WORK IS CONDUCTED. MOTION CARRIED UNANIMOUSLY.

5.2 1257 EAST LANE – NOTICE TO ELIMINATE SUBSTANDARD AND PUBLIC NUISANCE CONDITIONS. (0470-20)

MAYOR JANNEY declared the public hearing open.

CITY MANAGER BROWN introduced the item.

CODE COMPLIANCE OFFICER GARCIAS gave a PowerPoint presentation on the item.

DAVID LOWRY stated the owner is in the process of refurbishing the property.

JP PALMER claimed he is being harassed; he said he is an artist and what staff sees as junk, he sees as art; he submitted a total of 32 photos.

RENN SHORES stated he is in charge of and in the process of cleaning up the property; and he expressed concern about the behavior of staff.

CITY COUNCIL discussed the history of substandard and public nuisance conditions of the property and attempts by staff to get the property owner to clean it up.

MAYOR JANNEY closed the public hearing

CITY COUNCIL spoke about the impacts to the neighbors; they expressed disappointment that the property is returning to City Council so soon; they spoke of the need to consider the rights of neighbors.

MOTION BY MCCOY, SECOND BY BRAGG, TO ADOPT RESOLUTION NO. 2010-6919, ASSESSING \$2,600.00 IN CURRENT CIVIL PENALTIES (DEPENDENT UPON ANY NOTED VIOLATION ABATEMENT), \$8,350.00 OF THE PENALTIES HELD IN ABEYANCE FROM 2009, AND \$500.00 IN ADMINISTRATIVE FEES AND AUTHORIZE STAFF TO SEEK LEGAL ACTION TO EITHER COMPEL THE PROPERTY OWNER TO CLEAN UP THE PROPERTY OR TO OBTAIN AN ABATEMENT WARRANT TO CAUSE THE ABATEMENT TO BE COMPLETED BY CITY FORCES OR PRIVATE CONTRACT. MOTION CARRIED UNANIMOUSLY.

REPORTS (6.4)

Item No. 6.4 discussed at 7:00 p.m. – TIME SPECIFIC

6.4 COMMERCIAL ZONING REVIEW – CONTINUED FOCUS DISCUSSION ON DEVELOPMENT PROTOTYPES AND BUILDING SETBACKS AND STEPBACKS. (0610-95)

CITY MANAGER BROWN introduced the item.

COMMUNITY DEVELOPMENT DIRECTOR WADE, along with SEAN GOTT of AECOM, gave a PowerPoint presentation on development prototypes.

MAYOR JANNEY suggested the remainder of the presentation continue to the August 4th City Council meeting and allow for City Council comments at that time.

BRIAN JONES submitted a drawing for the record detailing development possibilities (additional speaking time donated by Joe Ellis).

COMMUNITY DEVELOPMENT DIRECTOR WADE stressed economic analysis was a key element that went into the prototypes, he further stated a developer will likely build what the prototypes displayed; stepbacks and setbacks will be presented at the next meeting and he reviewed the timeline.

PUBLIC HEARINGS (5.3)

5.3 LIOR AVRAHAM, MOBILITIE LLC (APPLICANT)/CHINO INDUSTRIAL PARK (OWNER); ADMINISTRATIVE COASTAL PERMIT (ACP 100025), CONDITIONAL USE PERMIT (CUP 100026), DESIGN REVIEW CASE (DRC 100027), AND SITE PLAN REVIEW (SPR 100028) TO INSTALL A TELECOMMUNICATIONS FACILITY (BROADLEAF FAUX TREE STRUCTURE) LOCATED AT 750 13TH STREET IN THE C-1 (GENERAL COMMERCIAL) ZONE. MF 1041. (0600-20 & 0800-50)

MAYOR JANNEY declared the public hearing open.

CITY MANAGER BROWN introduced the item.

ASSOCIATE PLANNER FOLTZ gave a PowerPoint presentation on the item.

LIOR AVRAHAM, representative for Mobilitie, spoke about Mobilitie's role in the project and its relationship with T-Mobile; and he responded to Council's question regarding the broadleaf tree noting the actual tree will look like the simulation.

ASTRID CYBULSKIS, Project Manager for Mobilitie, stated she will provide staff with addresses of other telecommunication facilities with broadleaf trees.

MAYOR JANNEY closed the public hearing.

MOTION BY ROSE, SECOND BY BRAGG, TO ADOPT RESOLUTION NO. 2010-6916, APPROVING ADMINISTRATIVE COASTAL PERMIT (ACP 100025), CONDITIONAL USE PERMIT (CUP 100026), DESIGN REVIEW CASE (DRC 100027), AND SITE PLAN REVIEW (SPR 100028), WHICH MAKES THE NECESSARY FINDINGS AND PROVIDES CONDITIONS OF APPROVAL IN COMPLIANCE WITH LOCAL AND STATE REQUIREMENTS. MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, ROSE, KING, JANNEY
NOES:	COUNCILMEMBERS:	MCCOY
ABSENT:	COUNCILMEMBERS:	NONE

REPORTS (6.1 - 6.3)

Consensus of City Council to take Item No. 6.2 at this time.

6.2 RESOLUTION NO. 2010-6917 – REJECTING ALL BIDS FOR CERTAIN PUBLIC WORKS CONTRACT – PUBLIC WORKS ROOF REPAIR CIP (P05-10A). (0910-30)

CITY MANAGER BROWN introduced the item.

PUBLIC WORKS DIRECTOR LEVIEN reported on the bid process.

MOTION BY KING, SECOND BY MCCOY, TO ADOPT RESOLUTION NO. 2010-6917 – REJECTING ALL BIDS FOR CERTAIN PUBLIC WORKS CONTRACT – PUBLIC WORKS ROOF REPAIR CIP (P05-10A). MOTION CARRIED UNANIMOUSLY.

6.1 MONTHLY UPDATE REPORT ON THE REDEVELOPMENT OF THE SEACOAST INN HOTEL. (0660-43)

COUNCILMEMBER BRAGG announced she had a potential conflict of interest on the item due to the location of her previous employment and left Council Chambers at 8:34 p.m.

ALLISON ROLFE, Project Manager for Pacifica, submitted a letter from the Department of Real Estate and an email from the Real Estate Banking Group; she gave a progress report on the demolition of the hotel noting the following: the review of the CC&Rs by the Department of Real Estate has been completed, the attorney reviewing the CC&Rs for the California Coastal Commission will discuss her questions with Pacifica next week, the Condition Subsequent Letter is done with the approval of the final map on the Consent Calendar tonight, the final map cannot be recorded until Citibank's name is removed from the loan which is being worked on by Pacifica staff, and once the final map is recorded this will be verified by the California Coastal Commission; she also reviewed items completed that are not associated with the demolition; she will try to send a deposit check to the City this week, and Pacifica staff is currently reviewing the bill for the in lieu TOT.

6.3 ARMY CORPS OF ENGINEERS SAN DIEGO HARBOR MAINTENANCE DREDGING PROJECT AND DRAFT MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE ARMY CORPS OF ENGINEERS AND THE CITY OF IMPERIAL BEACH. (0220-70)

Item removed from the agenda.

ADJOURNMENT

MAYOR JANNEY adjourned the meeting at 8:54 p.m.

James C. Janney, Mayor

Jacqueline M. Hald, CMC
City Clerk

DRAFT

MINUTES

**IMPERIAL BEACH CITY COUNCIL
REDEVELOPMENT AGENCY
PLANNING COMMISSION
PUBLIC FINANCING AUTHORITY**

AUGUST 4, 2010

**Council Chambers
825 Imperial Beach Boulevard
Imperial Beach, CA 91932**

**CLOSED SESSION MEETING – 5:15 P.M.
REGULAR MEETING – 6:00 P.M.**

CALL TO ORDER

MAYOR JANNEY called the Closed Session Meeting to order at 5:15 p.m.

ROLL CALL

Councilmembers present: Bragg, McCoy
Councilmembers absent: Rose
Mayor present: Janney
Mayor Pro Tem present: King

Staff present: Acting City Manager Levien; City Attorney Lyon;
City Clerk Hald

CLOSED SESSION

MOTION BY BRAGG, SECOND BY KING, TO ADJOURN TO CLOSED SESSION UNDER:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:

Property: Land for wireless facilities at 170 Palm Ave., Imperial Beach, CA 91932,
APN 625-014-22

Agency Negotiator: City Manager and City Attorney
Negotiating Parties: Sprint PCS Assets, Inc.

Pursuant to Government Code Section 54956.8:

Property: Land for wireless facilities at 170 Palm Ave., Imperial Beach, CA 91932,
APN 625-014-22

Agency Negotiator: City Manager and City Attorney
Negotiating Parties: Clearwire Corporation

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

Pursuant to Government Code Section 54956.8:

Property: 741 Palm Ave., Imperial Beach, CA 91932, APN 626-250-04

Agency Negotiator: City Manager and City Attorney
Negotiating Parties: Lube & Tune c/o Oscar Padron

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

Pursuant to Government Code Section 54956.8:

Property: 119 Elm Ave., Imperial Beach, CA 91932, APN 625-351-02

Agency Negotiator: City Manager and City Attorney
Negotiating Parties: George W. Howard III & Austine R. Howard

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

Pursuant to Government Code Section 54956.8:

Property: NE corner of Evergreen Ave. and Seacoast Drive, Imperial Beach, CA 91932,
APN 625-351-25

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Howard Land Development, LLC

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

Pursuant to Government Code Section 54956.8:

Property: 110-126 Evergreen Ave., Imperial Beach, CA 91932, APN 625-351-26

Agency Negotiator: City Manager and City Attorney

Negotiating Parties: Howard Land Development, LLC

Under Negotiation: Instruction to Negotiators will concern price and terms of payment

MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, MCCOY, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	ROSE

MAYOR JANNEY adjourned the meeting to Closed Session at 5:16 p.m. and he reconvened the meeting to Open Session at 6:00 p.m. Reporting out of Closed Session, MAYOR JANNEY announced Council met earlier in Closed Session, received information from staff, gave direction and had no reportable action.

COUNCILMEMBER MCCOY announced she did not participate in the discussion of the first two closed session items due to a potential conflict of interest (due to the proximity of her home).

MAYOR PRO TEM KING announced he did not participate in the discussion of the third closed session item due to a potential conflict of interest (due to an indirect business conflict).

REGULAR MEETING CALL TO ORDER

MAYOR JANNEY called the Regular Meeting to order at 6:01 p.m.

ROLL CALL

Councilmembers present:	Bragg, McCoy, Rose
Councilmembers absent:	None
Mayor present:	Janney
Mayor Pro Tem present:	King

Staff present:	Acting City Manager Levien; City Attorney Lyon; City Clerk Hald
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PLEDGE OF ALLEGIANCE

MAYOR JANNEY led everyone in the Pledge of Allegiance.

AGENDA CHANGES

MAYOR JANNEY announced Consent Calendar Item No. 2.5 – RESOLUTION NO. 2010-6921 – APPROVING COUNCIL POLICY 613: POLICIES AND REGULATIONS GOVERNING BANNER HANGING PROCEDURES, FEES AND GUIDELINES will be pulled from agenda for consideration on a future agenda.

MAYOR/COUNCIL REIMBURSEMENT DISCLOSURE/COMMUNITY ANNOUNCEMENTS/REPORTS ON ASSIGNMENTS AND COMMITTEES

COUNCILMEMBER BRAGG reported on the Heartland Communications meeting and noted that efforts to combine the North County and South County JPAs are ongoing; she requested City Council's consideration of the League of California Cities resolutions at a future City Council meeting; she congratulated June Engel, IB Library Branch Manager, for being accepted to attend the Eureka Academy where only 35 people from the state of California were selected; she attended the Chamber of Commerce Installation Dinner along with Mayor Pro Tem King; and she announced the upcoming Imperial Beach Triathlon on August 22.

COUNCILMEMBER MCCOY reported on the SANDAG Borders Committee meeting where they met with the Tribal Governments to discuss transportation issues.

MAYOR PRO TEM KING reported on the SANDAG Bayshore Bikeway Committee meeting where they received an update on the California Coastal Trail.

MAYOR JANNEY reported on the SANDAG Board's and Regional Transportation Committee's efforts on updating the 2050 Regional Transportation Plan.

COMMUNICATIONS FROM CITY STAFF

ACTING CITY MANAGER LEVIEN announced the construction fence for the soccer field has been removed; and Sheriff's Lieutenant Sanfilippo will be transferring to another location.

MAYOR JANNEY thanked Lieutenant Sanfilippo for her service to Imperial Beach.

PUBLIC COMMENT

DANA CLARK requested the following information be posted on the City's website: the pay and benefits for all full-time employees of the City, a list showing the amount of money the City has spent on consultants for the last four years, the amount of interest debt the City is accruing each year on redevelopment funds, and unfunded pension liabilities; he further requested a verbal response to his request.

MAYOR JANNEY responded the City will comply with State of California mandates.

PRESENTATIONS (1)

None.

CONSENT CALENDAR (2.1 - 2.5)

KRISTA deBOER, of San Diego Coastkeeper, indicated support for Item No. 2.4 (did not speak).

MOTION BY KING, SECOND BY MCCOY, TO APPROVE CONSENT CALENDAR ITEM NOS. 2.1 THRU 2.4. MOTION CARRIED UNANIMOUSLY.

2.1 RATIFICATION OF WARRANT REGISTER. (0300-25)

Ratified the following registers: Accounts Payable Numbers 71282 through 71396 with the subtotal amount of \$414,021.86 and Payroll Checks 42866 through 42954 for the pay period ending 07/15/10 with the subtotal amount of \$265,434.38 for a total amount of \$679,456.24.

2.2 RESOLUTION NO. 2010-6922 - APPROVING A CALIFORNIA ENERGY COMMISSION ENERGY EFFICIENT COMMUNITY BLOCK GRANT FOR STREETLIGHT RETROFIT. (0390-86)

Adopted resolution.

2.3 RESOLUTION NO. 2010-6925 – AMENDING THE MASTER SCHEDULE OF FEES AND CHARGES FOR TRANSIENT OCCUPANCY AUDIT RATES. (0390-55 & 0390-80)

Adopted resolution.

2.4 SUPPORT FOR ASSEMBLY BILL 1998 REGARDING SINGLE-USE CARRYOUT BAGS. (0460-20)

Authorized the Mayor to send a letter of support to various State Legislative Committees and relative individual Members who will be considering AB 1998 during the remainder of the legislative cycle.

2.5 RESOLUTION NO. 2010-6921 – APPROVING COUNCIL POLICY 613: POLICIES AND REGULATIONS GOVERNING BANNER HANGING PROCEDURES, FEES AND GUIDELINES. (0920-60 & 0920-70)

Item removed from the agenda.

ORDINANCES – INTRODUCTION/FIRST READING (3.1)

3.1 ORDINANCE NO. 2010-1109 – INTRODUCTION AND FIRST READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING THE IMPERIAL BEACH MUNICIPAL CODE RELATING TO THE USE OF TENTS, CANOPIES AND OTHER ITEMS ON CITY PARKS AND BEACHES, AMENDING SECTION 12.56.010 AND SUBSECTION 12.56.020(Y), AND ADDING SUBSECTIONS 12.56.020(AA), 12.56.020(BB) AND SECTION 12.60.095 TO CHAPTERS 12.56 AND 12.60, RESPECTIVELY. (0920-95)

ACTING CITY MANAGER LEVIEN introduced the item.

LIFEGUARD CAPTAIN STABENOW, along with PUBLIC SAFETY DIRECTOR CLARK, reported on the item.

City Council spoke in opposition to the ordinance as written as it is overly broad and confusing; it was suggested the ordinance be rewritten so it is understandable and clearly states what is being regulated.

ORDINANCES – SECOND READING & ADOPTION (4)

None.

PUBLIC HEARINGS (5)

None.

REPORTS (6.1 - 6.3)

<i>Item No. 6.3 discussed at 6:30 p.m. – TIME SPECIFIC</i>
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6.3 COMMERCIAL ZONING REVIEW – CONTINUED FOCUS DISCUSSION ON DEVELOPMENT PROTOTYPES AND BUILDING SETBACKS AND STEPBACKS. (0610-95)

ACTING CITY MANAGER LEVIEN introduced the item.

COMMUNITY DEVELOPMENT DIRECTOR WADE gave a PowerPoint presentation on prototypes for the C-1 Zone, massing studies showing building setbacks and stepbacks abutting residentially zoned properties, and visual simulations of floor-to-ceiling clearance.

MAYDA WINTER expressed concern about the setbacks and stepbacks for commercial development abutting residential property on Old Palm Ave.; she spoke in opposition to adopting a blanket zero-foot rear yard setback; she spoke in support of a creative solution and referenced a letter she submitted to City Council on March 3 that included examples of how other cities handle similar situations (additional speaking time donated by TED WINTER).

MICHAEL CAREY spoke in support of the proposed regulations rather than the incentivized regulations; he indicated the proposed regulations would result in more commercial space and a height of 30 feet, and construction of higher quality but fewer residential units.

In response to City Council's extensive discussion and concern regarding building setbacks and stepbacks of commercial properties abutting residentially zoned properties in the C/MU-2 Zone (Old Palm Ave.), COMMUNITY DEVELOPMENT DIRECTOR WADE stated staff will return to City Council with an additional prototype of an internal/small lot located on the north side of Old Palm Ave. for consideration; he also suggested the community be provided a series of setback and stepback options.

City Council supported setting the parking recommendation of "Potential 25% reduction for vertical mixed use" into the Matrix of Recommendations.

Item No. 6.2 was taken at this time.

6.2 RESOLUTION NO. 2010-6923 – REJECTING ALL BIDS FOR CERTAIN PUBLIC WORKS PROJECT – 13TH STREET & EBONY AVENUE ACCESS RAMPS, CIP (S10-201). (0720-40)

ACTING CITY MANAGER LEVIEN introduced the item and noted specific CDBG elements were not included in the bid documents and, therefore, recommended rejection of all bids, the bid specifications be revised, and the project be rebid.

MOTION BY KING, SECOND BY MCCOY, TO ADOPT RESOLUTION NO. 2010-6923 – REJECTING ALL BIDS FOR CERTAIN PUBLIC WORKS PROJECT – 13TH STREET & EBONY AVENUE ACCESS RAMPS, CIP (S10-201). MOTION CARRIED UNANIMOUSLY.

6.1 RESOLUTION NO. 2010-6924 – APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KOA CORPORATION FOR THE DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR IMPERIAL BEACH BLVD. CROSSWALK AT LOUDEN LANE, CIP (S11-102). (0720-10)

COUNCILMEMBER ROSE announced she had a potential conflict of interest due to the location of her home and left Council Chambers at 8:16 p.m.

ACTING CITY MANAGER LEVIEN introduced the item.

COUNCILMEMBER KING spoke in support for lights embedded in the pavement.

MOTION BY MCCOY, SECOND BY KING, TO ADOPT RESOLUTION NO. 2010-6924 – APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KOA CORPORATION FOR THE DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR IMPERIAL BEACH BLVD. CROSSWALK AT LOUDEN LANE, CIP (S11-102). MOTION CARRIED BY THE FOLLOWING VOTE:

AYES:	COUNCILMEMBERS:	BRAGG, MCCOY, KING, JANNEY
NOES:	COUNCILMEMBERS:	NONE
ABSENT:	COUNCILMEMBERS:	NONE
DISQUALIFIED:	COUNCILMEMBERS:	ROSE (DUE TO A POTENTIAL CONFLICT OF INTEREST)

ADJOURNMENT

MAYOR JANNEY adjourned the meeting at 8:19 p.m.

James C. Janney, Mayor

Jacqueline M. Hald, CMC
City Clerk



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY R. BROWN, CITY MANAGER

MEETING DATE: September 22, 2010

ORIGINATING DEPT.: Michael McGrane *md*
Finance Director

SUBJECT: RATIFICATION OF WARRANT REGISTER

BACKGROUND:

None

DISCUSSION:

As of April 7, 2004, all large warrants above \$100,000 will be separately highlighted and explained on the staff report.

Vendor	Check	Amount	
City of San Diego	71600	\$589,045.00	1 st Qtr FY2011 Metro Sewer Charge
Best \$1	71627	\$165,000.00	9 th & Palm-Termination of Lease

ENVIRONMENTAL IMPACT

Not a project as defined by CEQA.

The following registers are submitted for Council ratification.

WARRANT # DATE AMOUNT

Accounts Payable

71583-71588	08/23/10	\$	60,111.02
71589-71594	08/25/10		34,420.18
71595-71615	08/26/10		736,961.83
71616	08/31/10		11,641.91
71617-71678	09/03/10		183,576.82

Sub-Total \$ 1,026,711.76

Payroll Checks:

43074-43138	P.P.E. 08/26/10	165,084.54
		\$ 165,084.54
	TOTAL	\$ 1,191,796.30

FISCAL IMPACT:

Warrants are issued from budgeted funds.

DEPARTMENT RECOMMENDATION:

It is respectfully requested that the City Council ratify the warrant register.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation

 FOR

Gary Brown, City Manager

Attachments:

1. Warrant Registers

PREPARED 09/07/2010, 14:05:40
 PROGRAM: GM350L
 CITY OF IMPERIAL BEACH

A/P CHECKS BY PERIOD AND YEAR
 FROM 08/23/2010 TO 09/03/2010

PAGE 1
 BANK CODE 00

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
VOIDED # 715-8						
08/23/2010	71584	ALLIANT INSURANCE SERVICES	1193			2,414.82
101-0000-209.01-14	06/24/2010	PR AP PPE 6/17/10	20100624		12/2010	478.34
101-0000-209.01-13	07/22/2010	PR AP PPE 7/15/2010	20100722		01/2011	426.65
101-0000-209.01-13	08/19/2010	PR AP PPE 8/12/2010	20100819		02/2011	415.65
101-0000-209.01-14	08/19/2010	PR AP PPE 8/12/2010	20100819		02/2011	480.06
101-1010-411.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	19.36
101-1020-411.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	34.44
101-1110-412.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	66.04
101-1130-412.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	20.54
101-1210-413.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	48.66
101-1230-413.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	23.70
101-3070-427.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	.63
101-3080-428.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	.63
101-1910-419.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	6.32
101-3010-421.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	11.00
101-3020-422.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	44.68
101-3030-423.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	38.49
101-3040-424.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	22.12
101-5020-432.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	47.40
101-5010-431.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	15.80
101-5040-434.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	4.06
101-6020-452.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	6.32
101-6010-451.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	3.16
101-6040-454.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	12.64
245-1240-413.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	6.32
405-1260-413.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	121.42
405-5030-433.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	6.32
601-5060-436.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	15.80
601-5050-436.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	17.74
501-1921-419.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	6.32
502-1922-419.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	7.43
503-1923-419.11-04	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	20.86
101-0000-209.01-14	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	35.80-
101-0000-209.01-13	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	11.00-
101-0000-209.01-14	08/01/2010	AUG 10 DISABILITY/LIFE/	08-01-2010		02/2011	32.72
08/23/2010	71585	PREFERRED BENEFIT INS ADMIN IN	37			2,249.48
101-0000-209.01-12	06/24/2010	PR AP PPE 6/17/10	20100624		12/2010	1,168.10
101-0000-209.01-12	08/19/2010	PR AP PPE 8/12/2010	20100819		02/2011	1,124.60
101-0000-209.01-12	08/01/2010	AUGUST 2010 DENTAL	CP11078		02/2011	43.22-
08/23/2010	71586	US BANK TRUST	749			49,900.00
725-0000-221.03-01	08/04/2010	ASSMNT DIST 66 PRINCIPAL	09-02-2010		01/2011	45,000.00
725-0000-221.03-04	08/04/2010	ASSMNT DIST 66 PRINCIPAL	09-02-2010		01/2011	4,900.00
08/23/2010	71587	VISION PLAN OF AMERICA	785			179.22
101-0000-209.01-18	07/22/2010	PR AP PPE 7/15/2010	20100722		01/2011	94.40
101-0000-209.01-18	08/19/2010	PR AP PPE 8/12/2010	20100819		02/2011	89.53
101-0000-209.01-18	08/01/2010	SEPTEMBER 2010 VISION	08-01-2010		02/2011	14.71-

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
101-1920-419.29-04	08/01/2010	SEPTEMBER 2010 VISION	08-01-2010		02/2011	10.00	
08/23/2010	71588	WELLS FARGO BANK, N.A.	1597			5,367.50	
	735-0000-221.03-01	07/20/2010	ASMNT DIST#71 PRINCIPAL	71IMPE305	01/2011	4,000.00	
	735-0000-221.03-04	07/20/2010	ASMNT DIST#71 PRINCIPAL	71IMPE305	01/2011	1,367.50	
VOIDED # 71589-71593							
08/25/2010	71594	U.S. BANK	1873			34,420.18	
	503-1923-419.30-22	06/25/2010	PC'S-CITY HALL	047003	110159 01/2011	1,393.63	
	503-1923-419.28-04	06/30/2010	LOPEZ,H-FOOD-WORK LATE	076243	110159 01/2011	6.73	
	503-1923-419.30-22	06/30/2010	PC'S CITY HALL	9205641017	110159 01/2011	489.35	
	101-3020-422.21-02	06/28/2010	PS MANAGEMENT MEETING	042250	110182 01/2011	34.55	
	101-3020-422.30-02	06/23/2010	STATION SUPPLIES	85	110186 01/2011	212.25	
	101-3020-422.30-02	06/30/2010	KEY/HIDEAKEY BOX-5401	051310/9586193	110186 01/2011	4.83	
	101-6010-451.30-02	07/01/2010	CLEANING SUPPLIES	000364/8567593	110140 01/2011	72.05	
	101-6010-451.30-02	07/06/2010	MUSIC ROOM EQUIPMENT	1122374791	110140 01/2011	516.98	
	101-6010-451.30-02	07/06/2010	MUSIC ROOM EQUIPMENT	1122374795	110140 01/2011	94.15	
	503-1923-419.28-14	07/02/2010	PC MAGAZINE	07-02-2010	110159 01/2011	24.95	
	503-1923-419.30-22	07/07/2010	CATS CABLE-PUBLIC WORKS	07-07-2010	110159 01/2011	23.89	
	503-1923-419.30-01	07/15/2010	RETURN SHPNG-PRSNL/REMRS	54302	110159 01/2011	17.28	
	101-3020-422.30-02	07/09/2010	E239 FUEL	105024	110186 01/2011	40.00	
	101-3030-423.25-03	05/17/2010	LG PATCH SETUP & SAMPLE	461815	110191 01/2011	163.13	
	101-6030-453.30-02	06/25/2010	SR CENTER TROLLEY TRIP	19754	110142 01/2011	125.00	
	101-3035-423.25-03	06/29/2010	UBJG UNIFORM DEPOSIT	0FJG01C	110188 01/2011	1,000.00	
	101-3030-423.30-02	06/24/2010	SUNSCREEN	067991	110191 01/2011	26.08	
	101-3035-423.28-04	07/06/2010	JRLG BUS TO LA JOLLA COVE	246122	110188 01/2011	350.88	
	101-3035-423.28-04	07/14/2010	JRLG PIER PLAZA PARTY	075806	110188 01/2011	102.00	
	101-3035-423.28-04	07/16/2010	JRLG CAPTN'S ACHVMNT LNCH	078110	110188 01/2011	49.78	
	101-3030-423.28-01	07/13/2010	DIVE COMPUTER BATTERY	333606	110191 01/2011	61.99	
	101-3035-423.28-04	07/19/2010	JG WATERPARK ENTRY FEES	071855	110191 01/2011	1,400.00	
	101-3030-423.28-01	07/19/2010	2X4 FOR TRAILER REPAIR	095257/0014453	110191 01/2011	8.67	
	101-3030-423.28-01	07/20/2010	LG TRUCK REAR WINDOW REPL	WCV023932	110191 01/2011	233.00	
	101-3030-423.30-02	07/21/2010	HAM RADIO ATTEN HARDWARE	00267141	110191 01/2011	32.59	
	101-1910-419.30-02	06/22/2010	JANITORIAL SUPPLIES	303588	110177 01/2011	258.05	
	101-1910-419.30-02	06/22/2010	HAND SOAP	303591	110177 01/2011	18.12	
	101-3030-423.30-02	06/23/2010	PWC FUEL	202801	110187 01/2011	30.51	
	101-3030-423.30-02	06/24/2010	PWC FUEL	203200	110187 01/2011	31.82	
	101-3030-423.28-01	06/25/2010	PAINT/ROPE/BUNGEE CORDS	003948/4585564	110187 01/2011	38.71	
	101-3030-423.30-02	06/25/2010	POSTAGE- RETURN LATCHES	096202	110187 01/2011	4.90	
	101-3030-423.30-02	06/27/2010	PWC FUEL	184948	110187 01/2011	22.48	
	101-6020-452.30-02	07/09/2010	DISINFECTANT	315832	110177 01/2011	32.60	
	101-1910-419.30-02	07/19/2010	MV CENTER KEYS	044840	110177 01/2011	24.51	
	101-3030-423.30-02	07/05/2010	PWC FUEL	008849	110187 01/2011	29.74	
	101-3030-423.30-02	07/15/2010	PWC FUEL	203811	110187 01/2011	31.41	
	101-3030-423.30-02	07/17/2010	PWC FUEL	092648	110187 01/2011	10.19	
	101-3030-423.30-02	07/20/2010	PWC FUEL	203507	110187 01/2011	25.01	
	101-3030-423.25-03	04/20/2010	STANDBY TEAM BAGS-EMBROID	52550	110190 01/2011	40.78	
	101-3030-423.25-03	04/23/2010	LG BAGS EMBROIDERY	52597	110190 01/2011	422.49	
	101-1230-413.28-04	06/29/2010	WADE/LUNCH MEETING	074166	110155 01/2011	38.52	
	101-3020-422.30-01	06/23/2010	CMND VEHICLE THOMAS GUIDE	4192	110185 01/2011	27.13	
	101-3030-423.25-03	06/04/2010	LG UNI-SCREENS	52970	110190 01/2011	148.77	

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
101-3035-423.30-02	06/11/2010	JRLG RESCUE BOARD	SCW-16513	110190	01/2011	915.00
101-3035-423.28-04	06/23/2010	LG MTG REFRESHMENTS	234386	110190	01/2011	140.00
101-3030-423.25-03	06/25/2010	LG UNIFORM POLOS	53164	110190	01/2011	1,154.93
101-3030-423.28-01	06/29/2010	PWC 3 REPAIR PARTS	21392370	110190	01/2011	1,128.73
101-3030-423.25-03	07/02/2010	LG UNIFORM SHIRTS	06874779	110190	01/2011	780.82
101-3030-423.30-02	07/04/2010	PWC 91 OCTANE FUEL	180245	110190	01/2011	40.34
101-3030-423.25-03	07/12/2010	LG UNIFORM SUNGLASSES	00344916	110190	01/2011	84.29
101-3030-423.25-03	07/12/2010	LG UNIFORM SUNGLASSES	07-12-2010	110190	01/2011	73.76
101-3030-423.30-02	06/23/2010	LG HQ PHOTO FRAMES	026857	110189	01/2011	123.87
101-3030-423.30-02	06/23/2010	OFFICE SUPPLIES	0574	110189	01/2011	98.08
101-3030-423.30-02	06/23/2010	HAM RADIO ANTENA BASES	976996	110189	01/2011	78.02
101-3030-423.30-02	06/24/2010	MEDICAL SUPPLIES	07101348	110189	01/2011	244.90
101-3030-423.28-01	06/25/2010	JANITORIAL SUPPLIES	303712	110189	01/2011	270.98
101-3030-423.30-02	06/28/2010	91 OCTANE FUEL FOR PWC	036733	110189	01/2011	30.11
101-3030-423.30-02	06/30/2010	LG TRUCK HARDWARE	022436	110189	01/2011	54.36
101-3030-423.28-01	06/30/2010	MASONARY DRILL BIT	079060/9024800	110189	01/2011	20.63
101-3030-423.30-02	07/01/2010	OFFICE BOARD RACKS	013810	110189	01/2011	71.61
101-3030-423.30-02	07/03/2010	91 OCTANE FUEL	07-03-2010	110189	01/2011	16.69
101-3030-423.30-02	07/06/2010	MEDICAL BLANKETS	08100230	110189	01/2011	101.43
101-3030-423.28-01	07/06/2010	JANITORIAL SUPPLIES	304083	110189	01/2011	140.14
101-3030-423.30-02	07/07/2010	TRUCK RACK TIE DOWN HRDWR	869362482248639	110189	01/2011	117.85
101-3030-423.30-02	07/09/2010	CR RETURNED ITEM	539323	110189	01/2011	60.73-
101-3030-423.28-01	07/12/2010	PWC ROAD TRAILER REPAIR	040249/4084311	110189	01/2011	33.89
101-3030-423.28-04	07/12/2010	ARC EMERGENCY RSPNS CERTS	07-12-2010	110189	01/2011	35.00
101-3030-423.28-01	07/12/2010	PWC EPOXY HULL REPAIR	9688	110189	01/2011	11.44
101-3030-423.30-02	07/13/2010	MEDICAL GLOVES	0239115	110189	01/2011	167.28
101-3030-423.30-02	07/14/2010	BIT FOR HAM RADIO PROJ	005287/5569283	110189	01/2011	21.15
101-3035-423.28-04	07/19/2010	JRLG WATERPARK TICKETS	066520	110189	01/2011	423.04
501-1921-419.28-16	04/21/2010	E39 DOOR LIFT SPRING	457554	110179	01/2011	75.31
101-3020-422.30-02	06/21/2010	STATION COFFEE SUPPLIES	6755060016260	110184	01/2011	23.17
101-3020-422.30-01	06/22/2010	FOLDERS/LABELS	523786962-001	110184	01/2011	76.21
101-6030-453.30-02	07/01/2010	SENIOR CENTER LUNCHEON	073417	110143	01/2011	120.00
101-5020-432.28-04	07/09/2010	MURPHY,M LUNCH/PICKUP E39	176391	110179	01/2011	22.34
501-1921-419.28-01	07/19/2010	UPHOLSTERY WORK	045080	110179	01/2011	150.00
101-3020-422.30-01	07/06/2010	WHITEBOARD	525122463-001	110184	01/2011	154.77
101-3020-422.30-01	07/06/2010	EASEL/EASEL PAD/PENS	525123619-001	110184	01/2011	91.42
101-3020-422.30-01	07/07/2010	TONER CARTRIDGE	525357749-001	110184	01/2011	87.65
101-3020-422.30-01	07/12/2010	POWER CORD FOR TOUGHBOOK	88609	110184	01/2011	39.43
101-0000-209.01-03	06/29/2010	KAHLE,E EMP COMP LOAN	2677594762530		01/2011	292.54
101-0000-209.01-03	06/24/2010	CEJA, E- EMP COMP LOAN	W262692057		01/2011	360.17
101-0000-209.01-03	07/14/2010	MCGRANE,M- EMP COMP LOAN	W70540953		01/2011	1,203.17
101-0000-209.01-03	07/13/2010	CUMMING, E -EMP COMP LOAN	BBY01-338730066		01/2011	552.98
101-1110-412.28-04	06/24/2010	LUNCH MTG-BROWN/MCGRANE	074853	110138	01/2011	34.62
101-1130-412.30-01	06/30/2010	EMPLOYEE ID SUPPLIES	645874	110147	01/2011	79.27
101-3040-424.28-04	06/23/2010	LANE,J/ADAME,R-CODE TRNG	06-23-2010	110158	01/2011	450.00
101-3040-424.20-06	07/08/2010	INTERVIEW PANEL LUNCH	015017	110147	01/2011	52.47
101-3040-424.20-06	07/08/2010	INTERVIEW PANEL -REFRESHM	23380300640748	110147	01/2011	11.96
101-1130-412.30-02	07/13/2010	FLOWERS TO L. LEICHTLE	W00532600764481	110147	01/2011	70.67
101-1010-411.28-04	07/13/2010	07/13/10 COUNCIL DINNER	063151	110147	01/2011	75.00
101-1230-413.28-04	07/13/2010	NAKAGAWA,J-SMART GROWTH	757950049-13430	110156	01/2011	30.00

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
101-1230-413.29-02	07/01/2010	SOTELO, F-RETIREMENT GIFT	1604471	110158	01/2011	17.38
101-1230-413.29-02	07/01/2010	SOTELO, F-RETIREMENT GIFT	4544	110158	01/2011	4.76
101-1230-413.30-01	07/06/2010	MISC OFFICE SUPPLIES	525113746-001	110158	01/2011	65.15
101-1020-411.28-11	07/14/2010	RECORD REQUEST PLANS	20454	110158	01/2011	71.78
101-1230-413.28-04	07/14/2010	WADE, G-SMARTGROWTH REGIST	757950049-13448	110158	01/2011	30.00
101-1110-412.28-04	06/21/2010	BROWN, G-ILG LUNCHEON	06-21-2010	110145	01/2011	45.00
101-5020-432.28-04	06/21/2010	LEVIEN, H-ILG LUNCHEON	06-21-2010	110145	01/2011	45.00
101-1110-412.29-04	06/22/2010	JUNE 2010/YOU SEND IT	06-22-2010	110145	01/2011	9.99
101-1010-411.29-04	06/30/2010	SOTELO/MILLER-GIFT WRAPPI	1451	110145	01/2011	33.49
101-1010-411.28-04	07/07/2010	KING, J-CONF REGISTRATION	07-07-2010	110145	01/2011	500.00
101-1010-411.28-04	07/07/2010	07/07/10 COUNCIL DINNER	099862	110145	01/2011	120.00
101-1010-411.28-04	07/09/2010	BRAGG, L-CONF REGISTRATIO	07-09-2010	110145	01/2011	500.00
101-1010-411.28-04	07/09/2010	BRAGG, L-ILG LUNCHEON	07-09-2010	110145	01/2011	45.00
101-1010-411.29-04	07/15/2010	PHOTO IMAGES	A100715-4797570	110145	01/2011	91.25
101-1110-412.28-04	07/20/2010	LUNCH MTG-BROWN/CLARK/ATT	018903	110145	01/2011	38.97
101-1010-411.28-04	07/15/2010	MCCOY, P-SMARTGROWTH REGIS	757950049-13497	110146	01/2011	30.00
101-1020-411.21-06	07/01/2010	NOTICE OF ELECTION TRANSL	58683	110150	01/2011	86.94
101-1020-411.30-01	07/03/2010	RULER	7799	110150	01/2011	2.16
101-1910-419.30-02	06/28/2010	BLINDS -CITY PLANNERS OFC	023832/1590225	110166	01/2011	95.66
101-1910-419.30-02	06/29/2010	FD DOOR JAM SUPPLIES	094919/0017116	110166	01/2011	8.08
101-1910-419.30-02	06/30/2010	SUPPLIES TO REPLACE DOOR	026990/9017376	110166	01/2011	25.59
101-6040-454.28-01	06/24/2010	TOT-LOT SURFACE REPAIR	004125	110180	01/2011	179.19
101-6040-454.30-02	06/24/2010	TOT-LOT SURFACE REPAIR	004125	110180	01/2011	43.98
101-5010-431.30-02	07/08/2010	BLANKET PURCHASE ORDER	022167/1026493	110162	01/2011	15.18
101-5010-431.30-02	07/12/2010	CONCRETE	8862947-001	110162	01/2011	184.88
101-5010-431.30-02	07/15/2010	SPRAY PAINT/PRIMER	060075/4028179	110162	01/2011	16.44
101-1910-419.30-02	07/08/2010	DRYWALL SUPPLIES	026142/1026392	110166	01/2011	60.35
101-1910-419.30-02	07/12/2010	DOOR KNOB/SCREWS	069813/7591891	110166	01/2011	21.57
101-5010-431.21-04	07/07/2010	BEE REMOVAL	2026	110180	01/2011	275.00
101-5020-432.25-03	07/07/2010	PW EMPLOYEE T-SHIRTS	53238	110180	01/2011	1,443.11
601-5060-436.30-02	07/19/2010	MUELLER GATE VALVES	CP029706	110180	01/2011	1,470.51
101-6040-454.30-02	06/23/2010	WIRE & SPLICES	031210/6570468	110168	01/2011	137.67
101-6040-454.30-02	06/23/2010	QUICK DISCONNECT FITTINGS	06411780-00	110168	01/2011	173.48
101-6040-454.30-02	07/01/2010	NIPPLE EXTRACTOR/RISER	006773/5570558	110168	01/2011	6.30
101-6040-454.30-02	07/01/2010	WD40/LOCK NUTS	083838/0567288	110168	01/2011	10.74
101-5010-431.30-02	07/02/2010	GALLEGOS, A -WORK BOOTS	013585212874	110161	01/2011	130.49
101-5010-431.30-02	07/08/2010	PROPANE TANK REFILL	051199/1190190	110161	01/2011	19.38
101-6040-454.30-02	07/06/2010	PADLOCK-PARK LADIESROOM	016806	110168	01/2011	26.51
101-6040-454.30-02	07/06/2010	CHAIN	038553/3011193	110168	01/2011	7.86
101-6040-454.30-02	07/13/2010	PRESSURE TREATED 2X4	040367/6569155	110168	01/2011	17.88
101-1910-419.30-02	07/14/2010	TOWELS/MICROFIBER PADS	051663/5573366	110168	01/2011	34.76
101-6040-454.30-02	07/14/2010	TOWELS/MICROFIBER PADS	051663/5573366	110168	01/2011	9.77
101-6040-454.30-02	07/15/2010	PEGBOARD/HOOKS	014197/4013468	110168	01/2011	38.53
101-6040-454.30-02	07/19/2010	EPOXY ANCHORING CEMENT	002113/0560252	110168	01/2011	21.09
101-1910-419.21-04	04/15/2010	NEW METER GAS LINE-MV CTR	13686	110175	01/2011	300.00
601-5050-436.30-02	06/28/2010	CASQA CONSTRUCTION TOOL	102794	110164	01/2011	160.00
101-5040-434.28-13	06/29/2010	EPA TOXIC SUBS CONTROL FE	CAD981379431	110164	01/2011	200.00
101-5040-434.30-02	06/29/2010	EPA TOXIC SUBS CONTROL FE	CAD981379431	110164	01/2011	7.50
101-6040-454.30-02	06/25/2010	CABLE TIES	067917/4585494	110171	01/2011	26.03
101-5010-431.30-02	07/06/2010	CRACK FILLER -BIKE PATH	85641	110175	01/2011	95.68

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
101-5010-431.30-02	07/09/2010	CORRALES, L -WORK BOOTS	000822	110175	01/2011	146.79
101-5010-431.30-02	07/09/2010	CORTEZ,M-WORK BOOTS	062595	110175	01/2011	150.00
101-5010-431.30-02	07/09/2010	ALUMINUM ANGLES/BACKSHIEL	13992	110175	01/2011	160.95
101-5010-431.30-02	07/12/2010	DUCT TAPE ROLLS	020428/7591897	110175	01/2011	22.05
101-5010-431.30-02	07/15/2010	CORTEZ,M -RETURN BOOTS	00834008551	110175	01/2011	150.00-
101-5010-431.30-02	07/20/2010	FORMING LUMBER	084007/9014601	110175	01/2011	436.98
101-5010-431.30-02	07/27/2010	SIGNAL FLAGS	43342	110175	01/2011	334.41
101-6020-452.30-02	06/21/2010	SAFETY GEAR	9280911281	110181	01/2011	38.82
101-6020-452.30-02	06/23/2010	PAINT PENS	000116/6585223	110181	01/2011	13.03
101-6040-454.25-02	06/24/2010	LAWN AERATOR RENTAL	292187	110181	01/2011	72.45
101-6020-452.30-02	06/24/2010	MULCH	37994	110181	01/2011	271.82
601-5060-436.28-01	07/06/2010	REBUILD MECH SEAL	28210	110160	01/2011	729.44
601-5060-436.28-01	07/06/2010	PS#2 ROOF RAIL REPLACEMENT	283231	110160	01/2011	26.34
601-5060-436.30-02	07/21/2010	CASAS,M-WORK BOOTS	00834008599	110174	01/2011	128.40
101-6020-452.30-02	07/07/2010	WOOD CHIP	38723	110181	01/2011	271.82
101-6020-452.30-02	07/08/2010	DRINKING FOUNTAIN PARTS	145642	110181	01/2011	43.34
101-6020-452.30-02	07/08/2010	MULCH	38787	110181	01/2011	271.82
101-6020-452.30-02	07/09/2010	IRRIGATION PARTS	55141136	110181	01/2011	145.89
101-6020-452.30-02	07/09/2010	IRRIGATION PARTS	55141136	110181	01/2011	145.90
101-6020-452.30-02	07/14/2010	IRRIGATION VALVE	55198748	110181	01/2011	183.68
101-1910-419.21-04	06/02/2010	VIDEO INSP/CLEARD DRAIN	14308	110163	01/2011	225.00
101-1910-419.21-04	06/24/2010	FD PLUMBING REPAIR	14429	110163	01/2011	757.27
101-6020-452.30-02	06/28/2010	FLAG POLE PARTS	1015981	110163	01/2011	153.40
101-6020-452.30-02	06/30/2010	MULCH	38338	110163	01/2011	652.37
101-6040-454.30-02	06/28/2010	TOOLS FOR IRRIGATION	039544/1571235	110170	01/2011	12.98
101-6040-454.30-02	06/28/2010	IRRIGATION PARTS/DUNES PK	3049446-A-1	110170	01/2011	248.10
101-6040-454.30-02	07/01/2010	PICKERS/BEACH MAINTENANCE	06421024-00	110170	01/2011	177.33
101-6020-452.30-02	07/15/2010	HOT COALS UNIT	0143299-IN	110163	01/2011	839.55
101-6020-452.30-02	07/15/2010	MULCH	39205	110163	01/2011	326.18
101-6020-452.30-02	07/21/2010	WOOD CHIP MULCH	39558	110163	01/2011	326.18
405-5030-433.30-02	07/12/2010	SAFETY VEST	15042738	110165	01/2011	15.23
405-5030-433.30-02	07/21/2010	MARTINEZ,H-WORK BOOTS	067137	110165	01/2011	150.00
405-5030-433.30-02	07/21/2010	MARTINEZ,D-WORK BOOTS	084514	110165	01/2011	126.24
101-1020-411.30-01	06/30/2010	OFFICE SUPPLIES	524732877-001	110151	01/2011	37.06
101-6040-454.30-02	07/01/2010	BARBER, J-WORK BOOTS	002744	110169	01/2011	150.00
101-6040-454.30-02	07/01/2010	LAWN FERTILIZER	55033865	110169	01/2011	107.41
101-1020-411.30-01	07/01/2010	FILING FOLDERS	1923294	110151	01/2011	119.64
101-1110-412.30-01	07/01/2010	FILING FOLDERS	1923294	110151	01/2011	389.95
101-1020-411.28-04	07/19/2010	WOLFSON,L-LUNCH/DEP CLK M	042560	110151	01/2011	16.61
101-6040-454.30-02	07/06/2010	PAINT/SUPPLIES-DUNES PARK	017667/3025895	110169	01/2011	174.08
101-6040-454.30-02	07/12/2010	TRASH CAN LINERS	0143218-IN	110169	01/2011	436.41
101-6040-454.30-02	07/20/2010	POTTING SOIL/ICE PLANTS	010734/9192077	110169	01/2011	151.87
101-6040-454.30-02	07/20/2010	POLE PROTECTORS/PIER PLAZ	1017406	110169	01/2011	272.50
501-1921-419.28-16	07/01/2010	SEAT SPRING E-39	458231	110178	01/2011	20.55
08/26/2010	71595	SOUTHCOAST HEATING & A/C	1554			9,142.00
504-1924-419.20-06	08/04/2010	INSTALL HEAT PUMP/MV CENT	J9623	110197	02/2011	4,236.00
504-1924-419.20-06	08/11/2010	REMOVE/REPLACE DUCT	J9626	110132	02/2011	4,031.00
504-1924-419.20-06	08/11/2010	INSTALL DIVIDER IN DUCT	J9627	110132	02/2011	875.00
08/26/2010	71596	APCD COUNTY OF SAN DIEGO	248			658.00
601-5060-436.28-13	08/20/2010	PERMIT TO OPERATE NEW	08-20-2010		02/2011	658.00

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
08/26/2010	71597	BDS ENGINEERING INC	372				1,234.50
101-0000-221.01-02	08/07/2010	JULY 2010 PLAN CHECK	10-02G		02/2011		1,036.50
101-0000-221.01-02	08/04/2010	JULY 2010 PLAN CHECK	10-02G		02/2011		198.00
08/26/2010	71598	CALIFORNIA ENV CONTROLS INC	642				3,860.86
601-5060-436.28-01	07/28/2010	CONVERSION KIT/CONTROLLER	2210	110113	01/2011		3,860.86
08/26/2010	71599	CHRISTOPHER LEE ANSKE	2				113.00
101-0000-121.00-00	08/19/2010	PT41398	MR Refund		02/2011		113.00
08/26/2010	71600	CITY OF SAN DIEGO	896				589,045.00
601-5060-436.21-04	07/28/2010	FY 2011 1ST QTR METRO	1000010044		01/2011		589,045.00
08/26/2010	71601	CLEAN HARBORS	913				1,311.20
101-5040-434.21-04	08/06/2010	JULY 2010	6Y1045381	110046	02/2011		1,311.20
08/26/2010	71602	COMMERCIAL LANDSCAPE SUPPLY	944				148.32
101-6020-452.30-02	07/28/2010	EDGER BLADE/GG MONOFIL	168424	110024	01/2011		148.32
08/26/2010	71603	DONALD STARR	2261				60.00
408-1920-519.20-06	08/09/2010	FACADE - 13TH & IB - IIRRI	08-09-2010	F11019	02/2011		60.00
08/26/2010	71604	FASTENAL	909				209.69
101-6040-454.30-02	06/09/2009	ZINC PLATE	CACHU19743	090043	12/2010		209.69
08/26/2010	71605	HERCA TELECOMM SERVICES INC.	4				607.00
101-0000-221.01-05	08/19/2010	BOND REFUND 1471 GROVE AV	TEP 10-20		02/2011		607.00
08/26/2010	71606	MYERS TIRE SUPPLY DIST., INC.	1095				50.03
501-1921-419.30-02	08/04/2010	CHAMP COMPRESSOR OIL	51426496	110101	02/2011		50.03
08/26/2010	71607	OFFICE DEPOT, INC	1262				701.74
101-1210-413.28-11	08/07/2010	WINDOW ENVELOPES	528496270001	110047	02/2011		149.91
101-5020-432.30-01	08/10/2010	MARKERS/NOTEPADS	529132139001	110047	02/2011		17.33
101-5020-432.30-01	08/11/2010	TIME CARDS/HIGHLIGHTERS	529371396001	110047	02/2011		27.08
503-1923-419.30-22	08/12/2010	BATTERIES	529466039001	110223	02/2011		6.56
503-1923-419.30-22	08/13/2010	BLUETOOTH MOUSE	529465855001	110223	02/2011		42.86
101-5020-432.30-01	03/12/2010	BINDER CLIPS/PLANNER	508782924001	010413	12/2010		31.76
101-5020-432.30-01	03/12/2010	COPY PAPER	509054748001	010413	12/2010		75.15
101-5020-432.30-01	03/19/2010	INK CARTRIDGE	509053055001	010413	12/2010		45.11
101-5020-432.30-01	03/19/2010	ENVELOPES	509071774001	010413	12/2010		346.21
101-5020-432.30-01	03/25/2010	FOLDERS?	513901831001	010413	12/2010		5.35
101-5020-432.30-01	03/29/2010	CREDIT RETURNED TONER	513903607001	010413	12/2010		200.32-
101-5020-432.30-01	04/19/2010	COPY PAPER	513016510001	010413	12/2010		117.22
101-5020-432.30-01	05/16/2010	MISC SUPPLIES	515710785001	010413	12/2010		37.52
08/26/2010	71608	SAFTEY KLEEN SYSTEMS	246				247.16
501-1921-419.29-04	08/02/2010	SVC PARTS CLEANING TANK	51410149	110102	02/2011		247.16
08/26/2010	71609	SAN DIEGO LAND & CATTLE LLC	2				60.00
101-0000-321.72-10	08/18/2010	OL REFUNDS	0008896		02/2011		60.00

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08/26/2010 101-0000-221.01-03	71610 08/11/2010	SARAH JACKSON	2				657.00
		REFUND MVC DEPOSIT	211		01/2011		657.00
08/26/2010 408-1920-519.20-06 408-1920-519.20-06	71611 08/24/2010 09/02/2010	STATE TREASURER	2194				.00
		RESOLUTION OF NECESSITY	08-24-2010		02/2011		116,348.00
		RESOLUTION OF NECESSITY	08-24-2010		02/2011		116,348.00-
08/26/2010 101-1920-419.29-04	71612 08/12/2010	UNION BANK OF CALIFORNIA	735				875.00
		MAY-JUL 2010 QTR BANKING	633145	110243	02/2011		875.00
08/26/2010 101-1920-419.21-04	71613 08/20/2010	WAGE WORKS INC.	2210				97.25
		AUGUST 2010 ADMIN FEES	125AI0140721	110093	02/2011		97.25
08/26/2010 101-1020-411.28-14	71614 08/01/2010	WEST GROUP CTR	826				120.36
		JULY 2010	821036496	110232	02/2011		120.36
08/26/2010 101-5050-535.20-06	71615 07/09/2010	WESTON SOLUTIONS INC.	2016				11,415.72
		TJ RIVER WQ 2010	JUL2010-01758	011171	12/2010		11,415.72
08/31/2010 501-1921-419.28-01	71616 08/19/2010	EMERGENCY EQUIPMENT REFINISHER	2222				11,641.91
		E239 WATER TANK REPLACMNT	303	010994	02/2011		11,641.91
09/03/2010 101-3020-422.25-03 101-3020-422.25-03 101-3020-422.25-03 101-3020-422.25-03	71617 07/16/2010 07/12/2010 07/07/2010 06/02/2010	ACE UNIFORMS & ACCESSORIES INC	1571				1,001.75
		SANTOS, T-UNIFORMS	39527		02/2011		228.34
		DODSWORTH, T-UNIFORMS	38919		02/2011		219.48
		SANTOS, T-UNIFORMS/SEWING	38435		02/2011		414.32
		SPRINGFIELD, A-UNIFORMS	34604		02/2011		139.61
09/03/2010 101-6010-451.21-04	71618 08/07/2010	ADT SECURITY SERVICES, INC.	103				80.04
		SEPTEMBER 2010	30222495	110071	02/2011		80.04
09/03/2010 503-1923-419.20-06 101-1910-419.21-04	71619 07/26/2010 08/12/2010	ADVANCED ELECTRONIC SOLUTIONS2	1892				1,335.00
		UPGRADE ACCESS CONTROL	173863		01/2011		1,145.00
		REPAIR SERVICE	174129	110303	02/2011		190.00
09/03/2010 101-0000-209.01-13 101-0000-209.01-13	71620 08/19/2010 09/02/2010	AFLAC	120				844.28
		PR AP PPE 8/12/2010	20100819		02/2011		422.14
		PR AP PPE 8/26/2010	590334		03/2011		422.14
09/03/2010 101-6020-452.21-04	71621 08/24/2010	AGRICULTURAL PEST CONTROL	123				95.00
		AUGUST 2010	225446	110058	02/2011		95.00
09/03/2010 101-1910-419.21-04 101-1910-419.21-04	71622 03/26/2010 04/21/2010	SOUTHCOAST HEATING & A/C	1554				314.00
		COIL/VENT CHECK	272023	110062	01/2011		169.00
		PREVENTATIVE MAINT	C43091	110062	01/2011		145.00
09/03/2010 101-1010-411.30-02 101-5020-432.30-02	71623 08/24/2010 08/24/2010	ARROWHEAD MOUNTAIN SPRING WATE	1340				184.26
		JUL/AUG 2010	00H0025324922	110198	02/2011		104.11
		AUGUST 2010	00H0026726646	110219	02/2011		80.15

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09/03/2010	71624	AT&T MOBILITY	1866			773.11	
101-1230-413.27-05	08/23/2010	287016633295 JUL/AUG 10	X08232010		02/2011	108.60	
101-3050-425.27-05	08/23/2010	287019473995 JUL/AUG 10	X08232010		02/2011	136.04	
503-1923-419.27-05	08/23/2010	287015635717 JUL/AUG 10	X08232010		02/2011	260.85	
101-3020-422.27-05	08/23/2010	287015635717 JUL/AUG 10	X08232010		02/2011	181.53	
101-5020-432.27-05	08/23/2010	287015635717 JUL/AUG 10	X08232010		02/2011	86.09	
09/03/2010	71625	AZTEC LANDSCAPING INC	310			83.23	
408-1920-519.20-06	06/25/2010	735 PALM AVE-WEED CONTROL	11115L-IN	110092	01/2011	83.23	
09/03/2010	71626	BDS ENGINEERING INC	372			3,632.00	
202-5016-531.20-06	08/04/2010	JULY 2010 STREET IMPRVMT	09-40F	010859	02/2011	3,632.00	
09/03/2010	71627	BEST \$1	1			165,000.00	
408-1920-519.20-06	08/26/2010	9TH&PALM TERMINATION OF	09-02-2010		02/2011	165,000.00	
09/03/2010	71628	BJ'S RENTALS, INC.	1591			99.01	
101-1910-419.25-02	07/27/2010	CORE BIT RENTAL	298191	F11023	01/2011	55.54	
101-1910-419.25-02	08/04/2010	2 MAN AUGER RENTAL	299691		02/2011	43.47	
09/03/2010	71629	BOB HOFFMAN VIDEO PRODUCTION	457			1,148.15	
101-1920-419.21-04	08/10/2010	BLANK DVD STOCK	32264	F11015	02/2011	27.19	
101-1920-419.21-04	08/10/2010	AV SYSTEM UPGRADE-COUNCIL	32266	010910	02/2011	979.60	
101-1010-411.20-06	08/10/2010	WESTERN DIGITAL MEDIA PLA	32265	F11026	02/2011	141.36	
09/03/2010	71630	CALIFORNIA ALUMINUM & VINYL WI	1915			2,283.91	
248-1920-519.20-06	08/19/2010	CLEAN&GREEN-1186 GEORGIA	8192010-4	110308	02/2011	2,283.91	
09/03/2010	71631	CALIFORNIA AMERICAN WATER	612			301.46	
101-3030-423.27-02	08/06/2010	05-0155019-8 07/01-08/02	08-25-2010		01/2011	20.21	
405-5030-433.27-02	08/06/2010	05-0155037-0 07/06-08/03	08-25-2010		01/2011	11.93	
601-5050-436.27-02	08/06/2010	05-0392478-9 07/06-08/03	08-25-2010		01/2011	109.71	
601-5060-436.27-02	08/06/2010	05-0505362-9 07/06-08/03	08-25-2010		01/2011	159.61	
09/03/2010	71632	CDW GOVERNMENT INC	725			687.06	
503-1923-419.30-22	07/26/2010	HP LJ	TJZ7882	011250	01/2011	687.06	
09/03/2010	71633	CVA SECURITY	797			267.45	
101-1910-419.20-23	08/01/2010	AUGUST 2010 EOC	15923	110060	02/2011	30.00	
101-1910-419.20-23	08/01/2010	AUGUST 2010 PW	16000	110060	02/2011	30.00	
101-1910-419.20-23	08/04/2010	SERVICE CALL/LABOR	16069	110060	02/2011	147.45	
101-1910-419.20-23	09/01/2010	SEPT 10 EOC	16217	110060	03/2011	30.00	
101-1910-419.20-23	09/01/2010	SEPTEMBER 10 PW	16282	110060	03/2011	30.00	
09/03/2010	71634	COLONIAL LIFE & ACCIDENT	941			266.88	
101-0000-209.01-13	08/19/2010	PR AP PPE 8/12/2010	20100819		02/2011	133.44	
101-0000-209.01-13	09/02/2010	PR AP PPE 8/26/2010	9498114-0802074		03/2011	133.44	
09/03/2010	71635	COMMERCIAL LANDSCAPE SUPPLY	944			34.36	
501-1921-419.28-16	06/25/2010	BUMPFEEED TRMRHEAD BASE	167867	110024	01/2011	34.36	

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09/03/2010	71636	CULLIGAN WATER CO. OF SAN DIEG	1112				18.75
101-1210-413.30-02	08/17/2010	SEPTEMBER 2010	06445620	110009	02/2011		18.75
09/03/2010	71637	DG LANDSCAPE	1167				110.00
601-5060-436.21-04	08/21/2010	PS#9 WEED CONTROL	1188	110004	02/2011		110.00
09/03/2010	71638	DKC ASSOCIATES, INC.	2187				3,222.00
101-1110-412.20-06	08/25/2010	08/17/10-08/25/10	201	110088	02/2011		1,074.22
405-1260-413.20-06	08/25/2010	08/17/10-08/25/10	201	110088	02/2011		1,073.89
502-1922-419.20-06	08/25/2010	08/17/10-08/25/10	201	110088	02/2011		1,073.89
09/03/2010	71639	DONALD STARR	2261				240.00
408-1920-519.20-06	07/25/2010	13TH ST - TROUBLESHOOT IR	07-25-2010	F11029	01/2011		120.00
408-1920-519.20-06	08/23/2010	13TH ST - DEEP WATER/LAND	08-23-2010	F11030	02/2011		120.00
09/03/2010	71640	DRUG TESTING NETWORK INC	1195				155.90
101-1130-412.20-06	08/23/2010	RDT MICHAEL MURPHY	50767	F11025	02/2011		95.95
101-1130-412.20-06	08/12/2010	EDT FOR ANTHONY SERRANO	50618	F11027	02/2011		59.95
09/03/2010	71641	EAST COUNTY TRANSITIONAL LIVIN	2267				3,000.00
101-5040-434.29-04	08/31/2010	2010 SANDCASTLE CLEANUP	51039		02/2011		3,000.00
09/03/2010	71642	EDAW, INC	1804				17,364.17
405-1260-513.20-06	08/10/2010	JULY 2010 IB MIXED USE	1457040	080317	02/2011		17,364.17
09/03/2010	71643	ENVIRO MATRIX ANALYTICAL INC	1691				496.00
601-5050-436.21-04	08/16/2010	AUG 10 DRY WEATHER PROG	0080302	110305	02/2011		496.00
09/03/2010	71644	EPIC LAND SOLUTIONS, INC.	2105				4,970.12
408-1920-519.20-06	07/31/2010	JULY 2010 PALM AVE RELOCT	0710-0190	010328	01/2011		4,970.12
09/03/2010	71645	GOOGLE, INC.	2009				280.00
503-1923-419.21-04	08/05/2010	AUGUST 2010	1509827	110126	02/2011		280.00
09/03/2010	71646	GRAINGER	1051				1,191.69
101-1910-419.30-02	08/19/2010	BALLAST/LAMP/KEY REEL	9327930021	110038	02/2011		295.86
101-6020-452.30-02	08/19/2010	PLIERS SET/PAINT/SANITIZE	9327930039	110038	02/2011		131.03
101-1910-419.30-02	06/29/2010	BALLAST	9287816764	110038	01/2011		249.70
101-6020-452.30-02	08/20/2010	LAMP, 1000 W	9329272851	110038	02/2011		66.83
101-6020-452.30-02	08/23/2010	LAMP 26W	9330708802	110038	02/2011		178.46
101-1910-419.30-02	08/20/2010	LAMP/BALLAST	9328821419	110038	02/2011		269.81
09/03/2010	71647	HARLAN CONSTRUCTION	2074				620.00
405-1260-413.20-06	08/17/2010	10TH & DONAX FENCE REPAIR	08-17-2010	110302	02/2011		620.00
09/03/2010	71648	HDL COREN & CONE	88				3,000.00
101-1210-413.20-06	08/06/2010	2010 3RD QTR SALES TAX	0016798-IN	110237	02/2011		975.00
101-1920-419.20-06	08/10/2010	JUL-SEP 2010 PROPERTY TAX	0015972-IN	110237	02/2011		2,025.00
09/03/2010	71649	HORIZON HEALTH EAP	90				425.79
101-1130-412.20-06	08/06/2010	AUGUST 2010	40702	110075	02/2011		425.79

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09/03/2010	71650	I B FIREFIGHTERS ASSOCIATION	214			216.50	
101-0000-209.01-08	09/02/2010	PR AP PPE 8/26/2010	20100902		03/2011	216.50	
09/03/2010	71651	ICMA RETIREMENT TRUST 457	242			5,235.48	
101-0000-209.01-10	09/02/2010	PR AP PPE 8/26/2010	20100902		03/2011	5,235.48	
09/03/2010	71652	DOCUFLOW SOLUTIONS	367			340.55	
503-1923-419.30-22	08/19/2010	NEW PLOTTER NETWORK CARD	5323	110300	02/2011	275.55	
101-1210-413.29-04	07/12/2010	FINANCE PRINTER CLEANING	5220	F11021	01/2011	65.00	
09/03/2010	71653	JESSOP & SON LANDSCAPING	479			3,052.83	
101-6010-451.21-04	08/23/2010	AUGUST 2010	388336	110199	02/2011	3,052.83	
09/03/2010	71654	JOHN DEERE LANDSCAPES	1986			59.86	
101-6020-452.30-02	08/19/2010	BATTERIES/RAKE/SPLICE KIT	55582305	110051	02/2011	59.86	
09/03/2010	71655	JUAN SEVILLA	4			3,331.00	
101-0000-221.01-05	08/31/2010	BOND REFND-837 FLORENCE	TEP 10-27		02/2011	3,331.00	
09/03/2010	71656	KANE, BALLMER & BERKMAN	1828			5,033.00	
101-0000-221.01-02	08/01/2010	JUL 2010 SEACOAST INN OPA	15528		02/2011	1,850.00	
408-1920-519.20-06	08/01/2010	9TH & PALM OPA	15526	F11022	02/2011	60.00	
245-1240-413.20-06	08/01/2010	JULY 2010-PALM AVE PLAN	15527	110309	02/2011	624.60	
405-1260-413.20-06	08/01/2010	JULY 2010-PALM AVE PLAN	15527	110309	02/2011	2,498.40	
09/03/2010	71657	KEYSER MARSTON ASSOC INC	620			923.75	
101-0000-221.01-02	08/09/2010	JULY 2010 SEACOAST	0022681		02/2011	923.75	
09/03/2010	71658	KOA CORPORATION	611			13,857.50	
210-1235-513.20-06	08/18/2010	06/21-07/18/10 CIVIC CTR	JA92077X2	011152	02/2011	13,857.50	
09/03/2010	71659	METRO WASTEWATER JPA	1002			7,809.00	
601-5060-436.21-04	09/01/2010	ANNUAL BUDGET 2010/11	128		02/2011	7,809.00	
09/03/2010	71660	MICHAL PIASECKI CONSULTING	1795			5,850.00	
101-1220-413.21-04	08/11/2010	JULY 2010	140	110036	02/2011	360.00	
101-1920-532.20-06	08/11/2010	JULY 2010	140	110036	02/2011	22.50	
101-5010-431.20-06	08/11/2010	JULY 2010	140	110036	02/2011	112.50	
101-5020-432.20-06	08/11/2010	JULY 2010	140	110036	02/2011	270.00	
405-1260-513.20-06	08/11/2010	JULY 2010	140	110036	02/2011	5,085.00	
09/03/2010	71661	MOBILE HOME ACCEPTANCE CORPORA	1533			299.06	
408-5020-432.25-01	08/24/2010	09/07-10/06/10 PW TRAILER	154041	110067	02/2011	299.06	
09/03/2010	71662	NIPPON CARBIDE IND (USA) INC	1253			814.59	
101-5010-431.30-02	07/08/2010	PROTECTIVE COATING ROLL	48843	110057	01/2011	814.59	
09/03/2010	71663	ONE SOURCE DISTRIBUTORS	1071			121.98	
101-1910-419.30-02	07/19/2010	BALLAST	S3342055.001	110029	01/2011	121.98	

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09/03/2010	71664	PADRE JANITORIAL SUPPLIES	1430			611.78	
101-6040-454.30-02	08/03/2010	DISINFECTANT/SOAP	305259	110043	02/2011	164.86	
101-6040-454.30-02	08/17/2010	DISINFECTANT	305875	110043	02/2011	130.50	
101-1910-419.30-02	07/20/2010	JANITORIAL SUPPLIES	304571	110043	01/2011	316.42	
09/03/2010	71665	RAFAEL ADAME	2266			1,300.00	
101-3040-424.28-04	08/26/2010	REIMBURSE APPLICATION FEE	08-24-2010		02/2011	500.00	
101-3040-424.28-04	04/21/2010	REIMBURSE EXAM REGISTRATN	08-24-2010		02/2011	800.00	
09/03/2010	71666	RANCHO AUTO & TRUCK PARTS	1685			231.45	
501-1921-419.28-16	08/05/2010	OIL FLTER/RADIATOR CAP	7693-40436	110034	02/2011	10.53	
501-1921-419.28-16	08/11/2010	FILTERS/FUSE	7693-41224	110034	02/2011	16.12	
501-1921-419.28-16	08/13/2010	SMALL ENGINE PART	7693-41419	110034	02/2011	20.81	
601-5060-436.30-02	08/17/2010	WT LITH GREASE AERO	7693-41978	110034	02/2011	42.28	
501-1921-419.28-16	08/26/2010	OIL/AIR FILTERS-MOTOR OIL	7693-43058	110034	02/2011	133.03	
501-1921-419.28-16	08/26/2010	KWIK CONNECT BLADE	7693-43094	110034	02/2011	8.68	
09/03/2010	71667	RUSS' BEE REMOVAL	1380			275.00	
101-6010-451.21-04	08/09/2010	BEE REMOVAL AT SPORTS PK	2051	110236	02/2011	275.00	
09/03/2010	71668	SAM & SONS PLUMBING	1981			3,200.00	
248-1920-519.20-06	08/26/2010	CLEAN&GREEN-1035 HOLLY AV	1799	110315	02/2011	3,200.00	
09/03/2010	71669	SEIU LOCAL 221	1821			1,541.87	
101-0000-209.01-08	05/27/2010	VOID PR CK 42640 WIDLUND	20100527		02/2011	9.05-	
101-0000-209.01-08	05/13/2010	MANUAL PR CK43075 WIDLUND	20100513		02/2011	9.05	
101-0000-209.01-08	05/13/2010	VOID PR CK 42578 WIDLUND	20100513		02/2011	9.05-	
101-0000-209.01-08	05/27/2010	PR MANUAL CK43076 WIDLUND	20100527		02/2011	9.05	
101-0000-209.01-08	06/24/2010	VOID PR CK42765 WIDLUND	20100624		02/2011	9.05-	
101-0000-209.01-08	06/24/2010	MANUAL PR CK43077 WIDLUND	20100624		02/2011	9.05	
101-0000-209.01-08	09/02/2010	PR AP PPE 8/26/2010	20100902		03/2011	1,541.87	
09/03/2010	71670	SKS INC.	412			8,321.59	
501-1921-419.28-15	08/18/2010	1050 GAL REG FUEL	1235033-IN	110104	02/2011	2,941.38	
501-1921-419.28-15	08/23/2010	962.9 G REG/199 G DIESEL	1235128-IN	110104	02/2011	3,269.66	
501-1921-419.28-15	08/26/2010	750 GALLONS REG FUEL	1235194-IN	110104	02/2011	2,110.55	
09/03/2010	71671	SLOAN ELECTRIC COMPANY	417			533.00	
601-5060-436.21-04	07/29/2010	INSTALL GR LCP @PS #6	0057774	110119	01/2011	533.00	
09/03/2010	71672	SOUTH COUNTY ECONOMIC	484			2,000.00	
405-1260-413.28-04	08/31/2010	SPONSOR ECONOMIC SUMMIT	09-17-2010	110313	02/2011	2,000.00	
09/03/2010	71673	SPRINT	2040			438.94	
101-3030-423.27-05	08/15/2010	07/12/2010-08/11/2010	699898810-033		02/2011	438.94	
09/03/2010	71674	STANDARD ELECTRONICS	504			180.00	
101-1910-419.20-23	03/11/2010	JAN-MAR 2010	13675	110061	01/2011	90.00	
101-1910-419.20-23	06/15/2010	APR-JUN 2010	14019	110061	01/2011	90.00	

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT	
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO # PER/YEAR	TRN AMOUNT
09/03/2010	71675	STANFORD SIGN & AWNING	1532		13,136.77
408-1920-519.20-06	08/10/2010	235 PALM AVE-9TH/PALM REL	10232	110306 02/2011	2,680.81
408-1920-519.20-06	08/16/2010	629-641 9TH AVE/FACADE IM	10197	011182 02/2011	8,005.96
408-1920-519.20-06	08/19/2010	629-641 9TH/FACADE IMPRVM	16618	110319 02/2011	2,450.00
09/03/2010	71676	THYSSENKRUPP ELEVATOR	663		219.65
101-3030-423.20-06	09/01/2010	SEPTEMBER 2010	1037052436	110065 03/2011	219.65
09/03/2010	71677	WHITE CAP CONSTRUCTION SUPPLY	1434		1,248.46
101-6020-452.30-02	07/22/2010	SAFETY GLASSES	15043202	110033 01/2011	4.35
101-5010-431.28-01	08/20/2010	16" CONCRETE DIAMOND BLAD	3165788	110033 02/2011	473.61
101-5010-431.30-02	08/23/2010	SKILSAW/CAST PLACE ARMORT	15044309	110033 02/2011	770.50
09/03/2010	71678	ZUMAR INDUSTRIED INC.	875		9,215.84
101-5010-431.21-23	08/19/2010	STREET SIGNS	0124257	110032 02/2011	8,678.25
101-5010-431.21-23	08/20/2010	STREET SIGNS-"KEEP RIGHT"	0124308	110032 02/2011	195.75
101-6020-452.30-02	08/23/2010	SKATE PARK SIGN	0124352	110032 02/2011	341.84
DATE RANGE TOTAL *					1,029,711.76 *



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT
GREG WADE, DIRECTOR *GW*
ELIZABETH CUMMING, ASSISTANT PROJECT MANAGER

SUBJECT: ADOPTION OF RESOLUTION NO. 2010-6939 AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT AND THE CITY OF IMPERIAL BEACH FOR THE REALLOCATION OF FISCAL YEAR 2008-2009 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FROM PUBLIC SAFETY/FIRE STATION ENHANCEMENTS AND EQUIPMENT UPGRADES PROJECT TO CIVIC CENTER CROSSWALK IMPROVEMENT PROJECT

BACKGROUND:

The Community Development Block Grant Program ("CDBG") is funded through the Department of Housing and Urban Development Department ("HUD"). The County of San Diego's Department of Housing and Community Development allocates funds to participating cities based on a formula that considers factors such as population, income level, and overcrowded housing.

In 2008, the City Council approved the Imperial Beach Fire Station Enhancements and Equipment Upgrades project in the amount of \$136,099. The project was completed and came in under budget. There is a total of \$17,619.61 remaining from the 2007-2008 CDGB allocation. In 2009, the City Council approved the Civic Center Crosswalk Project. At that the time, staff estimated that a budget of \$136,099 would be sufficient for the project.

DISCUSSION

Staff is requesting authorization to reallocate \$17,619.61 of CDGB funds from the Public Safety /Fire Station Enhancement Project to the Civic Center Crosswalk Project. Staff is requesting that the Civic Center Crosswalk Project receive the funds as the original CDBG award for this project may not cover all the expenses to complete the project. The County has informed Staff that the reallocation is an allowed expense and has submitted a First Amendment to the Agreement for Management and Implementation of a Community Development Grant Project to provide for this funding reallocation (Attachment 2).

FISCAL IMPACT:

The City of Imperial Beach has already been allocated \$136,099 in CDBG funding for the FY 2009-2010 CDBG Civic Center Crosswalk Project. The reallocation of \$17,619.61 from the Public Safety/Fire Station CDBG funds would bring the total funds for the Civic Center Crosswalk Project for FY 2009-2010 to \$153,718.61.

DEPARTMENT RECOMMENDATION:

That the City Council adopts Resolution No. 2010-6939 authorizing the City Manager to execute the attached agreement reallocating of \$17,619.61 of CDBG funds from the Public Safety/Fire Station Project to the Civic Center Crosswalk project.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

 FOR

Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6939
2. First Amendment to Agreement and Implementation of a Community Development Block Grant Project.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, REQUESTING REALLOCATION OF THE FISCAL YEAR 2009-2010 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

WHEREAS, the City Council of the City of Imperial Beach conducted public hearings to consider project proposals for the Fiscal Year 2008-2009 Community Development Block Grant ("CDBG") Program; and

WHEREAS, the Sports Park Improvement Project and the Civic Center Crosswalk Project were selected and allocated funding for the FY 2009-2010 cycle; and

WHEREAS, the City Council of the City of Imperial Beach now desires to further fund the Civic Center Crosswalk Project with FY 2009-2010 CDBG funds by re-allocating remaining funds from Public Safety/Fire Department in the amount of \$17,619.61; and

WHEREAS, the Civic Center Crosswalk Project will benefit and enhance the livability of the community by improving the accessibility of the City's public infrastructure; and

WHEREAS, the Civic Center Crosswalk Project is a project that will achieve an intended outcome of the CDBG program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach:

1. That it hereby requests that the County of San Diego Department of Housing and Community Development reallocate \$17,619.61 remaining from the FY 2009-2010 Public Safety/Fire Department CDBG Project to the Civic Center Crosswalk Project; and
2. That the City Manager or his designee be authorized to execute and submit all documents including, but not limited to, applications, agreements, amendments, payment requests, etc., which may be necessary for the completion of the aforementioned project.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its regular meeting held on the 1st day of September, 2010 by the following roll call vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

JAMES C. JANNEY
MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

FIRST AMENDMENT TO
AGREEMENT FOR MANAGEMENT AND
IMPLEMENTATION OF A
COMMUNITY DEVELOPMENT BLOCK GRANT PROJECT

THIS FIRST AMENDMENT to the Agreement for Management and Implementation of a Community Development Block Grant Project (County Contract No. 533504) is between the County of San Diego, Department of Housing and Community Development ("County"), and the City of Imperial Beach ("City") entered into this ____ day of _____ 2010.

WITNESSETH:

WHEREAS, the County and City have earlier entered into an Agreement for management and implementation of a Community Development Block Grant project (County Contract No. 533504), and

WHEREAS, said Agreement authorized funds for the City of Imperial Beach Civic Center Crosswalk Project; and

WHEREAS, Contractor had requested a remaining balance of \$26,003 of 2008/09 program year funding for the City of Imperial Beach Fire Station Improvements Project be reallocated to the 2009/10 Civic Center Crosswalk Project; and

WHEREAS, after final payment of the Fire Station Improvements Project claims, the amount to be reallocated was reduced to \$17,619.61.

IT IS AGREED AS FOLLOWS:

1. Paragraph 3 of said COUNTY contract Number 533504 is amended to read as follows:

Compensation: COUNTY shall reimburse CITY for the costs it incurs for work performed under this Contract, not to exceed the sum of \$153,718.61. Contractor shall not submit claims to the County nor shall County reimburse CITY for costs for which CITY is reimbursed from a source other than the funds allocated for work under this contract.

2. Paragraph B of Attachment "A" Scope of Work of said COUNTY contract Number 533504 is amended to read as follows:

Estimated Budget: CITY shall make all good faith and reasonable efforts to complete the work under this Contract within the following estimated budget. In no case shall CITY be entitled to, or shall County reimburse CITY for more than \$153,718.61 for work performed under this Contract.

Contract Amount: Total \$153,718.61

IN WITNESS WHEREOF the parties hereto have caused this First Amendment to be executed as of the day and year first above written.

CITY:
BY: _____
Gary Brown, City Manager
City of Imperial Beach

COUNTY:
BY: _____
DAVID ESTRELLA, Director
Department of Housing & Community Development

Date: _____



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR *GW*

SUBJECT: ADOPTION OF RESOLUTION NO. 2010-6945 AUTHORIZING THE ACCEPTANCE OF CALTRANS RELINQUISHMENT OF PROPERTY TO FACILITATE THE REALIGNMENT OF THE PALM AVENUE/STATE ROUTE (SR) 75 INTERSECTION ADJACENT TO THE PROPOSED 9TH AND PALM REDEVELOPMENT PROJECT

BACKGROUND:

City and Redevelopment Agency staff have, through an exclusive negotiation agreement (ENA), been negotiating with Sudberry, Inc. ("Sudberry") for the future development of the Agency-owned property located on the south side of Palm Avenue/SR 75 west of 9th Street. During the negotiation process, Sudberry advised staff that many prospective tenants have indicated a strong preference, and some an absolute need, for direct vehicular access to the site from Palm Avenue/SR 75. To address this request, Sudberry developed a site plan with a vehicular access point approximately 200 feet west of 9th Street. Staff, Sudberry and their traffic and civil engineer then met twice with the California Department of Transportation ("Caltrans") staff to review the proposed site plan and vehicular access. During these meetings, Caltrans indicated that the closest they could support a vehicular access point on Palm Avenue/SR 75 from the 9th and Palm intersection was between 400 and 500 feet. Such a location, however, would result in a driveway that would be blocked by the existing triangular median in Palm Avenue/SR 75 which would not provide the desired direct access to the site. An alternative proposal, therefore, would have to be developed.

On February 19, 2009, the City Council approved the Palm Avenue Commercial Corridor Master Plan ("Master Plan"). This plan, developed by a consultant team headed by MIG, proposed right-of-way improvements for the Palm Avenue/SR 75 corridor focused on improving pedestrian safety and walkability, enhancing the corridor's overall aesthetics and appearance, and improving functionality of the vehicular corridor while maintaining acceptable traffic levels of service all in an effort to create a "main street" environment. The Master Plan divided the corridor into four sectors, each of which had similar yet unique design proposals and recommendations. In response to input from both the community and City Council, one of the sectors, known as the "Park Sector" recommended the realignment of the Palm Avenue/SR 75 transition/intersection to provide a more easily-traveled and pronounced roadway on which west-bound Palm Avenue/SR 75 traffic could access Imperial Beach. One of the directions given to Sudberry in the ENA and during early negotiations was to develop a site plan that would allow for the future implementation of the Master Plan's Park Sector. Given the above information, it was apparent that such a configuration would address both Caltrans'

requirements as well as the needs of the tenants of the proposed development at 9th and Palm. Staff worked with Sudberry, therefore, to implement the Park Sector, in some form, to address all parties' respective concerns and objectives.

To initiate the relinquishment process, on April 7, 2010, the City Council authorized the City Manager to send a letter to Caltrans officially requesting the proposed relinquishment (see Attachment 1). When the City Council authorized the initiation of the relinquishment process, staff indicated it would return to the City Council seeking adoption of a resolution accepting the relinquishment as shown on Attachment 1.

DISCUSSION:

Since that time, Sudberry has been working to develop a revised site plan that would incorporate the reconfigured right-of-way. In coordination with Caltrans staff, Sudberry's civil engineers are also working to prepare the necessary relinquishment plans and maps. At this time, both Sudberry and Caltrans are requesting that the City of Imperial Beach adopt a resolution of acceptance of the relinquished Palm Avenue/SR 75 right-of-way in order to move the process forward. Even with adoption of this resolution, actual relinquishment of the right-of-way would not officially occur until the California Transportation Commission's adoption and recordation of their resolution to relinquish.

ENVIRONMENTAL REVIEW:

The requested partial relinquishment of Caltrans' right-of-way is not, in itself, subject to CEQA. However, the proposed Palm Avenue/SR 75 realignment as well as the development proposal by Sudberry will be subject to environmental review under CEQA.

FISCAL IMPACT:

While there is no direct fiscal impact with this item, the Master Plan estimated construction of the Park Sector improvements at \$7.3 million. Construction of only a portion of the proposed improvements on the south side of Palm Avenue/SR 75 has been generally estimated by staff at approximately \$3 million, however, that estimate may be high. Staff has requested that Sudberry's civil engineer prepare a cost estimate for the construction of the proposed reconfigured/realigned right-of-way. On-going maintenance costs of the relinquished and accepted right-of-way would also be incurred by the City but would not be substantial.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 2010-6945 authorizing the acceptance of Caltrans relinquishment of property along the south side of Palm Avenue/State Route 75 between 7th Street and 9th Street in the City of Imperial Beach.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

- Attachments:
1. Request for Relinquishment Letter
 2. Resolution No. 2010-6945
 3. Letter to Sudberry

Received 4-19-10

ATTACHMENT 1
Christian
SD-75
PM 9.02



City of Imperial Beach, California

OFFICE OF THE CITY MANAGER

April 14, 2010

Bill Figge
Deputy District Director, Planning Division
Caltrans District 11
4050 Taylor Street MS 240
San Diego, CA 92110

SUBJECT: REQUEST FOR RELINQUISHMENT OF A PORTION OF THE PALM AVENUE/STATE ROUTE (SR) 75 RIGHT-OF-WAY

Dear Mr. Figge:

The City of Imperial Beach would like to request the relinquishment of a portion of the Palm Avenue/State Route (SR) 75 right-of-way as shown on the attached exhibit. The purpose of the requested relinquishment is to allow for the reconfiguration of the intersection at SR 75 and Palm Avenue that, if relinquished, will render the area no longer necessary for State Highway purposes. Relinquishment of the right-of-way will also allow for better traffic circulation and will create a development site on the south side of Palm Avenue west of 9th Street that is more functional and compliant with Cal Trans' standards.

We are therefore requesting that this portion of the Palm Avenue/SR 75 right-of-way be relinquished to the City of Imperial Beach. The City would then assume responsibility for the right-of-way at this location as well as operational and maintenance responsibility.

Once again, we respectfully request that you initiate the process for relinquishing this right-of-way to the City of Imperial Beach. If you have any questions or require any additional information, please call Greg Wade at 619-628-1354.

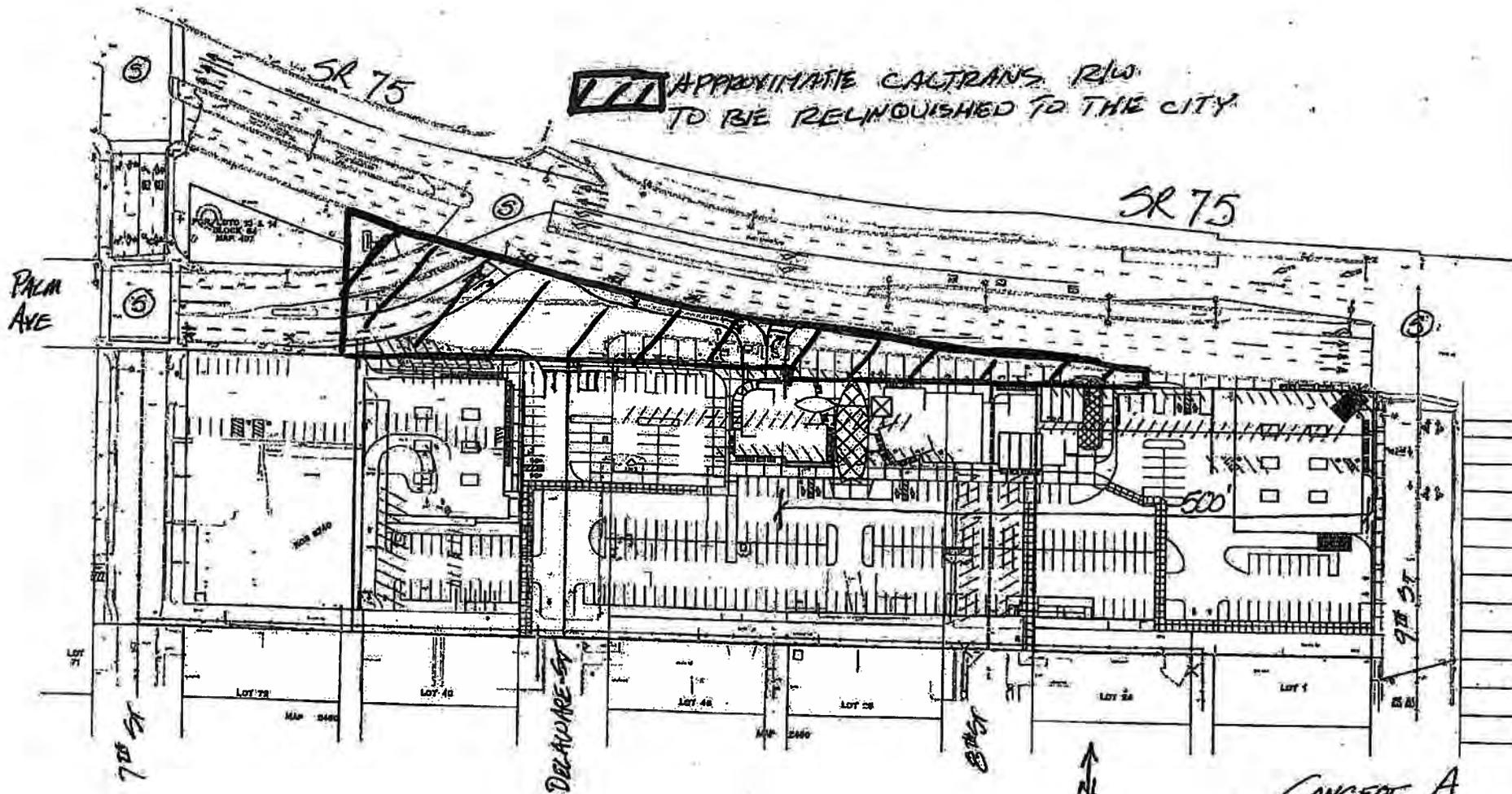
Sincerely,

A handwritten signature in cursive script that reads "Gary Brown".

Gary Brown
City Manager

C: Hank Levien, Public Works Director
Greg Wade, Community Development Director
Jerry Selby, Redevelopment Coordinator
Jennifer Lyon, City Attorney

Attachment




 APPROXIMATE CALTRANS R/W
 TO BE RELINQUISHED TO THE CITY

SR 75

PALM AVE

7th ST

DELAWARE ST

9th ST

9th ST

500'

LOT 72

LOT 40

LOT 48

LOT 28

LOT 24

LOT 1

MAP 0460

MAP 2460



LLG

$\frac{1"=80'}$
 1 INCH

CONCEPT A
 EB PALM REALIGNMENT
 3/11/10

RESOLUTION NO 2010-6945

A RESOLUTION OF THE COUNCIL OF THE CITY OF IMPERIAL BEACH AUTHORIZING THE ACCEPTANCE OF CALTRANS RELINQUISHMENT OF PROPERTY LOCATED ADJACENT TO STATE ROUTE 75 AT PALM AVENUE BETWEEN 7TH STREET AND 9TH STREET IN THE CITY OF IMPERIAL BEACH

WHEREAS, the City of Imperial Beach [City] desires to take over control and maintenance of portions of 7th Street and Palm Avenue rights of way, their appurtenant facilities and landscaping (“roadway”) for the public benefit and enjoyment; and

WHEREAS, the areas of said roadway are currently within the State of California Department of Transportation’s (“State”) Route 75 rights of way; and

WHEREAS said portions of 7th Street and Palm Avenue rights of way are not within the main traveled way of said State Route 75; and

WHEREAS, the City has requested that State relinquish portions of said roadway in order to enable City to reconfigure, realign and improve traffic circulation and vehicular movement; and

WHEREAS, the City agrees to prohibit new ingress and egress from areas within said relinquished roadway, in and to the remaining State right of way; except as agreed to by the State in writing, and

WHEREAS; the State has determined that this area is not needed as part of its operating right of way; and

WHEREAS, the State is authorized to relinquish certain areas of right of way under Section 73 of the Streets and Highways Code with the consent of the City and the approval of the California Transportation Commission; and

WHEREAS; the State has offered to relinquish to City, at no charge, the area depicted on “Exhibit A” attached hereto, subject to said California Transportation Commission approval, consisting of portions of existing public right of way and appurtenant roadway facilities; and

WHEREAS, the City agrees that relinquished roadway areas and facilities may be reincorporated into State right of way for future transportation projects and City agrees to reconvey property, at no cost to the State, which is still functioning as public right of way, when requested to do so by the State; and

WHEREAS, the City agrees to accept roadway “as is” for the purposes of compliance with the requirements of Section 73 of the Streets and Highways Code.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Imperial Beach, that the City agrees to accept maintenance, control and ownership, including all of State’s current obligations, rights, title and interest in the described segment of roadway area and appurtenant facilities upon recordation of the California Transportation Commission’s Resolution of Relinquishment in the San Diego County Recorder’s Office, and to thereafter operate, maintain, and be liable for roadway areas and facilities at no additional cost to the State.

BE IT FURTHER RESOLVED, that the City waives the State’s obligation to provide ninety (90) days prior notice of the State’s “Intention to Relinquish” as set forth in Section 73 of the Streets and Highways Code because this relinquishment is at the request of the City.

BE IT FURTHER RESOLVED, that the City agrees there shall be no California Transportation Commission allocation of funds for a betterment or improvement of requested relinquishment areas.

BE IT FURTHER RESOLVED, that the City agrees that the State reserves the right to enter relinquished collateral facilities, including sidewalks and other areas adjacent to the traveled way, to modify or add signage, drainage, and other improvements necessary for State highway operations, at no additional cost to the State for the right to perform said activities and at no additional cost incurred to the City.

BE IT FURTHER RESOLVED, that the City reserves the right to retract the acceptance of the relinquishment of the property at any time prior to the California Transportation Commission’s formal Resolution to relinquish the property.

BE IT FURTHER RESOLVED, that this activity is not a “project” and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

PASSED, APPROVED AND ADOPTED by the City Council of the City of Imperial Beach at its regular meeting held on the 22nd day of September 2010, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD
CITY CLERK

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and exact copy of Resolution No. 2010-6945 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING THE ACCEPTANCE OF CALTRANS RELINQUISHMENT OF PROPERTY LOCATED BETWEEN THE INTERSECTIONS OF PALM AVENUE AND 9TH STREET AND PALM AVENUE AND 7TH STREET IN THE CITY OF IMPERIAL BEACH

CITY CLERK

DATE



July 23, 2010

Mr. Estean Lenyoun
Sudberry Properties, Inc.
5465 Morehouse Drive, Suite 260
San Diego, CA 92121-4714

**SUBJECT: 9TH & PALM REDEVELOPMENT PROJECT – SUMMARY OF JULY 21, 2010
TELECONFERENCE**

Dear Estean:

The purpose of this letter is to memorialize the 9th & Palm Redevelopment Project discussion held on July 21, 2010, between Sudberry (Colton Sudberry, Estean Lenyoun) and Imperial Beach Redevelopment Agency (“Agency”) staff (Greg Wade, Jerry Selby) on July 21, 2010. The issues discussed were as follows:

- Schedule and Progress of Relinquishment Documentation; and
- The development and funding of Construction Documents and Plan for the re-alignment of the Palm Avenue/State Route 75 & Delaware Street intersection.

The Agency was informed that Project Design Consultants has been contracted to perform the tasks outlined in the Scope of Work that had been previously distributed to Sudberry and the Agency.

Sudberry and the Agency agreed on the following:

- That the completion of documentation for the relinquishment and the subsequent submittal to Caltrans was a priority;
- That the funding for the development of Construction Documents and Plans for the re-alignment of the State Route 75 & Delaware Street intersection will be the responsibility of the Agency; and
- That the Agency would be reimbursed by Sudberry for the development of Construction Documents and Plans, if and when, Phase II of the proposed redevelopment project is constructed.

The above statements assume the following:

- Sudberry and the Agency agreed to split the cost to develop the Caltrans’ Right-of-Way Relinquishment Documentation with the Agency’s contribution reimbursed by Sudberry

Mr. Estean Lenyoun
July 23, 2010
Page 2

upon execution of the Disposition and Development Agreement (DDA) for redevelopment of the 9th and Palm Redevelopment Project;

- Sudberry and the Agency will codify and memorialize the processes, tasks, methods of funding, and responsibilities of Sudberry and the Agency in the DDA ; and
- Sudberry understands and acknowledges that the above is subject to the approval of the Agency Board.

If you have any questions, please contact me by telephone at 619-424-2226 or by email at jsselby@cityofib.org.

Sincerely,


Gerard E. Selby
Redevelopment Coordinator

c: Gary Brown, Executive Director
Greg Wade, Director of Community Development
Mike McGrane, Director of Administration Services
Jennifer Lyon, City Attorney



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT: LINDA LEICHTLE, HUMAN RESOURCES

**SUBJECT: ADOPTION OF RESOLUTION NO. 2010-6946
DELEGATING TO CITY MANAGER AUTHORITY TO
MAKE DISABILITY RETIREMENT DETERMINATIONS**

BACKGROUND:

Under the Public Employee Retirement Law, employees of local government agencies that contract with CalPERS who meet certain requirements may seek disability retirement. Disability retirement or industrial disability retirement (when the disability was acquired on the job) allows the employee to receive a certain percentage of the employee's salary each year if the employee is no longer able to work. Most of the time, employees apply on their own for this retirement, but in some cases, a local government agency can apply on the employee's behalf, even over the employee's objection since the employee would no longer be able to work for the agency.

The determination of whether or not an employee is entitled to a disability retirement is made by the City Council or the City Manager, if the City Council has delegated such authority to the City Manager. The employee then has a right to appeal to the State's Office of Administrative Hearings if the employee is unhappy with the City's determination.

In 1982, the City Council adopted Resolution 2951, authorizing the City Manager to determine whether an employee is entitled to a disability retirement. Since that resolution was passed, state law has changed. The relevant code sections have been renumbered, and Public Employee Retirement Law now specifies that an employee aggrieved by the City's decision may appeal the matter to the Office of Administrative Hearings.

DISCUSSION:

This resolution updates the 1982 resolution and brings the City's policy into conformity with current law. It also discusses the proper appeal procedures to be followed by employees dissatisfied with the City's decisions related to disability retirement.

ENVIRONMENTAL IMPACT:

Not a project as defined by CEQA.

FISCAL IMPACT:

None.

CITY MANAGER'S RECOMMENDATION:

Adopt Resolution No. 2010-6946 authorizing the City Manager to determine whether an employee is subject to disability retirement.



Gary Brown, City Manager

Attachments:

1. Resolution No. 2951 (1982)
2. Resolution No. 2010-6946

RESOLUTION NO. 2951

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF IMPERIAL BEACH DELEGATING
AUTHORITY TO THE CITY MANAGER TO MAKE
DETERMINATIONS UNDER SECTION 21023(C), GOVERNMENT CODE

WHEREAS, the City Council of the City of Imperial Beach (hereinafter referred to as Agency) is a contracting agency of the Public Employees' Retirement System, and

WHEREAS, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such Law, and

WHEREAS, the City Council of the City of Imperial Beach has determined upon legal advice that it may delegate authority under Section 21034 of the Government Code to make such determinations to the incumbent of the office of City Manager.

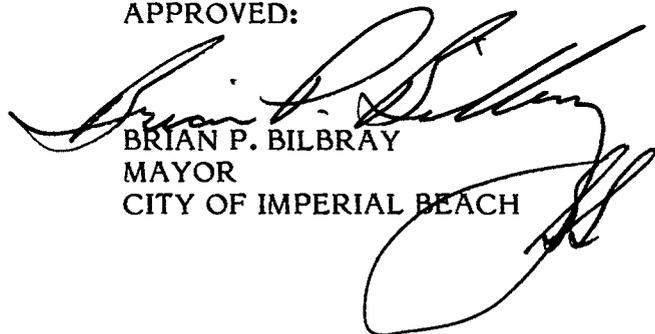
NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Imperial Beach delegate and it does hereby delegate to the incumbent of the office of City Manager authority to make determinations under Section 21023(c), Government Code, on behalf of the Agency of disability and whether such disability is industrial and to certify such determinations and all other necessary information to the Public Employees' Retirement System, and

BE IT FURTHER RESOLVED that such incumbent be and he is authorized to make applications on behalf of the Agency for disability retirement of employees in employments in which they are local safety members and to initiate requests for reinstatement of such employees who are retired for disability.

PASSED AND ADOPTED by the City Council of the City of Imperial Beach this 7th day of September, 1982, by the following vote, to wit:

AYES: RUSSELL, BENNETT, PALMER, BILBRAY
NOES: STARK
ABSENT: NONE

APPROVED:


BRIAN P. BILBRAY
MAYOR
CITY OF IMPERIAL BEACH

ATTEST:


A. GEORGE RAMOS, CMC
CITY CLERK
CITY OF IMPERIAL BEACH

APPROVED AS TO FORM:

CLIFTON E. REED
CITY ATTORNEY
CITY OF IMPERIAL BEACH

RESOLUTION NO. 2010-6946

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, DELEGATING TO THE CITY MANAGER AUTHORITY TO DETERMINE WHETHER AN EMPLOYEE IS ELIGIBLE FOR DISABILITY OR INDUSTRIAL DISABILITY RETIREMENT

WHEREAS, the City of Imperial Beach (City) is a contracting Agency of the California Public Employees' Retirement System (CalPERS); and

WHEREAS, CalPERS requires that a contracting Agency adopt by resolution standardized procedures for making a determination if an employee has an industrial disability; and

WHEREAS, Public Employees' Retirement Law ("PERL") requires that a contracting Agency determine whether a covered employee is disabled for purposes of the PERL and whether such disability is "industrial" within the meaning of the PERL; and

WHEREAS, the City Council of the City of Imperial Beach has determined that it may delegate authority under section 21173 of the Government Code to make such determinations to the incumbent of the position of City Manager or the City Manager's designee.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach, California, as follows:

Section 1. That the City of Imperial Beach does hereby delegate to the incumbent of the position of City Manager or the City Manager's designee the authority to make determinations, under sections 21150-21176 of the Government Code on behalf of the City, of disability and whether such disability is industrial and to certify such determinations and all other necessary information to the Public Employees' Retirement Systems; and

Section 2. That the City Manager be and is authorized to make application on behalf of the Agency for disability retirement of all employees and to initiate requests for reinstatement of such employees who are retired for disability; and

Section 3. That following the filing of an application for disability or industrial disability retirement by an employee member under the California Public Employees' Retirement System the following procedures shall be employed:

- a. An initial determination will be made by the City Manager or his or her designee upon medical and other available evidence offered by either the applicant or the City to determine whether the applicant is incapacitated from the performance of duty. The determination shall be made within six months of the date of the receipt by the City from CalPERS unless this time requirement is waived by the applicant.
 1. If it is determined by the City Manager that the applicant is incapacitated, and the incapacity is industrial, the City Manager (or City Manager's designee) will so certify to CalPERS.

2. If it is determined by the City Manager that the applicant is incapacitated, but that the cause of the incapacity is nonindustrial, the City Manager (or City Manager's designee) will so certify to CalPERS.
 3. If the City Manager makes the determinations specified in subparagraph 2 above, but the applicant contends that the cause of disability is industrial, the applicant may petition the Worker's Compensation Appeals Board (WCAB) for a Finding of Fact determining causation. If the WCAB determines the cause of incapacity to be industrial, or nonindustrial, the City will so certify to CalPERS.
 4. If the City Manager determines that the applicant is not incapacitated from the performance of duty, it shall notify the applicant and CalPERS of this determination. The City shall notify the applicant by certified mail (return receipt requested) or by personal service of his/her right to appeal their decision and request a hearing within thirty (30) calendar days of the notice.
- b. If the applicant requests a hearing per section (a)(4) of this Resolution, the hearing shall be held in conformity with the Administrative Procedures Act. When an applicant requests a hearing, the City will notify CalPERS. The City will also notify the Office of Administrative Hearings and will request a hearing date with an Administrative Law Judge.
1. The hearing shall be conducted before an Administrative Law Judge who will prepare a proposed decision and findings of fact for review by the City Council.
 2. An administrative record shall be generated at the hearing pursuant to the Administrative Procedures Act. All testimony shall be recorded by a Certified Shorthand Reporter or otherwise recorded.
 3. Following the hearing, a decision and findings of fact will be made by the City Council. The decision and findings will be served on the applicant by certified mail and CalPERS will be notified.
 4. If the applicant is found to be incapacitated either by the City Council or by a final decision of a court in response to a petition for a writ of mandate, the City shall so certify to CalPERS. If the applicant is found not to be incapacitated by the City Council, the applicant will be further advised that s/he has thirty (30) calendar days to seek judicial review. Such review is the means of filing a petition of writ of mandate in the Superior Court of San Diego. Upon receipt of notice that the applicant has filed a Petition for Writ

of Mandate, or upon expiration of thirty (30) calendar days where applicant has not filed a Petition for Writ of Mandate, the City will notify CalPERS.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 22nd day of September 2010, by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
DISQUALIFIED: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

Jacqueline M. Hald

JACQUELINE M. HALD, CMC
CITY CLERK

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Resolution No. 2010-6946 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, DELEGATING AUTHORITY TO THE CITY MANAGER TO DETERMINE ELIGIBILITY FOR DISABILITY RETIREMENT.

CITY CLERK

DATE



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010
ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR
JIM NAKAGAWA, AICP, CITY PLANNER

SUBJECT: CONSENT AGENDA: RATIFICATION OF PEDESTRIAN AND VEHICULAR ACCESS AGREEMENT FOR FINAL MAP (TM 03-091) OF THE REDEVELOPMENT OF THE SEACOAST INN, A PROPOSED 78 ROOM HOTEL LOCATED AT 800 SEACOAST DRIVE, IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661.

PROJECT DESCRIPTION/BACKGROUND:

The Seacoast Inn project [MF 661: Specific Plan (GPA/LCPA 03-95, Coastal Development Permit (A-6-IMB-07-131), Design Review (DRC 03-094), Site Plan Review (SPR 03-093), Tentative Map (TM 03-091), and Environmental Impact Report (EIA 04-034)] proposed to demolish an



existing 3-story, 38-guest room hotel and construct a 4-story, 78-guest room full service condo hotel, 40-feet-high to roof level height with a new vertical seawall on a 1.39 acre lot at 800 Seacoast Drive in the C-2 (Seacoast Commercial) Zone. It was approved by the City Council on December 5, 2007. On appeal, the Coastal Commission eventually approved the coastal development permit (A-6-IMB-07-131) on April 10, 2008. A one-year extension of the coastal development permit was granted by the Commission Director in April of 2010. The final map for the Seacoast Inn was approved by the City Council on April 21, 2010. On July 21, 2010, the City Council ratified a corrected final map for the project.

PROJECT EVALUATION/DISCUSSION:

The street improvement plans were approved by BDS Engineering on July 27, 2010 along with the bond amount of \$34,849. In order to accommodate the ADA-compliant driveway ramp and sidewalk along Seacoast Drive, an additional dedication by way of a pedestrian and vehicular access easement agreement needed to be executed and recorded along with the final map.

CALIFORNIA ENVIRONMENTAL QUALITY ACT:

This project may be statutorily exempt pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15268 (Ministerial Projects).

FISCAL IMPACT:

The applicant's project developer account #03-95 currently has a credit balance of \$5,799.17. Related account #03-95A (C. Black) has a credit balance of \$175.00 and account #03-95B (RDA: Keyser Marston and Kane Ballmer & Berkman OPA) has a deficit of \$8,879.10.

DEPARTMENT RECOMMENDATION:

Adopt Resolution No. 2010-6943 that ratifies the Pedestrian and Vehicular Access Agreement for the Seacoast Inn Final Map.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown

Attachments:

1. Resolution No. 2010-6943
2. Pedestrian and Vehicular Access Easement Agreement

c: file MF 661

Allison Rolfe, Planning Director, Pacifica Companies, 1785 Hancock Street, Suite 100,
San Diego, CA 92110 arolfe@pacificacompanies.com

Gary D. Mellom, PLS, Survey Field Supervisor, Construction Testing and Engineering,
Inc., 1441 Montiel Road, Ste. 115, Escondido, CA 92026 gary@cte-inc.net

Thomas Jones, President, Bement, Dainwood & Sturgeon, 6859 Federal Boulevard,
Lemon Grove, CA 91945-1315 tjones@bdsengineering.com

Frank Green, Stewart Title of California, Inc., 7676 Hazard Center Drive, 14th Floor, San
Diego, CA 92108 FGREEN@stewart.com

RESOLUTION NO. 2010-6943

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, RATIFYING THE PEDESTRIAN AND VEHICULAR ACCESS EASEMENT AGREEMENT FOR THE SEACOAST INN FINAL MAP LOCATED AT 800 SEACOAST DRIVE IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661

APPLICANT: PACIFICA COMPANIES

WHEREAS, on December 5, 2007, the City Council of the City of Imperial Beach approved applications for a Specific Plan (03-095), Regular Coastal Permit (CP 03-091), Design Review (DRC 03-091), Site Plan Review (SPR 03-093), Development Agreement, Tentative Map (TM 03-092), and Environmental Impact Report (EIA 03-034) to demolish an existing 3-story, 38-room Seacoast Inn Hotel and timber seawall, and to redevelop the site as a 4-story, 78-guest room hotel, 40-foot high with 111 parking spaces in a subterranean garage, a restaurant, swimming pool, meeting rooms, and a new vertical seawall to be located 35 feet east of the existing timber seawall. The new hotel would be located landward of the new seawall. Currently private property on the beach to the mean high tide line is proposed to be dedicated as a public beach. The proposed project is located on 1.39 acres (APN 625-011-16-00) at 800 Seacoast Drive in the C-2 (Seacoast Commercial Zone) and is legally described as follows:

Lots 1 to 15, inclusive, in Block 7, in South San Diego Beach, in the City of Imperial Beach, County of San Diego, State of California, according to Map Thereof No. 1071, filed in the Office of the County Recorder of San Diego County, July 6, 1907.

Also all that certain alley in said Block 7 lying and being east of and adjacent to Lots 1 and 7, inclusive, in said Block and West of and adjacent to Lots 8 and 12 in said Block, and also all of the other certain alley of said Block, lying between Lots 8, 9, 10 and 11 on the south and Lots 12, 13, 14 and 15 on the north.

Also all that portion of Ocean Boulevard described as follows:

Commencing at the Southwest Corner of Said Block 7, and running thence Northerly along the West line of said Block as shown upon said Map to the Northwest Corner Thereof; Thence at right angles westerly to the high tide line of said Pacific Ocean; Thence Southerly along said high tide line to a point opposite and directly West of the Southwest Corner of said Block; Thence East to said Southwest Corner of said Block and being all that point of said boulevard lying between said Block 7 and the high tide of Pacific Ocean, and extending in a general Northerly direction from said south line of said Block projected Westerly to said high tide line, to the North line of said Block projected Westerly to said high tide line. Said alleys and said portion of Ocean Boulevard were vacated and closed to public use on December 9, 1908, by an order of the Board of Supervisors of San Diego County, recorded in Book 27, Page 432 and Page 433 of the records of said Supervisors Office.

Except any portion thereof lying below the Mean High Tide Line of the Pacific Ocean.

Together with the reversionary rights, if any, to the centerline of Seacoast Drive, Daisy Avenue, and Date Avenue adjacent thereto.

Lots 18 and 19, Block 7, Silver Strand Beach Gardens Addition to Imperial Beach, in the City of Imperial Beach, County of San Diego, State of California, according to map thereof No. 1902, filed in the Office of the County Recorder of San Diego County, March 25, 1926; Excepting therefrom any portion therefore heretofore or now lying below the ordinary high tide of the Pacific Ocean; and,

WHEREAS, on April 10, 2008, the California Coastal Commission, on appeal, approved the coastal development permit (A-6-IMB-07-131) for this project; and

WHEREAS, on March 4, 2009, the City Council approved a Specific Plan Amendment (Ordinance No. 2008-1082) that allowed for design modifications to accommodate a rooftop patio/garden for this project; and

WHEREAS, in April of 2010, the Executive Director of the Coastal Commission approved a one-year time extension of the coastal development permit for this project; and

WHEREAS, the City Council of the City of Imperial Beach approved the final map for this project on April 21, 2010 (Resolution No. 2010-6882) and ratified a corrected final map on July 21, 2010 (Resolution No. 2010-6920); and

WHEREAS, the City Council of the City of Imperial Beach finds that, in order to accommodate street improvements that need to be in compliance with the Americans With Disabilities Act for this project, additional dedications of land is required and would be obtained through this Pedestrian and Vehicular Access Easement Agreement; and

WHEREAS, the City Council acknowledges the acceptance of the Pedestrian and Vehicular Access Easement; and

WHEREAS, in compliance with the provisions of AB 32, The California Climate Solutions Act of 2006, the potential impacts of the Seacoast Inn project were, to the extent that such impacts were, as directly associated with the project conditions, evaluated in the Draft and Final EIR for the project (reference- Section 3.12 of said EIR). The project applicant has agreed to incorporate: solar panels for direct use, hot water production and other specific measures discussed in the EIR, and

WHEREAS, in compliance with Section 15063 of the California Environmental Quality Act (CEQA) Guidelines, an Environmental Impact Report (EIR) was prepared for this project, routed for public review from August 15 to October 1, 2007, submitted to the State Clearinghouse (SCH # 2005101113) in accordance with the requirements of the (CEQA) for agency review, and certified on December 5, 2007, and

WHEREAS, the City Council finds that the ratification of this pedestrian and vehicular access easement agreement that is related to the final map for this project is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15268 (Ministerial Projects).

NOW, THEREFORE, BE IT RESOLVED, that the **Pedestrian and Vehicular Access Easement Agreement** for the Seacoast Inn Final Map at 800 Seacoast Drive in the C-2 (Seacoast Commercial) Zone, is hereby **ratified** by the City Council of the City of Imperial Beach.

Appeal Process under the California Code of Civil Procedure (CCP): The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

PROTEST PROVISION: The 90-day period in which any party may file a protest, pursuant to Government Code Section 66020, of the fees, dedications or exactions imposed on this development project begins on the date of the final decision.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its regular meeting held on the 22nd day of September 2010, by the following roll call vote:

AYES: **COUNCILMEMBERS:**
NOES: **COUNCILMEMBERS:**
ABSENT: **COUNCILMEMBERS:**
DISQUALIFIED: **COUNCILMEMBERS:**

James C. Janney

JAMES C. JANNEY, MAYOR

ATTEST:

Jacqueline M. Hald

JACQUELINE M. HALD, CMC
CITY CLERK

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and correct copy of Resolution No. 2010-6943 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, RATIFYING THE PEDESTRIAN AND VEHICULAR ACCESS EASEMENT AGREEMENT FOR THE SEACOAST INN FINAL MAP LOCATED AT 800 SEACOAST DRIVE IN THE C-2 (SEACOAST COMMERCIAL) ZONE. MF 661.

CITY CLERK

DATE

RECORDING REQUESTED BY:

ATTACHMENT 2

GRANTOR

WHEN RECORDED MAIL TO:

IMPERIAL COAST LIMITED
PARTNERSHIP
ATTN: DEEPAK ISRANI
1785 HANCOCK STREET, SUITE 100
SAN DIEGO, CALIFORNIA 92110

PEDESTRIAN AND VEHICULAR ACCESS EASEMENT AGREEMENT

Grantor: Imperial Coast Limited Partnership
Grantee: City of Imperial Beach
Legal Description: See Attached Exhibit "A"

This Pedestrian and Vehicular Access Easement Agreement ("Agreement") is entered into as of September __, 2010 by and between Imperial Coast Limited Partnership, a California limited partnership ("Grantor") for the benefit of the City of Imperial Beach, and its successors and assigns ("Grantee").

Grantor's real property, as legally described in the attached Exhibit A ("Grantor's Property"), is adjacent to the sidewalk and street along Seacoast Drive which is owned and maintained by Grantee ("Grantee's Property").

For and in consideration of One Dollar (\$1.00) and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Grantor hereby conveys to Grantee a non-exclusive easement for public pedestrian and vehicular access from one (1) foot below finished surface to eight (8) feet above finished surface (the "Easement") on and over the property identified as the Easement Area as depicted on Exhibit "A" (the "Easement Area"). This easement shall continue in perpetuity.

The Easement is granted subject to the following terms and conditions, which Grantee agrees to perform and obey:

1. The Easement is granted solely for pedestrian and vehicular ingress and egress. Neither Grantee nor any other person may park or leave any vehicles or objects in the Easement Area. The Grantee may perform maintenance, repairs and construction in the Easement Area.
2. Grantee hereby accepts the Easement for the purposes stated herein.
3. The easement hereinabove granted shall be used and enjoyed by Grantee and the public in such a manner so as not to unreasonably interfere with, obstruct or delay the

conduct and operations of the business or intended use of Grantor or its permittees at any time conducted on its property, including, without limitation, public access to and from said business or intended use, and the receipt or delivery of deliveries in connection therewith.

4. Grantee shall indemnify and hold Grantor harmless from and against all claims, liabilities and expenses (including, without limitation, reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property related to or arising from the negligent, intentional or willful acts or omissions of Grantee or the public pertaining to the use of the granted easement and/or in the exercise of the rights granted herein; provided, however, that Grantee shall not indemnify defend or hold harmless Grantor from any liability, loss, damages, claims, demands, suits or expense arising out of or resulting solely from the gross negligence of Grantor, its servants, agents, permittees or assigns. Grantor shall indemnify and hold Grantee harmless from and against all claims, liabilities and expenses (including, without limitation, reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property related to or arising from the failure of the subterranean parking structure to be located under the easement area.
5. The rights and obligations of the parties hereunder shall inure to the benefit of and be binding upon their respective successors and assigns.
6. Attorneys Fees. If anyone having a right to enforce any of the provisions of this Agreement enforces or prevents the breach of any provisions of this Agreement, then, if the matter is settled by judicial determination (which term includes arbitration if arbitration is utilized by the parties hereto), the prevailing party (whether at trial or on appeal) shall be entitled, in addition to such other relief as may be granted, to be reimbursed by the losing party for reasonable attorney's fees and costs incurred by the prevailing party.
7. Estoppel Certificate. The parties hereto each hereby agree, within ten (10) days of receipt of a written request made by the owner of any other Parcel encumbered hereby, to execute and deliver to the Parcel owner so requesting such certificate a certificate in such form as may be reasonably required (i) certifying that the easements herein contained are in full force and effect, and (ii) stating whether any other owner of a Parcel is in default of any obligation arising under this Agreement and, if so, describing the default in reasonable specificity and detail.
8. Number and Gender. Whenever the singular number is used in this Agreement and when required by the context the same shall include the plural and the masculine, feminine and neuter genders shall include the others, and the word "person" shall include a corporation, firm, partnership, joint venture, trust or estate.
9. Waiver. No breach of any provision of this Agreement may be waived unless in writing. Waiver of any one breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision of this Agreement.
10. Severability. In the event that any covenant, condition or other provision in this Agreement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision

contained in this Agreement. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provisions shall be deemed valid to the extent of the scope or breadth permitted by law.

11. **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California.
12. **Construction of Agreement.** In determining the meaning of or resolving any ambiguity with respect to any word, phrase or provision of this Agreement, no uncertainty or ambiguity shall be construed or resolved against any party under any rule of construction including the party primarily responsible for the drafting and preparation of this Agreement.

[Signature on following page.]

IN WITNESS WHEREOF, the parties have executed this Access Easement Agreement at Imperial Beach, California as of the date first written above.

City of Imperial Beach

Imperial Coast Limited Partnership
a California limited partnership

By: Pacifica Hospitality Group, Inc.
a Nevada corporation
Its General Partner

By: _____
Gary Brown, City Manager

By: _____
Deepak Israni, Secretary

APPROVED AS TO FORM:

By: _____
Jennifer M. Lyon, City Attorney

By: _____
Thomas P. Sayer, Jr., General Counsel

Attach Notarial Acknowledgment

ACKNOWLEDGMENT

State of California)
County of San Diego)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

State of California)
County of San Diego)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT 'A'
PEDESTRIAN ACCESS EASEMENT

THAT PORTION OF LOT 1 OF SEACOAST INN, IN THE CITY OF IMPERIAL BEACH, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. _____, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, _____, DESCRIBED AS FOLLOWS:

PARCEL A

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAID LOT 1, DISTANT ALONG SAID LINE NORTH 00°35'15" EAST 19.41 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 1; THENCE NORTH 26°00'00" WEST 4.47 FEET TO A LINE PARALEL WITH AND 2.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE; THENCE ALONG SAID PARALLEL LINE NORTH 00°35'15" EAST 43.06 FEET; THENCE LEAVING SAID PARALEL LINE NORTH 27°10'00" EAST 4.47 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 1, DISTANT NORTH 00°35'15" EAST 51.05 FEET FROM THE POINT OF BEGINNING; THENCE ALONG SAID EASTERLY LINE SOUTH 00°35'15" WEST 51.05 FEET TO THE POINT OF BEGINNING.
CONTAINING 94 SQ.FT., MORE OR LESS

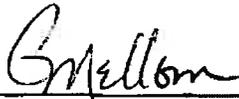
PARCEL B

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAID LOT 1, DISTANT ALONG SAID LINE SOUTH 00°35'15" WEST 21.79 FEET FROM THE NORTHEAST CORNER OF SAID LOT 1; THENCE CONTINUING ALONG SAID EASTERLY LINE SOUTH 00°35'15" WEST 50.13 FEET; THENCE LEAVING SAID EASTERLY LINE NORTH 26°00'00" WEST 4.47 FEET TO A LINE PARALEL WITH AND 2.00 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM SAID EASTERLY LINE; THENCE ALONG SAID PARALLEL LINE NORTH 00°35'15" EAST 42.14 FEET; THENCE LEAVING SAID PARALEL LINE NORTH 27°10'00" EAST 4.47 FEET TO THE POINT OF BEGINNING.
CONTAINING 92 SQ.FT., MORE OR LESS

SUBJECT TO ALL COVENANTS, RIGHTS, RIGHTS-OF-WAY AND EASEMENTS OF RECORD.

EXHIBIT "B" ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION WAS PREPARED BY ME OR UNDER MY DIRECTION.



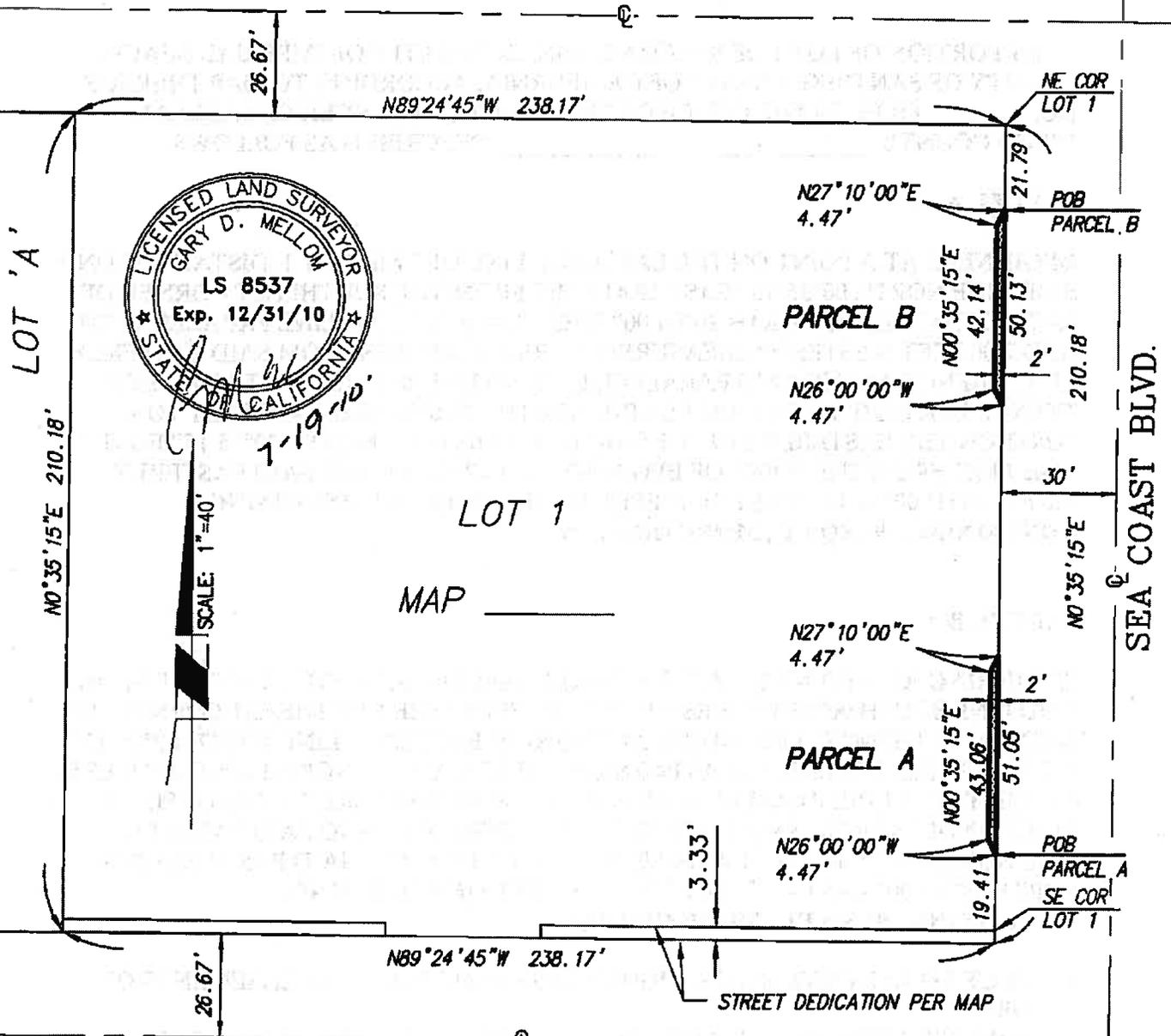
GARY D. MELLOM, PLS 8537
EXPIRES 12/31/2010

7-19-10
DATE



EXHIBIT 'B'

DAISY AVENUE



SCALE: 1"=40'

\\Engineering\ALP-08\15-0239S.dwg 08239-ped-ease.dwg 7/19/2010 2:29:53 PM PDT

LEGEND

PROPOSED PEDESTRIAN ACCESS EASEMENTS
 PARCEL A = 94 SQ.FT.
 PARCEL B = 92 SQ.FT.



CONSTRUCTION TESTING & ENGINEERING, INC.
 PLANNING - CIVIL ENGINEERING - LAND SURVEYING - GEOTECHNICAL
 1441 MONTIEL ROAD, SUITE 115 ESCORCADO CA. 92026, PH: (760) 748-4955

PEDESTRIAN ACCESS EASEMENT

CTE JOB NO:	15-0239S
SCALE:	1"=40
DATE:	7/19/10
FIGURE:	

Parcel name: ped easement -south

North: 1792426.8615 East : 6290022.3062
Line Course: S 27-10-00 W Length: 4.470
North: 1792422.8847 East : 6290020.2653
Line Course: S 00-35-15 W Length: 43.060
North: 1792379.8269 East : 6290019.8237
Line Course: S 26-00-00 E Length: 4.469
North: 1792375.8102 East : 6290021.7828
Line Course: N 00-35-15 E Length: 51.054
North: 1792426.8615 East : 6290022.3063

Perimeter: 103.052 Area: 94 Sq Ft 0.00 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0001 Course: S 85-42-04 E
Error North: -0.00001 East : 0.00013
Precision 1: 1.030.530.000

Parcel name: ped easement - north

North: 1792541.4493 East : 6290023.4810
Line Course: S 27-10-00 W Length: 4.470
North: 1792537.4724 East : 6290021.4401
Line Course: S 00-35-15 W Length: 42.140
North: 1792495.3346 East : 6290021.0080
Line Course: S 26-00-00 E Length: 4.469
North: 1792491.3179 East : 6290022.9671
Line Course: N 00-35-15 E Length: 50.134
North: 1792541.4493 East : 6290023.4811

Perimeter: 101.212 Area: 92 Sq Ft 0.00 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0001 Course: S 85-42-04 E
Error North: -0.00001 East : 0.00013
Precision 1: 1.012.130.000



STAFF REPORT
CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BRONW, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT: COMMUNITY DEVELOPMENT
GREG WADE, DIRECTOR *GW*
ELIZABETH CUMMING, ASSISTANT PROJECT MANAGER

SUBJECT: NO. 2010-6940 APPROVING COUNCIL POLICY 613: POLICIES
AND REGULATIONS GOVERNING BANNER HANGING
PROCEDURES, FEES AND GUIDELINES

BACKGROUND:

The City has recently erected two new sets of banner poles, one set at Veterans Park and the other at Triangle Park. These banner poles are intended for local organizations to hang banners that advertise upcoming events within the City of Imperial Beach. Currently, the City does not have a banner policy or banner hanging criteria for these banner poles.

DISCUSSION:

Due to recent confusion regarding policy and procedure to hang banners, City staff feels it is necessary to have a banner policy in place. Attached is a recommended policy governing the banner poles. Generally, the Banner Pole policy regulates the following:

1. The Placement of Banner Poles
2. The Procedures and guidelines for removal of banners
3. The size and type of banners allowed
4. The Limitations on placement
5. The Non-eligible banners

ENVIRONMENTAL IMPACT:

Not a project as defined by CEQA.

FISCAL IMPACT:

No fiscal impact.

CITY MANAGER'S RECOMMENDATION:

Adopt Resolution No. 2010-6940, approving Council Policy 613 regarding a City Banner Policy.



Gary Brown, City Manager

Attachments:

1. Resolution 2010-6940
2. Council Policy 613-Banner Policy

RESOLUTION NO. 2010-6940

A RESOLUTION OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING THE COUNCIL POLICY 613: POLICIES AND REGULATIONS GOVERNING BANNER HANGING PROCEDURES, FEES AND GUIDELINES

WHEREAS, the City has recently erected two new banner poles, one at Veterans Park and the other at Triangle Park; and

WHEREAS, these banner poles are intended for local organizations to hang banners that advertise upcoming city events; and

WHEREAS, the City does not currently have a banner policy or banner hanging criteria for these banner poles; and

WHEREAS, due to recent confusion regarding policy and procedure to hang banners, city staff feels it is necessary to have a banner policy in place.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach that the City Council adopt Resolution 2010-6940, approving Council Policy 613, entitled "Policies and Regulations Governing Banner Hanging Procedures, Fees and Guidelines."

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 4th day of August 2010, by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

CITY OF IMPERIAL BEACH COUNCIL POLICY		
SUBJECT: POLICIES AND REGULATIONS GOVERNING BANNER HANGING PROCEDURES, FEES AND GUIDELINES	POLICY NUMBER: 613	PAGE Page 1 of 2
ADOPTED BY: Resolution No. 2010-6921	DATED: August 4, 2010	

BACKGROUND

The City has recently erected two new sets of banner poles, one set at Veterans Park and the other at Triangle Park. These banner poles are intended for local organizations to hang banners that advertise upcoming city events. Currently the City does not have a banner policy or banner hanging criteria for these banner poles.

PURPOSE

The purpose of the 613 Policy is to provide standardized procedures, fees and guidelines for use of the banner poles.

POLICY

1. City Policy will cover the banner poles placed at Veterans Park and Triangle Park.
2. A designated staff person in the Community Development Department as designated by the Community Development Director will be the primary contact and regulator of Council Policy 613. A designated staff person in the City Manager's office as designated by the City Manager will be the secondary contact and regulator of Council Policy 613.
3. If any of the regulations, procedures or guidelines is not followed, the City staff primary contact will remove said banner and keep at his/her office for pick up.
4. Banners may be subject to removal for maintenance or repair work or for public safety reasons.
5. If banners are removed by City staff, they must be picked up within one week of notification of removal. If banners are not picked up, the City may recycle them for other uses.

BANNER SIZE/TYPE:

1. Specific banner size must be 3' high by 8' wide. If the banner is not the appropriate size, it will not be allowed on the poles.
2. It is recommended that the banner be constructed of some type of waterproof material such as vinyl, plastic, or canvas to prevent wear and tear.
3. Grommets must be included at each corner to allow for proper installation.

LIMITATIONS ON PLACEMENT:

1. Each set of banner poles allows for 2 banners.
2. Banner placement is first come, first served. No reservations are required.

CITY OF IMPERIAL BEACH COUNCIL POLICY		
SUBJECT: POLICIES AND REGULATIONS GOVERNING BANNER HANGING PROCEDURES, FEES AND GUIDELINES	POLICY NUMBER: 613	PAGE Page 2 of 2
ADOPTED BY: Resolution No. 2010-6921	DATED: August 4, 2010	

3. Banner must be hung to proper eye rings on banner poles. No tape or adhesive product may be used to affix the banner to the poles.
4. If the banner is not installed properly, City staff will remove the banner.
5. A banner may be hung 2 weeks prior to the event date and must be taken down one day after the event date.
6. Repeating events are only allowed to hang their banner one day prior to the event date and must remove the banner one day after the event date.
7. If the banner is not removed one day after the event date, City staff will remove the banner.
8. Only one banner per event or activity, per set of poles is allowed.

NON-ELIGIBLE BANNERS:

The following will not be allowed on the City's banner poles:

1. Any banner advocating a political or discriminatory point-of-view.
2. Any activity announcements of regular meetings/classes/lessons/clinics.
3. Any banner advertising religious events or containing religious speech.

APPROVED BY:

Gary Brown, City Manager

DATE: _____



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: SEPTEMBER 22, 2010
SUBJECT: RATIFICATION OF COMMERCIAL ZONING REVIEW AD HOC COMMITTEE

BACKGROUND

On September 1, 2010, the City Council considered the status of the commercial zoning review project under an agenda item for that purpose. At that meeting, the Council was supposed to consider the commercial zoning review document that would be sent out for public review. However, after the regular agenda for the September 1st meeting was posted, staff told Council that the public document was not going to be available for the September 1st Council meeting. Therefore at the September 1st meeting, the City Council discussed the short timeframe to send the document out for public review based on dates for public workshops. They determined there was an urgent need to form an ad hoc committee of two councilmembers to review the draft document so that the document could be put out for public review as was scheduled. Therefore, at the September 1st meeting, a vote was taken and approved by 4 out of the 4 councilmembers present to consider creating an ad hoc committee. The committee was formed, and Mayor Janney and Councilmember Rose were appointed to the ad hoc committee that was created for the sole and limited purpose of reviewing the proposed commercial zoning review document that would be sent out for public review prior to the September 22, 2010 Council meeting.

DISCUSSION

This agenda item ratifies (1) the creation of the ad hoc committee created to review the commercial zoning document that will be sent out for public review in September of 2010 and (2) the appointment of the two councilmembers to the committee.

FISCAL IMPACT:

None associated with this report.

CITY MANAGER'S RECOMMENDATION:

Ratify the formation of the committee and appointment of the members.



Gary Brown, City Manager



AGENDA ITEM NO. 3.1

**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: SEPTEMBER 22, 2010
ORIGINATING DEPT.: HANK LEVIEN, PUBLIC WORKS DIRECTOR *HL*
JENNIFER M. LYON, CITY ATTORNEY
SUBJECT: INTRODUCTION AND FIRST READING OF ORDINANCE NO. 2010-1108 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING TITLE 12 – “STREETS, SIDEWALKS, AND PUBLIC PLACES” TO ADD CHAPTER 12.76 – “NEWS RACKS AFFECTING PUBLIC SAFETY” TO THE IMPERIAL BEACH MUNICIPAL CODE

BACKGROUND:

The City does not currently regulate the number and placement of news racks within the public rights-of-way. As a result, unregulated placement of news racks interferes with the flow of vehicular and pedestrian traffic; distracts and impairs the vision of motorists, posing a danger to pedestrians, particularly small children; interferes with the safe entry and departure from vehicles or buildings; and detracts from the appearance of streets, sidewalks, and businesses, all constituting a nuisance. In order to prevent the inconvenience and potential danger to the health, safety and welfare of the public, it is necessary to regulate the appearance, size, and placement of news racks.

DISCUSSION:

The proposed ordinance prohibits the placement of a news rack in such a way as to interfere with pedestrian, including access by disabled persons, and vehicular traffic and requires that news racks placed in the public rights-of-way conform to all of the provisions of the proposed Chapter 12.76 of the Imperial Beach Municipal Code (IBMC). The regulations in the proposed ordinance consist of requiring a permit, insurance, and a hold harmless agreement in order to maintain a news rack; and sets out the standards for the appearance of news racks, their placement and number, and maintenance and repair. The ordinance further provides for enforcement, revocation or modification of permits, and an appeal process.

FISCAL IMPACT:

N/A

ENVIRONMENTAL IMPACT:

The ordinance adding Chapter 12.76 to Title 12 of the IBMC, regulating appearance, location and operation of news racks is exempt from further review under the California Environmental Quality Act ("CEQA.") Specifically, the adoption of the ordinance is exempt under the general rule found in CEQA Guidelines section 15061(b)(3) which states that CEQA only applies to projects that would have a significant effect on the environment, and the activity is exempt from further review because the activity in question will not have a significant effect on the environment.

DEPARTMENT RECOMMENDATION:

Staff recommends that:

1. The City Council receive this report;
2. The Mayor calls for the reading of the title of Ordinance No. 2010-1108 an Ordinance of the City Council of the City of Imperial Beach, California, adding Chapter 12.76- "News racks Affecting Public Safety" to Title 12 – "Streets, Sidewalks and Public Places" of the City of Imperial Beach Municipal Code;
3. City Clerk to read title of the Ordinance No. 2010-1108; and
4. Motion to waive further reading and dispense introduction by title only and set the matter for adoption at the next regularly scheduled City Council meeting.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

 FOR

Gary Brown, City Manager

Attachments: 1. Ordinance No. 2010-1108 with Exhibit "A"

ORDINANCE NO. 2010-1108

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AMENDING TITLE 12 – “STREETS, SIDEWALKS, AND PUBLIC PLACES” TO ADD CHAPTER 12.76 – “NEWS RACKS AFFECTING PUBLIC SAFETY” TO THE IMPERIAL BEACH MUNICIPAL CODE

WHEREAS, the City Council finds that the City does not currently regulate the number and placement of news racks within the public right-of-way; and

WHEREAS, the City Council also finds that the unregulated placement of news racks presents an inconvenience and danger to the health, safety and welfare to the citizens of and visitors to the City of Imperial Beach; and

WHEREAS, the unregulated placement of news racks interferes with the safe flow of pedestrian and vehicular traffic; impairs the vision and distracts the attention of motorists and pedestrians and cause injury to the person or property of such persons; and

WHEREAS, the unregulated placement of news racks can inhibit wheelchair access and/or interfere with the safe use of the public rights of way by disabled persons; and

WHEREAS, the unregulated placement of news racks also inhibits the safe entry or departure of vehicles or buildings, and detracts from the appearance of streets, sidewalks and adjacent businesses; and

WHEREAS, news racks can cause patrons to lose funds in the event of a malfunction; and

WHEREAS, the City Council has determined that the above-listed characteristics constitute a public nuisance.

NOW, THEREFORE, the City Council of the City of Imperial Beach hereby ordains as follows:

SECTION 1. Title 12 of the Imperial Beach Municipal Code is hereby amended to add “Chapter 12.76 – News racks Affecting Public Safety” to read as shown in Exhibit “A,” which is attached hereto and incorporated herein by reference.

SECTION 2. The City Clerk is directed to prepare and have published a summary of this ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast pursuant to the provisions of Government Code section 36933.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California, on the 22nd day of September 2010; and thereafter **PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Imperial Beach, California, held on the ____ day of ____ 2010, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON
CITY ATTORNEY

EXHIBIT A

12.76.010 Purpose and intent.

A. The City Council finds and declares that it is necessary to establish comprehensive news rack regulations in order to achieve substantial government interests. The unregulated placement of news racks affecting the public right-of-way presents an inconvenience and danger to the health, safety and welfare of the inhabitants of the City in that, unless regulated, news racks may:

1. Interfere with the safe flow of pedestrian and vehicular traffic and inhibit wheelchair access and/or interfere with the safe use of the public rights of way by disabled persons;
2. Impair the vision and distract the attention of motorists and pedestrians, particularly small children, and cause injury to the person or property of such persons;
3. Inhibit safe entry and departure from vehicles or buildings;
4. Inhibit reasonable access to bus stops, bus benches and bus shelters;
5. Inhibit reasonable access for use and maintenance of sidewalks, poles, posts, traffic signs and signals, hydrants, mailboxes and similar appurtenances;
6. Detract from the appearance of streets, sidewalks and adjacent businesses;
7. Cause loss of funds to patrons in the event of a malfunction;
8. Expose the City to liability claims for personal injury and property damage.

B. News racks presenting any of the characteristics enumerated in subsection A of this section constitute a public nuisance, which the provisions of this chapter are enacted to prevent.

12.76.020 Definitions.

Whenever the following words and phrases are used in this chapter, they shall have the following meanings:

- A. "Department" means the Public Works Department.
- B. "Director" means the Director of the Public Works Department or his or her designee.

C. "News rack" or "newsrack" means any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display, distribution or sale of publications.

D. "Person" means the person or entity who owns any news rack located in the right-of-way in the City, or located so as to attempt to utilize or take advantage of the right-of-way, or who places or maintains, is responsible for, or directs the placing or maintenance of such news rack.

E. "Public right-of-way" means any place owned by the City or dedicated to use of the public for pedestrian or vehicular travel, including but not limited to a street, sidewalk, curb, gutter, parkway, highway, alley, mall, court, park or square.

F. "Roadway" means that part of a public right-of-way that is designed or used primarily for vehicular travel.

G. "Sidewalk" means the area of the public right-of-way that is designated or ordinarily used for pedestrian travel.

12.76.030 Prohibitions.

No person shall place or maintain a news rack so as to endanger safety of person(s) or property or unreasonably interfere with or impede the flow of pedestrian or vehicular traffic on a roadway or public right-of-way. In addition, no person shall place or maintain upon or over a public right-of-way a news rack, unless in conformance with all provisions of this chapter.

12.76.040 Permit required.

A. No person shall place or cause to be placed or maintained or cause to be maintained any news rack, or other device used or maintained for the display, distribution or sale of publications, hereinafter referred to in this chapter as "news rack," in or upon any roadway, public right-of-way or City-owned property in the City, or permit any news rack to remain upon any roadway, public right-of-way or City-owned property without first obtaining a written permit from the City. A permit will not be issued unless the application is completed in full, the requested installation meets all the appropriate placement and appearance criteria as set forth below, and the application is accompanied by the permit fee.

B. Any owner of a news rack currently existing on any City right-of-way must apply for a permit pursuant to this chapter within sixty days of the effective date of this ordinance provided that the existing news rack is in a legal location. Any news rack that is not the subject of a valid permit application as required by this chapter, will be deemed to be in violation of this chapter and subject to removal from the right-of-way as set forth herein.

C. This chapter shall not apply to an owner or occupant of property who places or maintains a news rack on private property, in such manner that the news rack will not interfere with the movement of pedestrians or vehicular traffic.

12.76.050 Permit – Applications.

A person desiring a permit for the placement of one or more news racks as required by this chapter shall file an application for such permit with the Community Development Department.

12.76.055 Permit – Application Process.

A. The Community Development Department shall be responsible for the receipt, distribution, tracking, permit fee and return of the permit to the applicant. The distribution will include routing the application to the Director for review, evaluation and conditions of approval or denial.

B. Each application shall be accompanied by a detailed plan giving a full description of the proposed location of each news rack, the type and design of the news rack to be used, and such other information regarding the appearance and placement as may be required by the Director.

C. If the application for a permit is denied, the Director shall notify the applicant setting forth the grounds for denial of the permit in clear and concise language. Within 5 days of receipt of the Director's notification of denial of the application for a permit, the applicant may file a written request with the City Manager for a hearing before the City Manager. The City Manager shall set a time and place for the hearing and shall notify the applicant thereof at least five days before the hearing date. The hearing shall be held within 30 days after the request is filed. At any hearing held pursuant to this section the applicant shall have the right to be heard and to present witnesses and documentary evidence on its behalf. The decision of the City Manager shall be final.

12.76.060 Filing fee.

A person desiring a permit shall pay a fee in an amount to be set by City Council resolution, to the City upon the filing of each application for a permit as provided in this chapter for the purpose of defraying the expense of processing the application.

12.76.070 Issuance of permit.

A. The Director shall approve the permit applied for if the application meets all the requirements of this chapter.

B. The Director shall determine priorities related to the location of news racks as follows:

1. An application for a news rack in a new location shall be on a first come, first serve basis.

2. News racks already placed at an existing, legal location shall have priority over new applicants for the same location, provided the owners of the existing news racks submit an application for a permit as required by section 12.76.040(B), and the existing news racks comply with the appropriate placement and appearance criteria within six months, as set forth in Section 12.76.110(F),

3. In determining which pre-existing news rack(s) shall be permitted to remain at an existing legal location, the Director shall assign the space(s) at random by means of a public lottery. Such news racks must also apply for a permit as required by section 12.76.040(B), and comply with the appropriate placement and appearance criteria within six months, as set forth in Section 12.76.110(F),

12.76.080 Permit nontransferable.

The permit shall not be transferable from one person to another.

12.76.090 Insurance.

Prior to the issuance of a permit pursuant to this chapter, the applicant shall file a policy of insurance, or certificate thereof, issued by a company authorized to do business in the State with the Director. Said policy shall name the City as a named insured, and shall indemnify the City for any loss, damage or liability suffered by the City by reason of the existence of such news rack in or upon the City right-of-way and/or the operation and maintenance of such news racks. Said policy of insurance shall indemnify the City in the sum of \$1,000,000 or more against loss or liability arising from the injury or death of one person, and shall indemnify the City in the sum of \$1,000,000 or more against loss or liability arising from the injury or death of two or more persons in any one accident, and the sum of \$300,000 or more with respect to any property damage aforesaid. Such indemnity, public liability and property damage insurance shall be maintained in full force and effect during the entire term of the permit granted pursuant to this chapter.

12.76.100 Hold harmless agreement.

Prior to the issuance of a permit pursuant to this chapter, the applicant shall enter into an agreement with the City whereby the permittee shall agree as follows: The City, its agents, officers and employees, shall not be held liable for any claims, liabilities, penalties, fines or for any damage to any goods, properties or effects of any person whatsoever, or for personal injuries to or deaths of any person, whether caused by or resulting from any acts or omission of permittee, or his agents, employees or representatives, or for dangerous or defective conditions of the property of permittee or any way caused by news racks placed or maintained pursuant to the permit; permittee further agrees to indemnify and save free and harmless and defend in any lawsuit the City and its authorized agents, officers, and employees against any of the foregoing

liabilities and any cost and expenses incurred by the City, its agents, officers or employees on account of any claims therefore.

12.76.110 Standards.

A. No news rack shall exceed 40 inches in height, 20 inches in width or 20 inches in depth.

B. Each news rack shall be constructed entirely of opaque, shatterproof materials.

C. No photographs, drawings, advertising signs, or material other than the printed name of the publication contained within the news rack, and the notice described in subsection D of this section, shall be displayed on the outside of any news rack.

D. Each news rack shall have affixed to it in a readily visible place, a notice not larger than three inches high and six inches long, setting forth the name and address of the person responsible for maintaining the news rack and a working telephone number to call to report a malfunction, or to obtain a refund in the event a person using the news rack is unable to receive the publication paid for. The name, address and telephone number given shall be those desired for receipt of all notices provided by this chapter.

E. Each news rack shall be maintained in a neat and clean condition and in good repair at all times. Evidence that the news rack is not maintained in a clean condition and good repair includes, but is not limited to, the presence of:

1. Graffiti.
2. Broken or unreasonably misshapen structural components.
3. Cracks, dents or discoloration of the news rack.
4. Substantial accumulation of dirt, grease, rust, or corrosion.
5. Substantial amount of chipped, faded, peeling, or cracked paint.

F. The provisions of this section shall apply to all news racks, whether installed and maintained prior to or after the effective date of this ordinance that, in whole or in part, rests upon, in, or over any dedicated sidewalk, right-of-way or roadway. Those news racks installed prior to the effective date of this ordinance shall apply for a permit as required by section 12.76.040(B), and be brought into compliance with the all the provisions of this code no later than six months after the effective date hereof,

12.76.120 Location.

A. No news rack shall be located, maintained or placed at or within:

1. Twenty-five feet of the intersection of two or more roadways;

2. Five feet of any crosswalk, bus bench, fire hydrant or other emergency facility;
3. Forty-five feet ahead or forty-five feet to the rear of a bus stop as measured along the street curb;
4. Ten feet of any driveway;
5. Five hundred feet of any cluster of three other news racks, whether or not containing the same edition of the publication.

B. All news racks shall be placed in a location that preserves a minimum of four feet of unobstructed pedestrian accessible sidewalk between the rack and the street side of the sidewalk.

C. News racks upon sidewalks or other pedestrian ways shall be located only at the edge thereof farthest from the roadway. If a roadway adjoins such sidewalk or pedestrian way, news racks shall only be located at the edge away from the roadway, and if the wall of a building adjoins the edge away from the roadway, then news racks must be parallel to and within six inches of such wall, but neither directly in front of any display window nor within three feet of any entrance to such building.

D. No news rack shall be chained, bolted or otherwise attached to the ground or to any fixture unless it is affixed in a manner acceptable to the Director pursuant to a validly issued Encroachment Permit. E. In addition to any other provisions of this section, news racks shall be otherwise located so as not to create a danger to persons using the news rack in a reasonably foreseeable manner, and that all news racks will comply with all applicable federal, state, and local laws and regulations including, without limitation, the Americans with Disabilities Act and other laws and regulations relating to barrier-free design.

12.76.130 Maintenance and repair.

The permittee shall at all times keep and maintain each of the news racks in a good state of repair and in a neat, clean condition to the satisfaction of the Director. Said maintenance shall include: painting at such intervals as may be specified from time to time by the Director to ensure that the news racks have a neat appearance; and repairing of any damage within 72 hours after written notification of damage given by the Director.

12.76.135 Removal or relocation of news racks – repair of sidewalks.

Upon the removal or relocation of any news rack, the person so removing or relocating the news rack shall be responsible for the repair of any resulting condition, including filling in of any holes left in the sidewalk and/or the removal of any bolts or other devices used to affix the news rack to the sidewalk such that there are no obstructions above the grade of the sidewalk. Such work is to be done to the satisfaction of the Department.

12.76.140 Abandonment.

No news rack shall remain empty for a period of 30 continuous days.

12.76.150 Inspection.

The Director shall be responsible for the enforcement of this chapter and shall authorize periodic inspections of news rack locations, including inspections upon the removal or relocation of a news rack, to accomplish the purposes of this chapter.

12.76.160 Enforcement.

A. Upon determining that a news rack exists in violation of any provision of this chapter, the City Manager shall:

1. Cause the news rack to be removed and processed as unclaimed property under applicable provisions of law if the news rack is in violation of IBMC 12.76.110(D), and the City Manager is unable to otherwise ascertain the name and address of its owner.

2. Cause an order to be issued to the person named in the notice required by IBMC 12.76.110(D) to correct the offending condition if the news rack is in compliance with IBMC 12.76.110(D). The order shall be telephoned to the distributor and confirmed by mailing a copy of the order by certified mail, return receipt requested, to the person at the address shown on the notice required by IBMC 12.76.110(D). The order shall specifically describe the offending condition and suggest actions necessary to correct it. If the distributor fails to make the corrections within five days (excluding Saturdays, Sundays and legal holidays) of receipt of the order, and no request for a hearing is filed, the City Manager shall cause the offending news rack to be seized. The person named in the notice required by IBMC 12.76.110(D) shall be notified of the seizure by certified mail within 30 days. If no response is made, the City Manager shall cause the news rack to be processed as unclaimed property under applicable law.

3. Cause the news rack to be seized and processed under the provisions of subsection B of this section relating to summary correction of a violation, if the news rack poses an immediate danger to pedestrians or vehicles, irrespective of whether it is in compliance with IBMC 12.76.110(D).

B. In the case of minor violations of this chapter that can be corrected at the site, any City employee, as an alternative to removal of the news rack, is authorized to correct the violation summarily.

C. Any news rack existing in violation of any provision of this chapter shall constitute a public nuisance, and may be abated in accordance with applicable provisions of law.

12.76.170 Hearing.

Within five days after receipt of the City Manager's order issued pursuant to the provisions of IBMC 12.76.160(A)(2), any party affected by the order may file a written request with the City Manager for a hearing before the City Manager. The City Manager shall set a time and place for the hearing and shall notify the party thereof at least five days before the hearing date. The hearing shall be held within 30 days after the request is filed. At any hearing held pursuant to this section or IBMC 12.76.190, the permittee shall have the right to be heard and to present witnesses and documentary evidence on its behalf. The decision of the City Manager shall be final.

12.76.180 Revocation or modification of permits.

After a hearing as provided in this chapter, or if no hearing is requested, the City Manager may revoke or modify any permit which has been granted pursuant to this chapter on any one or more of the following grounds:

- A. That such permit was obtained by fraud;
- B. That the use for which such permit was granted is not being exercised;
- C. That the use for which such permit was granted has ceased or has been suspended for 30 days or more;
- D. That any person making use of or relying upon the permit has violated any condition of such permit, or that the use for which permit was granted, is being, or recently has been exercised contrary to the terms or conditions of the permit, or in violation of any statute, ordinance, law or regulation or such person has failed to comply with any order of the Director authorized by this chapter;
- E. That the use for which the permit was granted is so exercised as to be detrimental to the public health, safety or welfare or so as to be a nuisance.

12.76.190 Hearing for revocation or modification.

A. The City Manager, upon the filing of a complaint by the Director shall hold a hearing for modification or revocation of any permit issued as provided for in this chapter. Such hearing shall be held within 40 days after the filing of a written complaint with the City Clerk setting forth the grounds of revocation or modification in clear and concise language. At least 10 days before the hearing, a copy of said complaint shall be mailed to the permittee together with a notice of the time and place of the hearing. The permittee may file an answer to the grounds set forth in the complaint at or before the hearing. After the hearing, the City Manager may:

- 1. Revoke or modify the permit as requested in the complaint; or
- 2. Deny the revocation and modifications requested in the complaint in whole or in part.

B. The decision of the City Manager shall be final and conclusive. Appeals shall be governed by the procedures set out in California Code of Civil Procedure Section 1094.8 for expedited judicial review.

12.76.200 Termination.

A. Each permit issued pursuant to this chapter shall terminate at the expiration of one year from the date of issuance by the Department unless the permit is issued for a shorter period, in which event it shall terminate at the end of such shorter period. In the event no use in reliance on a permit issued pursuant to this chapter is commenced within a period of 30 days from the date of issuance, or within an extension of said time as granted by the City Manager, then the permit shall terminate and expire.

B. Upon the termination or revocation of any permit issued pursuant to this chapter, the person to whom the permit was issued shall remove all news racks placed or maintained upon any City right-of-way or City-owned property pursuant to such permit. In the event such person fails to remove such news racks within 10 days after notice by the Director to do so, the City may elect to treat such news racks as having been abandoned and may remove and dispose of such news racks at the expense of such person.

12.76.210 Severability.

If any section, subsection, clause or phrase of this Chapter is held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions of this Chapter or any part thereof. The City Council hereby declares that this Chapter, and each section, subsection, sentence, clause and phrase hereof, would have been prepared, proposed, adopted, approved and ratified irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared invalid or unconstitutional.



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: FINANCE DEPARTMENT

SUBJECT: FIRST READING OF ORDINANCE NO. 2010-1111 – CORRECTLY STATE AND EXTEND THE PLAN EFFECTIVENESS AND TAX INCREMENT DEADLINES FOR THE REDEVELOPMENT PLAN FOR THE PALM AVENUE/COMMERCIAL REDEVELOPMENT PROJECT PERTAINING TO THE ORIGINAL PROJECT AREA AND THE ADDED AREA PURSUANT TO HEALTH AND SAFETY CODE SECTION 33333.2 (c)

BACKGROUND

A review by our fiscal consultant of Ordinance 2006-1050 found differences relative to redevelopment area time limits. The attached ordinance correctly states plan effectiveness and the debt establishment deadline dates.

DISCUSSION

On December 20, 2006 the City Council approved Ordinance 2006-1050. This ordinance clarified aspects of the merged redevelopment project area as well as attempted to update the redevelopment time limits relative to legislation which allowed agencies to extend time periods if the 2003-04 ERAF payment to schools was made. A review of this ordinance found inconsistencies relative to the correct dates allowed by law for the original project area and added area. The table below details the corrections:

	Current Limits Original Area	Limits Should Be Original Area	Current Limits Amendment	Limits Should Be Amendment
Debt Establishment	2/7/2017	2/7/2016	7/18/2022	7/18/2021
Plan Effectiveness	2/7/2017	2/7/2027	7/18/2022	7/18/2032

FISCAL IMPACT

The intent of the legal deadlines was to allow redevelopment agencies to recover revenues lost as a result of the ERAF shift in fiscal year 2003-04.

DEPARTMENT RECOMMENDATION

1. Receive report;
2. Mayor calls for the reading of the title of Ordinance No. 2010-1111 – AN ORDINANCE OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, TO CORRECTLY STATE AND EXTEND THE PLAN EFFECTIVENESS AND TAX INCREMENT DEADLINES FOR THE REDEVELOPMENT PLAN FOR THE PALM AVENUE/COMMERCIAL REDEVELOPMENT PROJECT PERTAINING TO THE ORIGINAL PROJECT AREA AND THE ADDED AREA PURSUANT TO HEALTH AND SAFETY CODE SECTION 33333.2 (c);
3. City Clerk to read title of Ordinance No. 2010-1111; and
4. Motion to waive further reading and dispense introduction by title only and set the matter for adoption at the next regularly scheduled City Council meeting.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

 FOR

Gary Brown, City Manager

Attachments:

1. Ordinance 2010-1111

ORDINANCE NO. 2010-1111

AN ORDINANCE OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, TO CORRECTLY STATE AND EXTEND THE PLAN EFFECTIVENESS AND TAX INCREMENT DEADLINES FOR THE REDEVELOPMENT PLAN FOR THE PALM AVENUE/COMMERCIAL REDEVELOPMENT PROJECT PERTAINING TO THE ORIGINAL PROJECT AREA AND THE ADDED AREA PURSUANT TO HEALTH AND SAFETY CODE SECTION 33333.2 (c)

WHEREAS, pursuant to provisions of the California Community Redevelopment Law (Health and Safety Code Sections 33000 *et seq.*), the Redevelopment Agency of the City of Imperial Beach (the "Agency") is engaged in the activities necessary to execute and implement the redevelopment plan ("Redevelopment Plan") for the Palm Avenue/Commercial Redevelopment Project Area (the "Original Project Area"); and

WHEREAS, the City Council of the City of Imperial Beach, California (the "City Council") , adopted Ordinance No. 96-901 on February 7, 1996, approving and adopting the Redevelopment Plan; and

WHEREAS, on July 18, 2001 by Ordinance No. 2001-970, the City Council amended the Redevelopment Plan by adopting Plan Amendment No. 1 (the "Amendment Area"), which added territory to the Original Project Area and further added limitations amending the Redevelopment Plan; and

WHEREAS, on December 20, 2006, by adoption of Ordinance No. 2006-1050 ("Ordinance No. 2006-1050), the City Council adopted a text amendment to the Redevelopment Plan, clarifying that the amendment to the Redevelopment Plan under Ordinance No. 2001-970 added the Amendment Area to the Original Project Area and was not intended to add a new project area by its own terms ("Second Amendment"); and

WHEREAS, on March 19, 2008, by adoption of Ordinance No. 2008-1066, the City Council amended the Redevelopment Plan by adopting Plan Amendment No. 3, relating to the use of eminent domain in the Original Project Area; and

WHEREAS, the Original Project Area and the Amendment Area shall collectively referred to herein as the "Project Area," unless otherwise referenced separately herein; and

WHEREAS, this Ordinance corrects the effectiveness and tax increment deadlines for the Redevelopment Plan pertaining to the Original Project Area and the Amendment Area which were incorrectly set forth in Ordinance No. 2006-1050 and sets forth the true and correct effectiveness and tax increment deadlines for the Redevelopment Plan pertaining to the Original Project Area and the Amendment Area; and

WHEREAS, the extension of time limits for the establishment of indebtedness for the Redevelopment Plan pertaining to the Original Project Area and the Amendment Area have no force and effect and were therefore incorrectly stated and this Ordinance correctly states the time limits for the establishment of indebtedness; and

WHEREAS, the time limitations in Health and Safety Code Section 33333.2 apply to every redevelopment plan adopted pursuant to Article 5 of the California Community Redevelopment Law (commencing with Section 33360) on or after January 1, 1994, and to amendments that add territory and that are adopted on or after January 1, 1994; and

WHEREAS, pursuant to Health and Safety Code Section 33333.2(a)(1), the Redevelopment Plan for the Project Area contains a time limit on the establishing of indebtedness; and

WHEREAS, the correct time limit for the establishment of indebtedness for the Redevelopment Plan pertaining to the Original Project Area is February 7, 2016, as originally set forth in the Redevelopment Plan.

WHEREAS, the correct time limit for the establishment of indebtedness for the Redevelopment Plan pertaining to the Amendment Area is July 18, 2021, as originally set forth in the Redevelopment Plan.

WHEREAS, pursuant to Health and Safety Code Section 33333.2(a)(2), the Redevelopment Plan for the Project Area contains a time limit for effectiveness; and

WHEREAS, pursuant to Health and Safety Code Section 33333.2 (a) (3), the Redevelopment Plan for the Project Area contains a time limit for the payment of indebtedness/receipt of tax increment; and

WHEREAS, the time limits for effectiveness and the payment of indebtedness/receipt of tax increment for the Redevelopment Plan pertaining to the Original Project Area are February 7, 2026 and February 7, 2041, respectively; and

WHEREAS, the time limits for effectiveness and the payment of indebtedness/receipt of tax increment for the Redevelopment Plan pertaining to the Amendment Area are July 18, 2031 and July 18, 2046, respectively; and

WHEREAS, the California Legislature enacted SB 1045, making various amendments to the Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*); and

WHEREAS, Health and Safety Code Section 33333.2 (c) , as added by SB 1045, provides that when a redevelopment agency is required, pursuant to Health and Safety Code Section 33681.9, to make a payment to the county auditor for deposit in the county=s Educational Revenue Augmentation Fund (“ERAF”), the legislative body of the agency may

amend, by ordinance, the redevelopment plan to extend the time limits required pursuant to paragraphs (2) and (3) of subdivision (a) of Health and Safety Code Section 33333.2 by one (1) year. In adopting the ordinance, neither the legislative body nor the agency is required to comply with Health and Safety Code Section 33354.6, Article 12 (commencing with Health and Safety Code Section 33450), or any other provision of the Community Redevelopment Law relating to the amendment of redevelopment plans; and

WHEREAS, Health and Safety Code Section 33681.9 required the Agency to make a payment to the San Diego County ERAF during the 2003-2004 fiscal year; and

WHEREAS, the Agency made a payment to the San Diego County ERAF during the 2003-04 fiscal year and is thus entitled to extend the time limits required pursuant to paragraphs (2) and (3) of subdivision (a) of Health and Safety Code Section 33333.2 by one (1) year for the Redevelopment Plan pertaining to the Original Project Area and the Amendment Area; and

WHEREAS, In adopting the ordinance, neither the legislative body nor the agency is required to comply with Health and Safety Code Section 33354.6, Article 12 (commencing with Health and Safety Code Section 33450), or any other provision of the Community Redevelopment Law relating to the amendment of redevelopment plans; and

WHEREAS, the Agency and City Council now desire to take advantage of the above mentioned provisions of the Health and Safety Code and adopt an ordinance to extend the time limits for effectiveness and payment of indebtedness/receipt of tax increment for the Redevelopment Plan pertaining to the Original Project Area and the Amendment Area; and

WHEREAS, the Agency has provided notice of the public hearing to consider this Ordinance to extend the time limits for effectiveness and payment of indebtedness/receipt of tax increment for the Redevelopment Plan for the Original Project Area and the Amendment Area.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF IMPERIAL BEACH ordain as follows:

Section 1: Adoption of Recitals. The City Council hereby finds and determines that all of the foregoing recitals are true and correct, and that all legal prerequisites to the adoption of this Ordinance, including the findings and determinations required by Health and Safety Code Section 33333.2, have been satisfied.

Section 2: Time Limit for Establishment of Indebtedness: Based upon the above findings and determinations, in accordance with Health and Safety Code Section 33333.2 (a) (1), and notwithstanding any other provisions in the Redevelopment Plan, the City Council hereby finds and determines that the time limits for establishment of indebtedness for the Redevelopment Plan pertaining to the Original Project Area and the Amendment Area set forth in Ordinance No. 2006-1050 have no force and effect and the true and correct the time limits for establishment of indebtedness for the Redevelopment Plan are as follows:

a. The time limit for the establishment of indebtedness for the Redevelopment Plan pertaining to the Original Project Area is February 7, 2016; and

b. The time limit for the establishment of indebtedness for the Redevelopment Plan pertaining to the Amendment Area is July 18, 2021.

Section 3: Extension of Time Limits. Based upon the above findings and determinations, in accordance with Health and Safety Code Section 33333.2 (c), and notwithstanding any other provisions in the Redevelopment Plan, the City Council hereby amends the Redevelopment Plan by extending the time limits for effectiveness and payment of indebtedness/receipt of tax increment, as follows:

a. The time limits for effectiveness and the payment of indebtedness/receipt of tax increment for the Redevelopment Plan pertaining to the Original Project Area shall be extended to February 7, 2027 and February 7, 2042, respectively; and

b. The time limits for effectiveness and the payment of indebtedness/receipt of tax increment for the Redevelopment Plan pertaining to the Amendment Area shall be extended to July 18, 2032 and July 18, 2047, respectively; and

Section 4: Redevelopment Plans in Effect. The Redevelopment Plan, as amended, shall remain in full force and effect, unmodified except to the extent of the amendment expressly set forth in this Ordinance.

Section 5: Certified Copy by City Clerk. The City Clerk is hereby directed to send a certified copy of this Ordinance to the Agency, whereupon the Agency is vested with the responsibility for continuing to carry out the Redevelopment Plan as herein amended.

Section 6: 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 the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 7: Publication. The City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation.

Section 8: Effectiveness. This Ordinance shall take effect upon the date of publication.

Signed and approved this 22nd day of September, 2010.

Jim Janney
Mayor of the City of Imperial Beach

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Imperial Beach at its meeting held _____, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Published:

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

APPROVED AS TO FORM:

JENNIFER LYON
CITY ATTORNEY



STAFF REPORT CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010
ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR
DAVID GARCIAS, CODE COMPLIANCE OFFICER

SUBJECT: SECOND READING AND ADOPTION:
ORDINANCE NO. 2010-1109 TO AMEND THE PROVISIONS OF
THE CITY OF IMPERIAL BEACH MUNICIPAL CODE,
AMENDING SECTION 1.12.020 OF CHAPTER 1.12 AND
SECTIONS 1.22.030, 1.22.060, 1.22.070, 1.22.080, 1.22.100,
1.22.110, 1.22.120, AND 1.22.160 OF CHAPTER 1.22 OF THE
IMPERIAL BEACH MUNICIPAL CODE REGARDING CIVIL
PENALTIES, ADMINISTRATIVE CITATIONS, AND FINES.

BACKGROUND / DISCUSSION:

In 2005, the City Council adopted Ordinance No. 2005-1024 amending Chapter 1.12 and adding Chapter 1.22 of the Imperial Beach Municipal Code establishing Administrative Citations and fines.

Administrative Citations have been successfully administered and issued by the Imperial Beach Code Compliance Division. The process has been similar to the process applicable to parking citations. When an enforcement officer determines that a violation of the Municipal Code has occurred, the officer has the authority to issue an Administrative Citation to the person responsible for the violation. If the violation does not create an immediate danger to health and safety, then the responsible person may be issued a warning notice for the first violation.

If the violation is not corrected by a correction date, or there is a second or subsequent violation of the same ordinance, term, or condition anytime within 18 months, an Administrative Citation may be issued with a fine assessed.

City Council conducted the first reading and introduction of this ordinance at their meeting of September 1, 2010.

PROCEDURE:

The proposed amendments to Chapter 1.12 and 1.22 will clarify and streamline the Civil Penalties and Administrative Citation process. The main proposed changes are:

1. Changing the date to calculate the appeal period. The deadline to appeal a citation and fine would continue to be thirty (30) days, but the date to calculate the appeal period would change to thirty days from the date the Administrative Citation is issued rather than thirty days from the date violations are to be corrected. This change is in line with other jurisdictions, and helps standardize the issuance of citations for officers and

inspectors. This thirty-day appeal period is only for cases where an Administrative Citation has been issued, and a fine assessed.

2. Changing the language for determining the correction date of a warning notice to: If a violation does not create an immediate danger to life, health, or safety of persons or property, the responsible person may be issued a warning notice for the first violation. The responsible person will be given a reasonable period of time to correct the violation, and the time provided to correct the violation will depend on the nature and extent of work required. Providing for a reasonable period of time to correct a violation allows staff to account for the nature and extent of work required to abate the violation.
3. Clarifying the procedures for collecting unpaid fines by adding language that the unpaid fine(s), plus interest and late charges, may be declared a special assessment against any real property and a notice of lien shall be recorded in the Office of the County Recorder, and the amounts shall be collected at the same time and in the same manner as ordinary property taxes.
4. Clarify language stating that civil penalties may be assessed for violation(s) of any provision of the municipal code.

CONCLUSION:

These proposed amendments to the ordinance will allow staff to perform code compliance duties in a more efficient and effective manner; and will standardize the process for issuing Administrative Citations for inspectors and officers.

FISCAL ANALYSIS:

The amendments to the regulations are not expected to produce any change or increase to current revenue to the City. The expedited administrative process is anticipated to enhance code compliance and reduce enforcement costs.

DEPARTMENT RECOMMENDATION:

Staff Recommends that the Mayor and City Council:

1. Receive the report;
2. Mayor calls for introduction of Ordinance No. 2010-1109, amending section 1.12.020 of chapter 1.12 and sections 1.22.030, 1.22.060, 1.22.070, 1.22.080, 1.22.100, 1.22.110, 1.22.120, and 1.22.160 of chapter 1.22 of the Imperial Beach Municipal Code regarding civil penalties, administrative citations, and fines;
3. City Clerk reads title of Ordinance No. 2010-1109; and
4. Motion to dispense with the second reading and adopt Ordinance No. 2010-1109 by title only.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachment:

1. Ordinance No. 2010-1109

ORDINANCE NO. 2010-1109

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA AMENDING SECTION 1.12.020 OF CHAPTER 1.12 AND SECTIONS 1.22.030, 1.22.060, 1.22.070, 1.22.080, 1.22.100, 1.22.110, 1.22.120, AND 1.22.160 OF CHAPTER 1.22 OF THE IMPERIAL BEACH MUNICIPAL CODE REGARDING CIVIL PENALTIES, ADMINISTRATIVE CITATIONS, AND FINES

THE IMPERIAL BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Section 1.12.020 of Chapter 1.12 (General Penalty) of the Imperial Beach Municipal Code is amended to read as follows:

1.12.020. Civil penalties—Procedures.

A. Any person or organization violating any provision of this code, or rules and regulations adopted thereunder, or the conditions of any permit issued pursuant to such ordinance, rule or regulation, or by any act of commission or omission procures, aids or abets such violation, shall be subject to civil penalties as provided in this chapter.

B. Civil penalties may be directly assessed by means of a notice and order issued pursuant to Titles 8, 15, or 19, or may be recovered by legal action. The notice and hearing procedures in Chapter 1.16 apply.

C. Civil penalties assessed by means of notice and order shall be collected in accordance with the lien, personal obligation and other procedures specified in this code. Civil penalties assessed in a legal action shall be collected in the same manner as judgments in civil actions.

D. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. Civil penalties for failure to obtain any required permit shall begin to accrue on the first day activity subject to the permit requirement is commenced, and shall cease to accrue on the day the permit is obtained. Civil penalties for violation of any order to cease violation or notice and order to correct shall begin to accrue on the first day such order or notice is posted, and shall cease on the day the violation is actually stopped.

E. 1. A civil penalty for a violation of any ordinance, rule or regulation by a person engaged in a noncommercial venture shall be assessed at the rate of fifty dollars per day per violation.

2. A civil penalty for a violation of any ordinance, rule or regulation by a person engaged in a commercial venture shall be assessed at the rate of one hundred dollars per day per violation.

F. Penalties for the second separate violation of a like nature by the same person shall be double the rates identified in subsection E of this section. Penalties for any separate violation of a like nature beyond a second violation by the same person shall be triple the rates identified in subsection E.

SECTION 2: Section 1.22.030 of Chapter 1.22 (Administrative Citations and Fines) of the Imperial Beach Municipal Code is amended to read as follows:

1.22.030. Issuance of Administrative Citation.

A. Any person who violates any provision of the Imperial Beach Municipal Code or regulation of the City, any condition of approval of a permit or entitlement, any condition of an environmental review, or any term or condition of any agreement with the City made pursuant to the police power may be issued an administrative citation by an Enforcement Officer as provided in this Chapter. A violation of this Code includes, but is not limited to, all violations of the Municipal Code and the failure to comply with any condition imposed by any entitlement, permit, city agreement or environmental review issued or approved pursuant to this Code.

B. Each and every day that a violation of the Municipal Code exists constitutes a separate and distinct offense. A separate citation may be issued for each day a violation occurs.

C. A civil fine shall be assessed by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the City of Imperial Beach.

D. Fines shall be assessed in the amounts specified by resolution of the City Council, or as follows where no amount is otherwise specified:

- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
- (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same ordinance or permit within an eighteen-month (18) period from the date of the first violation;
- (3) A fine not exceeding five hundred dollars (\$500.00) for the third violation of the same ordinance or permit within an eighteen-month (18) period from the date of the first violation.
- (4) A fine not exceeding one thousand dollars (\$1,000.00) for each additional violation of the same ordinance or permit within an eighteen-month (18) period from the date of the first violation.

E. A second or subsequent violation need only be of the same ordinance, term, or condition to require the larger fine, and need not involve the same personnel or property, provided that the same responsible person is cited. The fine amounts shall be cumulative where multiple citations are issued.

F. If the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to life, health, or safety of persons or property, then the responsible person shall be issued a warning only on the first violation. The warning will advise the responsible person of the nature of the violation and the date upon which the violation shall be corrected. The responsible person will be given a reasonable period of time to correct the violations, and the time

provided to correct the violation will depend on the nature and extent of work required-. If the violation is not corrected within that time period, an administrative citation with a fine shall be issued.

SECTION 3: Section 1.22.060 of Chapter 1.22 (Administrative Citations and Fines) of the Imperial Beach Municipal Code is amended to read as follows:

1.22.060. Satisfaction of Administrative Citation.

A. Upon receipt of a citation, the responsible person must do the following:

- (1) Pay the fine to the City within thirty (30) calendar days from the date the administrative citation is issued. All fines assessed shall be payable to the Imperial Beach City's Treasurer. Payment of a fine shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the City; or
- (2) Contest the administrative citation and request an Administrative Hearing within thirty (30) calendar days from the date the administrative citation is issued.

SECTION 4: Section 1.22.070 of Chapter 1.22 (Administrative Citations and Fines) of the Imperial Beach Municipal Code is amended to read as follows:

1.22.070. Appeal of Citation.

A. Any recipient of an administrative citation may contest that there was a violation of the Municipal Code or that he or she is the responsible person by completing a request for hearing form and returning it to the City within thirty (30) calendar days from the _date the administrative citation is issued.

B. The request for hearing form must be accompanied by either an advanced deposit of the fine or a request for hardship waiver. Any administrative citation fine which has been deposited shall be refunded if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation(s) or that there was no violation(s) as charged in the administrative citation.

SECTION 5: Section 1.22.080 of Chapter 1.22 (Administrative Citations and Fines) of the Imperial Beach Municipal Code is amended to read as follows:

1.22.080. Hardship Waiver.

A. A person who files a request for an Administrative Hearing may also request at the same time a hardship waiver of the fine deposit. To seek such a waiver and obtain a separate hearing on the request, the responsible person must check the box indicating this request on the form contained on the reverse side of the citation and attach a statement of the grounds for the request. To be effective, this form requesting the waiver and the Administrative Hearing must be received by the City Manager's office within fifteen (15) calendar days of the date the citation is issued.

B. The waiver request will be decided by the City Manager and issue the advance deposit hardship waiver only if the responsible party submits to the City Manager a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the City Manager the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing.

C. The City Manager shall inform the responsible party in writing of whether the waiver was approved, by serving the party personally or by mail at the address provided in the waiver application. The City Manager's determination is final and is not subject to appeal or judicial review.

D. If the waiver is denied, the responsible party shall pay the fine amount within ten (10) calendar days. Failure to make the deposit by the time required shall be deemed an abandonment of the contest and renders the fine delinquent.

SECTION 6: Section 1.22.100 of Chapter 1.22 (Administrative Citations and Fines) of the Imperial Beach Municipal Code is amended to read as follows:

1.22.100. Hearing Procedure.

A. No hearing to contest an administrative citation before a Hearing Officer shall be held unless and until a request for hearing form has been completed and submitted, and, the fine has been deposited in advance, or an advance deposit hardship waiver has been issued.

B. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) calendar and not more than sixty (60) calendar days from the date that the request for hearing is filed in accordance with the provisions of this Chapter. The responsible party requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) calendar days prior to the date of the hearing.

C. At least ten (10) calendar days prior to the hearing, the recipient of an administrative citation shall be provided with copies of the citations, reports and other documents submitted or relied upon by the Enforcement Officer. If, after copies of documents have been provided to the responsible party, the City determines to submit to the Hearing Officer additional documents then, whenever possible, a copy of such documents shall be provided to party prior to the hearing. No other discovery is permitted. Formal rules of evidence shall not apply.

D. The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the responsible person has caused or maintained the violation(s). Courtroom rules of evidence shall not apply. Relevant hearsay evidence and written reports may be admitted whether or not the speaker or author is present to testify if the Hearing Officer determines that the evidence is reliable. Admission of evidence and the conduct of the hearing shall be controlled by the Hearing Officer in accordance with the fundamentals of due process. The Hearing Officer may limit the total length of the hearing to one hour, and shall allow the responsible party at least as much time to present its case as is allowed the City.

E. At the hearing, the reasonable party requesting the hearing shall be given the opportunity to present, either themselves or through a representative, evidence and testimony concerning the administrative citation. The City's case shall be presented by an Enforcement Officer or by any other authorized agent of the City.

F. The failure of the responsible party, either personally or through counsel, of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust his or her administrative remedies.

G. The Hearing Officer may consolidate administrative citations issued to the same owner or responsible party.

H. The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation prior to issuing a written decision.

SECTION 7: Section 1.22.110 of Chapter 1.22 (Administrative Citations and Fines) of the Imperial Beach Municipal Code is amended to read as follows:

1.22.110. Hearing Officer's Decision.

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer may announce a decision orally, but in any event, shall prepare a written decision. The decision shall be provided to the parties within ten (10) calendar days of the hearing and shall either affirm the issuance of the citation as issued or dismiss the citation. The decision shall briefly state the reasons for the conclusion of the Hearing Officer. The City shall personally deliver the Notice of Decision for the Administrative Hearing to the responsible party. The decision of the Hearing Officer shall be final. If the Hearing Officer determines that First Amendment rights are involved, the decision shall be issued orally at the conclusion of the hearing and shall be effective immediately. A written decision shall thereafter be issued as provided here in below.

B. If the Hearing Officer affirms the issuance of the administrative citation, then the deposit with the City shall be retained by the City. If a hardship waiver was granted, the decision shall set forth a payment schedule for the fine.

C. If the Hearing Officer determines that the administrative citation should be canceled and the fine was deposited with the City, then the City shall refund the deposit within ten (10) calendar days of the Hearing Officer's decision.

D. The Hearing Officer shall not have the power to reduce the fine. The Hearing Officer may impose conditions and deadlines to correct any violations or require payment of any outstanding penalties.

SECTION 8: Section 1.22.120 of Chapter 1.22 (Administrative Citations and Fines) of the Imperial Beach Municipal Code is amended to read as follows:

1.22.120. Failure to Pay Fines

A. The failure of any person to pay the civil fines imposed by an administrative citation within the time specified on the citation may result in the filing of a claim with the Small Claims Court or the Superior Court for recovery of the fine. The only issue to be adjudicated by the court shall be whether or not the fines were paid. A person cited may only obtain judicial review of the validity of the citation by writ of mandate after exhausting their administrative remedies by requesting and participating in an administrative hearing before a hearing officer. In the court action, the City may also recover its collection costs, including the cost of the Hearing Officer, and any court fees, according to proof.

B. In lieu of or in addition to the filing of a court action, the amount of the unpaid fine plus interest and late charges as provided by this chapter, may be declared a special assessment against any real property owned by the responsible party and the City may impose a Code Enforcement Lien, in the amount of the fine plus interest and late charges, on the real property upon which the violation occurs. The City Manager shall record a notice of lien in the Office of the County Recorder. When so made and confirmed, the cost shall constitute a lien on that property for the amount of the assessment.

C. After confirmation and recordation, a copy shall be turned over to the tax collector for the County of San Diego. At that point, it will be the duty of the tax collector to add the amounts of the respective assessments to the next regular property tax bills levied against the lots and parcels of land for municipal purposes. Those amounts shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes. In the alternative, after recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

D. The City at its discretion may pursue any and all legal and equitable remedies for the collection of unpaid fines, interest and penalties. The use of one recovery method does not preclude the use of any other recovery method.

SECTION 9: Section 1.22.160 of Chapter 1.22 (Administrative Citations and Fines) of the Imperial Beach Municipal Code is amended to read as follows:

1.22.160. Procedural Compliance.

City's failure to comply with any procedural requirement of this Chapter, failure of any person to receive any notice or decision specified in this Chapter, or of any person to receive any copy required to be provided by this Chapter shall not affect the validity of proceedings conducted hereunder unless the responsible person is denied constitutional due process thereby.

SECTION 10: The City Clerk is directed to prepare and have published a summary of this ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast pursuant to the provisions of Government Code section 36933.

SECTION 11: This ordinance will take effect thirty (30) days after the date of its passage and adoption.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California, held the 1 day of September 2010 by the following roll call vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

Jacqueline M. Hald

JACQUELINE M. HALD, CMC
CITY CLERK

APPROVED AS TO FORM:

JENNIFER LYON
CITY ATTORNEY

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be a true and exact copy of Ordinance No. 2010-1109 – An Ordinance of the City Council of the City of Imperial Beach, California AMENDING SECTION 1.12.020 OF CHAPTERS 1.12 AND SECTIONS 1.22.030, 1.22.060, 1.22.070, 1.22.080, 1.22.100, 1.22.110, 1.22.120, AND 1.22.160 OF CHAPTER 1.22 OF THE IMPERIAL BEACH MUNICIPAL CODE REGARDING CIVIL PENALTIES, ADMINISTRATIVE CITATIONS, AND FINES.

CITY CLERK

DATE



STAFF REPORT CITY OF IMPERIAL BEACH

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010
ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR *GW*
DAVID GARCIAS, CODE COMPLIANCE OFFICER *DG*

SUBJECT: SECOND READING AND ADOPTION:
ORDINANCE NO. 2010-1110 TO ADD PROVISIONS TO
THE CITY OF IMPERIAL BEACH MUNICIPAL CODE,
ADDING CHAPTER 9.80 OF THE IMPERIAL BEACH
MUNICIPAL CODE, PERTAINING TO ADULT
ENTERTAINMENT ESTABLISHMENTS.

BACKGROUND / DISCUSSION:

Last year, the Sheriff's Department received a single citizen complaint regarding prostitution and sexual activities occurring at the Romantix Book Store located at 1177 Palm Avenue. Staff conducted an inspection of the business, and observed a number of factors in how the business was running, many of which were not covered by the Imperial Beach Municipal Code:

- The business advertised, "Open 24-hours a day".
- The business had constructed 14 adult arcade viewing booths of various sizes and dimensions, and each booth had seating for more than one person.
- The viewing booths were secured with latches from the inside preventing inspection by law enforcement.
- One viewing booth designated for disabled access did not meet disabled access standards.
- The manager's station did not have full view of all viewing booth areas as required by other jurisdictions.
- The business did not have signage required by other jurisdictions notifying customers of regulations such as:
 - No loitering in and around viewing rooms
 - Limit of one person in viewing rooms at a time
 - No sexual activity on the premises
 - Making openings between viewing rooms is prohibited
 - Notifying violators they would be required to leave the premises and subject to prosecution

Staff reviewed the municipal code and the municipal codes of other jurisdictions and it was determined that an ordinance was needed to regulate the adult arcades within the City. Staff has met with the owner's representatives and the business owner has been very cooperative, and has worked with staff. The proposed ordinance is similar to the City of San Diego's Adult Entertainment ordinance.

City Council conducted the first reading and introduction of this ordinance at their meeting of September 1, 2010.

PROCEDURE:

The proposed new ordinance would add Chapter 9.80 to the Imperial Beach Municipal Code. This new chapter would support City Inspections and Law Enforcements current inspection efforts to prevent, deter, and investigate criminal activities within a public business. The proposed new ordinance would include changes such as:

- Prohibit the business from operating between the hours of 2:00 am and 6:00 am.
- Limit the size of the viewing booths to a maximum size of 15 sq. feet.
- Limit the viewing booth occupancy to no more then one person per room.
- Limit the seating in each viewing booth to one seat per room.
- Each employee must ensure that there is a clear, unobstructed view, either by direct view from the manager's station or by fully functional and operational video monitoring equipment at the manager's station, of all methods of ingress and egress to or from any booth.
- The walls and doors of the viewing booths which are bordering the adjacent aisle corridor shall be elevated 18 inches above the floor to allow for inspection by law enforcement personnel (see Diagram A).

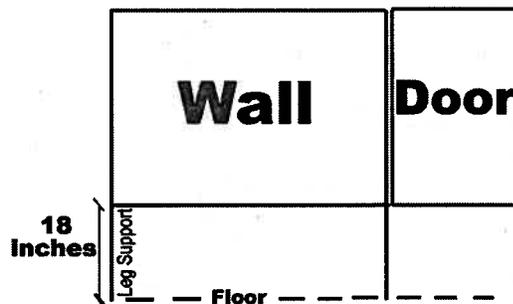


Diagram A

The proposed new ordinance would also require that an owner, operator, manager, or employee be present while the establishment is open for business and that all owners, operators, managers, and employees perform the following duties:

1. Ensure that no "specified sexual activity" occurs in the establishment.
2. Require any patron to immediately leave the establishment upon discovering any person, including another owner, operator, manager, or employee, violating the provisions of this code or any other law.
3. Immediately secure and prevent any patron from entering any viewing rooms upon discovering an opening between viewing rooms.
4. Inspect or to ensure the inspection of the walls between viewing rooms for openings of any kind at least once each business day.
5. Conspicuously post or ensure the continuous, conspicuous posting of all the following signs designed to ensure that it is easily readable by any reasonable consumer in all entry areas of the establishment:

- a. No loitering is allowed in viewing rooms;
 - b. Only one person is allowed in viewing rooms at a time;
 - c. Sexual activity on the premises is prohibited;
 - d. Making openings between viewing rooms is prohibited;
 - e. Violators will be required to leave the premises and may be subject to prosecution.
6. Ensure that all surface areas in viewing rooms and all flooring in viewing areas and adjacent hallways are waterproof, non-porous, easily cleanable surfaces, with no rugs or carpeting.
 7. Ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of or permanently covered by waterproof, non-porous, easily cleanable material.
 8. Ensure that the establishment is clean and sanitary.

If the proposed ordinance is adopted, all adult arcade viewing booths that are not in conformity with an approved design or modeling plan on file with the City shall be remodeled or rebuilt or new viewing booths constructed to comply with the California Building Code within 180 days from the adoption of this ordinance. At present there is only one such establishment to which this ordinance will apply.

CONCLUSION:

It is the purpose of this chapter to regulate adult entertainment establishments to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult entertainment establishments within the City. City staff worked in concert with the currently-active business in the City in order to ensure that these regulations address these secondary effects while allowing the business and its clientele the opportunity to exercise its First Amendment rights.

ENVIRONMENTAL DETERMINATION:

The new ordinance would be exempt pursuant to CEQA Guidelines Section 15301(a), existing facilities, because the ordinance requires minor alterations to the interior partitions of the subject businesses/buildings.

FISCAL ANALYSIS:

The regulation is not expected to increase current costs.

DEPARTMENT RECOMMENDATION:

Staff Recommends that the Mayor and City Council:

1. Receive the report;
2. Mayor calls for introduction of Ordinance No. 2010-1110, adding Chapter 9.80 to the Imperial Beach Municipal Code pertaining to Adult Entertainment Establishments;
3. City Clerk reads title of Ordinance No. 2010-1110; and
4. Motion to dispense with second reading and adopt Ordinance No. 2010-1110 by title only.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachment: Ordinance No. 2010-1110

ORDINANCE NO. 2010-1110

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF IMPERIAL BEACH TO ADD CHAPTER 9.80 OF THE IMPERIAL BEACH MUNICIPAL CODE, PERTAINING TO ADULT ENTERTAINMENT ESTABLISHMENTS

WHEREAS, the City Council of the City of Imperial Beach has been informed of several problems with the conduct of adult arcade businesses within the City which have caused undesirable secondary effects; and

WHEREAS, these secondary effects have included illegal sexual activity in a public business, the risk of contagion of sexually transmitted diseases, and general urban blight; and

WHEREAS, the City Council for the City of Imperial Beach seeks to avoid the detrimental secondary effects associated with activity of adult arcades while continuing to respect the fundamental right of its citizens to freedom of speech and expression; and

WHEREAS, this Ordinance proposes reasonable restrictions on the activity of adult arcade businesses that are less restrictive than those imposed by the County of San Diego and have withstood challenges in both California state court and the Ninth Circuit Court of Appeals;

NOW, THEREFORE, the City Council of Imperial Beach hereby ordains as follows:

Section 1. The City Council for the City of Imperial Beach makes the following factual findings based on case law and findings contained therein, academic research, and experience of government agencies throughout the County, the State, and the Nation:

A. Based on evidence of the adverse secondary effects of adult uses presented in hearings conducted by local governments throughout the County of San Diego, and on findings incorporated in the cases of *Pap's A.M. v. City of Erie*, (2000) 529 U.S. 277; *City of Renton V. Playtime Theatres, Inc.*, (1986) 475 U.S. 41, *Young v. American Mini Theatres*, (1976) 426 U.S. 50; *FW/PBS, Inc. v. City of Dallas*, (1990) 493 U.S. 215; *Barnes v. Glen Theatre, Inc.*, (1991) 501 U.S. 560; *California v. LaRue*, (1972) 409 U.S. 109; *Tily B., Inc. v. City of Newport Beach*, (1998) 69 Cal. App. 4th 1; *Sundance Saloon, Inc. v. City of San Diego*, (1989) 213 Cal. App. 3d 807, and other cases; and reports of secondary effects occurring in and around adult entertainment establishments, and from summaries of several of the foregoing secondary effects reports; the City Council for the City of Imperial Beach finds:

1. Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that cause deleterious secondary effects in the

establishments and in the areas surrounding them. This ordinance is designed to make the owners and operators of these establishments responsible, within constitutional boundaries, for the activities that occur on their premises.

2. Certain employees of unregulated adult entertainment establishments defined in this ordinance as adult cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

3. Sexual acts, including masturbation and oral and anal sex occur at unregulated adult entertainment establishments, especially those which provide private or semi-private booths or cubicles for viewing films or videos or live striptease and sex shows.

4. Offering and providing such unregulated space encourages unsanitary activities, which creates unhealthy conditions.

5. Persons frequent certain adult cabarets, adult arcades, and other adult entertainment establishments for the purpose of engaging in illicit sexual activities within the premises of such adult entertainment establishments, or for the purpose of purchasing or selling illicit drugs.

6. Numerous communicable diseases may be spread by activities occurring in adult entertainment establishments.

7. According to research from the Kaiser Family Foundation, an estimated 650,000 to 900,000 Americans are infected with HIV. The number of new HIV infections occurring each year is now about 41,000. Men and women of all races are most likely to be infected by sexual contact.

8. Relevant statistics revealed that a total of 117,521 AIDS cases have been reported in California through June of 2000. Of the 50 United States, California has the second highest number of AIDS cases and represents more than 15% of the 753,907 AIDS cases reported.

9. The Centers for Disease Control and Prevention have estimated that as many as 1 in 3 people with HIV do not know they are infected.

10. The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.

11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

12. The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be

transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

13. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

14. Sanitary conditions in some adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

15. Numerous studies and reports have determined that semen is found in the areas of adult entertainment establishments where persons view "adult" oriented films and live sexual shows.

16. The findings noted in paragraphs number 1 through 15 raise substantial governmental concerns.

17. Adult entertainment establishments have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

18. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the adult entertainment establishments. Further, such a licensing procedure will give an incentive on the operators to see that the adult entertainment establishment is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult entertainment establishment, in ultimate possession and control of the premises and activities occurring therein.

19. Requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult entertainment establishments.

20. Requiring licensees of adult entertainment establishments to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing criminals and minors from working in such establishments.

21. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the adult entertainment establishment, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and will prevent the further secondary effects of crime, blight, and dissemination of illegal obscenity, child pornography, and to minors, materials harmful to them;

22. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to such activity.

23. The fact that an applicant for an adult use has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this chapter.

24. The barring of such individuals from employment in adult entertainment establishments for a specified period of years serves to prevent distribution of illegal material, to prevent conduct which leads to the transmission of sexually transmitted diseases, and to preclude the establishment of criminal enterprises within the City.

25. The general welfare, health, and safety of the citizens of the City will be promoted by the enactment of this chapter.

a. The City Council also incorporates by reference all factual relevant factual findings reached by the County of San Diego justifying its adult entertainment laws.

b. The City Council for the City of Imperial Beach also finds that the threats from secondary effects associated with adult entertainment also manifest themselves in the City of Imperial Beach. Specifically, at least one person complains of contracting a sexually transmitted disease from an encounter at an adult entertainment arcade within the City, and there are numerous advertisements on the Internet from people proposing sexual rendezvous at an adult entertainment arcade in the City of Imperial Beach.

Section 2. Article 9, Chapter 80, is hereby added to the Imperial Beach Municipal Code, to read as follows:

“SEC. 9.80.010. PURPOSE AND FINDINGS

A. It is the purpose of this chapter to regulate adult entertainment establishments to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult entertainment establishments within the City. The provisions of this chapter do not have the purpose of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is not the intent of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent of this chapter to condone or legitimize the distribution of obscene material.

SEC. 9.80.020. DEFINITIONS

For the purpose of this chapter, "adult entertainment establishment" shall mean the activities listed in subdivisions A through E, K, or N of Section 8.92.010 or an "adult arcade" as defined in this Section.

A. "Adult arcade" shall mean a business establishment to which the public is permitted or invited and wherein coin, cash, card or slug operated or electronically or mechanically controlled still or motion picture machines, projectors, videos, holograms, virtual reality devices or other image producing devices are maintained to show images on a regular or substantial basis, where images so displayed are distinguished or characterized by an emphasis on matter depicting or describing specific sexual activities or specific anatomical areas. Such devices shall be referred to as adult arcade devices.

B. "Controlling Interest" means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote 20% or more of any class of voting securities of a business. The ownership, control, or power to vote 20% or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

C. "Distinguished or Characterized by an Emphasis Upon" means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or description of Specified Sexual Activities or Specified Anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description "specified anatomical areas" or "specified sexual activities."

D. "Employ, Employee, and Employment" describe and pertain to any person who performs any service on the premises of an adult entertainment establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises. This definition is provided solely for interpreting this chapter.

E. "Establish or Establishment" means and includes any of the following:

1. The opening or commencement of any adult entertainment establishment as a new business;
2. The conversion of an existing business, whether or not an adult entertainment establishment, to any adult entertainment establishment;
3. The addition of any adult entertainment establishment to any other existing adult entertainment establishment; or
4. The relocation of any adult entertainment establishment.

F. "Hearing Officer" means the person selected by the City Manager to conduct an administrative hearing pursuant to the provisions of this code.

G. "Nudity" or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, penis, anal cleft or cleavage with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

H. "Operate" or "Cause to Operate" means to cause to function or to put or keep in a state of doing business. "Operator" means any persons on the premises of an adult entertainment establishment who is authorized to exercise overall operational control of the establishment or who causes to function or who puts or keeps in operation the establishment. A person may be found to be operating or causing to be operated an adult entertainment establishment whether or not that person is an owner, part owner, or licensee of the establishment.

I. "Regularly Features" or "Regularly Shown" means a consistent and substantial course of conduct, such that the sexually explicit films or semi-nude performances exhibited constitute an ongoing and intentional objective of the business and are promoted as such.

J. "Semi-nude" or "semi-nudity" means a state of dress in which opaque clothing covers no more than the genitals, penis, anal cleft, cleavage, pubic area, vulva and nipple of the female breast as well as portions of the body covered by supporting straps or devices.

K. "Specified criminal activity" means any of the following offenses:

1. Any sexual offense punishable as a felony, described in Penal Code sections 261-269; any offense involving obscene material punishable as a felony, described in Penal Code sections 311.1-311.12; any offense for keeping, maintaining or participating in a house of prostitution as described in Penal Code sections 315, 316, 318; any offense for soliciting, agreeing to engage in or engaging in an act of prostitution as described in Penal Code section 647(b); any felony offense requiring registration under Penal Code section 290 except for Penal Code section 314; sale of any controlled substance on Schedules I-V of the Health and Safety Code or any other felony involving moral turpitude; criminal attempt, conspiracy, solicitation to commit any of the foregoing offenses; or offenses committed in another jurisdiction which, had the predicate acts been committed in California, would constitute any of the specified offenses or criminal attempt, conspiracy or solicitation to commit any of the specified offenses; for which:

a. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

b. Less than five years have elapsed since the date of conviction, or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

c. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period.

2. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

M. "Transfer of Ownership or Control" of an adult entertainment establishment means any of the following:

1. The sale, lease, or sublease of the establishment;
2. The transfer of securities which constitute a controlling interest in the establishment, whether by sale, exchange, or similar means; or
3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the establishment, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

N. "Viewing Room" means the room, booth, area or partitioned or partially enclosed portion of an adult arcade used for any of the following purposes:

1. Where a live or taped performance is presented or viewed, where the performances and/or images displayed or presented are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas;
2. Where adult arcade devices are located.

SEC. 9.80.030. HOURS OF OPERATION

A. It shall be unlawful for any owner, operator, manager or employee of an adult entertainment establishment to allow the establishment to remain open for business between the hours of 2:00 a.m. and 6:00 a.m. of any day.

B. No owner, operator, manager, or employee of any adult entertainment establishment may allow the premises to be used for the purpose of conducting a private club between the hours of 2:00 a.m. and 6:00 a.m.

SEC. 9.80.040. NO MINORS ALLOWED / WINDOWS AND DOORS

A. It shall be unlawful for any person under 18 years of age to enter, be present in or remain in any adult entertainment establishment. It shall also be unlawful for an adult entertainment establishment owner, operator, manager, or employee to allow any person under 18 years of age to enter, be present in or remain in any adult

entertainment establishment if the owner, operator, manager, or employee knows or reasonably should have known that the person was under 18 years old.

B. Every owner, operator, manager, and employee of an adult entertainment establishment shall ensure that all exterior windows and doors of an adult entertainment establishment shall be solid and opaque so as to prevent visibility at all times from outside the structure into the interior of the entertainment establishment.

SEC. 9.80.050. CONFIGURATION OF ADULT ARCADE

A. Each Adult Arcade shall prepare and maintain an accurate diagram of the interior of the adult entertainment establishment in which the adult arcade is located showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the establishment in which patrons will not be allowed. Restrooms shall not contain video reproduction equipment. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the establishment to an accuracy of plus or minus six inches. A legible copy of the diagram shall be conspicuously located within ten feet of any entrance to or exit from the establishment to which customers have access.

B. A manager's station shall not exceed 40 square feet of floor area. It is the duty of any owner, operator, manager, and employee to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is inside the establishment. Each employee must ensure that there is a clear, unobstructed view, either by direct view from the manager's station or by fully functional and operational video monitoring equipment at the manager's station, of all methods of ingress and egress to or from any booth.

SEC. 9.80.060. ADULT ARCADE BOOTHS – MINIMUM CORRIDOR WIDTH

No person shall own, operate, manage, or be an employee of an adult entertainment establishment wherein which the width of any adjacent corridor to a viewing room is less than 44 inches. Each viewing room shall be bordered by an adjacent corridor on the side containing the viewing room's entrance. A viewing room in which the width of any adjacent corridor is nonconforming and is not in full compliance with approved plans on file with the City before this ordinance becomes effective shall be remodeled or rebuilt or new booths constructed to comply with the California Building Code within 180 days from the adoption of this ordinance.

SEC. 9.80.070 MINIMUM DOORWAYS

A. It is unlawful for any person to own, operate, manage, or be the employee

of an adult entertainment establishment which is or contains an adult arcade unless there are at least two doorways that are each a minimum of 80 inches tall and 36 inches wide in each room where a viewing room booth is located. The doorway shall provide ingress or egress from any room unless the Building Official and Fire Marshall determine that one doorway is sufficient. Every owner, operator, manager, and employee shall ensure that doorways are unlocked during business hours.

B. A nonconforming adult arcade booth that is not in conformity with an approved design or modeling plan on file with the City shall be remodeled or rebuilt or new booths constructed to comply with the California Building Code within 180 days from the adoption of this ordinance. No door, curtain, or obstruction of any kind shall exist or be installed within or near the entrance to an adult arcade show booth.

SEC. 9.80.080. VIEWING ROOMS –SIZE, SHAPE, AND REQUIRED SIGNS, DEVICE LOCATION, OCCUPANT LOAD, AND ENFORCEMENT

A. Except for those viewing rooms described in Section 9.80.160, no person shall own, operate, manage, or be the employee of an adult entertainment establishment that is or contains an adult arcade unless the interior of each viewing room is a maximum of 15 square feet in floor area, with a minimum width and a minimum length of three feet.

B. Any owner, operator, manager, or employee shall ensure that a sign designed to ensure that it is easily readable by any reasonable consumer shall be maintained in a conspicuous location in each viewing room which reads as follows: "This booth is subject to inspection at any time. Patrons have no expectation of privacy in this room."

C. A sign designed to ensure that it is easily readable by any reasonable consumer shall be placed above the entrance to each viewing room which reads as follows: "Only one person may be present in an adult arcade booth at any one time."

D. The signs required by this section shall be at least six by eight inches in size and printed with dark ink on a light contrasting background with letters at least one quarter inch in height.

E. No person shall own, operate, manage, or be the employee of an adult entertainment establishment that is or contains an adult arcade unless each viewing room is square or rectangular in shape.

F. Each viewing room shall have an interlock mechanism on its door which prevents activation of the adult arcade device unless the viewing room door is closed and locked.

SEC. 9.80.090. ADULT ARCADE DEVICES AND VIEWING ROOMS – MAXIMUM NUMBER AND OCCUPANCY

A. No person shall operate an adult entertainment establishment in which the number of adult arcade devices exceeds the maximum occupancy load permitted in any room, viewing room, or partitioned portion of a room in which an adult arcade device is located. The maximum number of adult arcade devices permitted in any room, viewing room, or partitioned portion of a room in an adult entertainment establishment shall be conspicuously posted on a sign and shall remain posted at the entrance to the room. The signs shall comply with the requirements of section 9.80.080.

B. No more than one person may be in any viewing room at any time. No owner, operator, manager, or employee shall allow more than one person to be in any viewing room at one time, nor may any owner, operator, manager, or employee allow seating facilities within any viewing room designed to accommodate more than one person.

SEC. 9.80.100. ADULT ENTERTAINMENT ESTABLISHMENT – INTERIOR LIGHTING REQUIREMENTS

Every owner, operator, manager, or employee of an adult entertainment establishment shall ensure that all interior areas of any adult entertainment establishment shall be illuminated at a minimum of 1.00 foot-candle, maintained and evenly distributed at floor level. It shall be the obligation of any owner, operator, manager, or employee to ensure that inoperable and/or broken lights shall be replaced within twenty-four (24) hours.

SEC 9.80.110. VIEWING ROOM ENTRANCES AND WALLS

A. A viewing room entrance door or other covering and a wall on which a viewing room has its entrance shall extend downward no farther than eighteen inches above the floor.

B. Nothing shall obstruct the ability of any person to view the entire interior of a viewing room through the gap between the entrance wall of a viewing room and the floor provided for in Subsection A.

C. Every owner, operator, manager, and employee shall ensure full compliance with this section. A nonconforming adult arcade booth that is not in conformity with an approved design or modeling plan on file with the City shall be remodeled or rebuilt or new booths constructed to comply with the California Building Code within 180 days from the adoption of this ordinance.

SEC. 9.80.120 ADDITIONAL SIGNAGE REQUIRED

A. A sign designed to ensure that it is easily readable by any reasonable consumer setting forth the following information shall be maintained in a conspicuous location in each viewing room:

“NOTICE: It is unlawful for this booth to be occupied by more than one person at any

one time. This booth is subject to inspection at any time by management, peace officers, or other city officials. There is no expectation of privacy for any person entering or remaining inside this booth.”

B. All signs required by this section shall be at least six by eight inches in size and be printed with dark ink upon a light contrasting background with letters at least one-quarter inch in height.

SEC 9.80.130. APERTURES PROHIBITED

No owner, operator, manager, or employee shall create, maintain, or allow any adult arcade booth with an aperture which may permit contact or communication between occupants of any two or more adult arcade booths.

There shall be a light or lighted sign on the exterior of each adult arcade booth which indicates whether the adult arcade *device* is in use and whether the booth is occupied.

SEC 9.80.140. WALKWAYS AND AISLES

All walkways, aisles and hallways of adult entertainment establishments shall be maintained free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain or other device unless the area is out of service prior to or while being cleaned or repaired, in which case a sign shall indicate it is closed to all customers or persons.

SEC 9.80.150. VIDEO MONITORING

There shall be a system of monitoring all areas of the adult entertainment establishment open to the public, except restrooms, either by direct viewing or by a system of video monitoring which allows viewing of each monitored area at least every sixty seconds by the owner, operator, manager, or employee on the premises. Any owner, operator, manager, or employee shall ensure that this video monitoring service is being constantly monitored by an owner, operator, manager, or employee.

No person shall own, operate, manage, or be the employee of an adult entertainment establishment unless the complete interior of each viewing room is visible from the entrance to the viewing room while the door to the viewing room is open.

SEC 9.80.160. VIEWING ROOMS FOR THE PHYSICALLY DISABLED

Any viewing room built for use by a physically disabled person shall be clearly marked with a sign stating “Disabled Only.” It is unlawful for any owner, operator, manager, or employee to allow such a viewing room to be used by any person other than a physically disabled person. It shall be unlawful for a person other than a person with a physical disability that requires the use of a larger viewing room to use such a viewing room. Any viewing room built for use by a physically disabled person may exceed the

floor area requirements of this Chapter.

SEC 9.80.170. MANAGEMENT DUTIES

A. Every owner, operator, manager, or employee who is present while the establishment is open for business shall have the following duties:

1. To ensure that no patron is allowed access to any area of the establishment which has been designated as an area in which patrons will not be allowed in the application filed pursuant to this chapter.

2. To ensure that no "specified sexual activity" occurs in the establishment.

3. To require any patron to immediately leave the establishment upon discovering any person, including another owner, operator, manager, or employee, violating the provisions of this code or any other law.

4. To immediately secure and prevent any patron from entering any viewing rooms upon discovering an opening between viewing rooms.

B. Every owner, operator, manager, or employee shall also have the following additional duties:

1. To inspect or to ensure the inspection of the walls between viewing rooms for openings of any kind at least once each business day.

2. To conspicuously post or ensure the continuous, conspicuous posting of all the following signs designed to ensure that it is easily readable by any reasonable consumer in all entry areas of the establishment:

- a. No loitering is allowed in viewing rooms;
- b. Only one person is allowed in viewing rooms at a time;
- c. Sexual activity on the premises is prohibited;
- d. Making openings between viewing rooms is prohibited; and
- e. Violators will be required to leave the premises and may be subject to prosecution.

3. To ensure that all surface areas in viewing rooms and all flooring in viewing areas and adjacent hallways are waterproof, non-porous, easily cleanable surfaces, with no rugs or carpeting.

4. To ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of or permanently covered by waterproof, non-porous, easily cleanable material.

5. To ensure that the establishment is clean and sanitary. These duties shall be deemed fulfilled if an owner, operator, manager, or employee complies with the following cleaning procedures:

a. The owner, operator, manager, or employee maintains a regular cleaning schedule of at least two cleanings per day, separated by at least eight hours, documented by written logs;

b. The owner, operator, manager, or employee checks all areas for garbage, trash, body fluids, and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business is collected from the premises for disposal at a lawful solid waste disposal facility at least once each week;

c. Thorough cleaning of the entire interior of any viewing room is done using a disinfectant. Cleaning shall include floors, walls, doors, seats, monitors, video cameras, and windows and other surfaces.

E. It shall be unlawful for any person having a duty under this section to fail to fulfill that duty.

SEC. 9.80.180. INSPECTION

Adult entertainment establishment operators and adult entertainment establishment employees shall allow authorized officers or agents of the County and City to make reasonable inspections of the portions of the adult entertainment establishment premises at any time that any person is on the premises to ensure that the owner, operator, manager, all employees, and all patrons are complying with this chapter.

SEC. 9.80.190. NUDITY, SEMI-NUDITY, AND LIVE ENTERTAINMENT

A. No adult entertainment establishment other than an adult theater shall allow any person to exhibit nudity or to be semi-nude on the premises, and it is the duty of every owner, operator, manager, and employee to ensure compliance with this section.

B. No adult theater may be located at the same premises or in any place connected to any premises of any other adult business.

C. No adult entertainment establishment other than an adult theater may obtain an entertainment permit of any kind under this Code.”

Section 3. The City Clerk is directed to prepare and have published a summary of this ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

Section 4. Should any section, clause, or provision of this Ordinance be

declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity of any other portion of this Ordinance and, to that end, the provisions of this Ordinance are severable.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Imperial Beach shall cause this Ordinance to be published pursuant to the provisions of Government Code section 36933.

INTRODUCED AND FIRST READ at a regular meeting of the City Council of the City of Imperial Beach, California, on the 1st day of September, 2010; and

THEREAFTER ADOPTED at a regular meeting of the City Council of the City of Imperial Beach, California, on the 22nd day of September, 2010, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

APPROVED AS TO FORM:

JENNIFER M. LYON
CITY ATTORNEY

I, City Clerk of the City of Imperial Beach, do hereby certify the foregoing to be an exact copy of Ordinance No. 2010-1110 – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, ADDING CHAPTER 9.80 TO THE IMPERIAL BEACH MUNICIPAL CODE, PERTAINING TO ADULT ENTERTAINMENT ESTABLISHMENTS.

CITY CLERK

DATE



AGENDA ITEM NO. 5.1

**STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY**

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR *GW*
GERARD SELBY, REDEVELOPMENT COORDINATOR *GS*

SUBJECT: ADOPTION OF RESOLUTION NO. R-10-227- RESOLUTION OF NECESSITY OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY PERTAINING TO THE ACQUISITION OF CERTAIN PROPERTY OR INTEREST IN PROPERTY, LEASEHOLD INTEREST IN PROPERTY, IF ANY, AND LOSS OF GOODWILL PURSUANT TO SECTION 1263.510 OF THE CODE OF CIVIL PROCEDURE, IF ANY FOR USE BY THE AGENCY IN THE DEVELOPMENT OF 9TH & PALM REDEVELOPMENT PROJECT IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1245.230 OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA

BACKGROUND

In March 2009, the Imperial Beach Redevelopment Agency ("Agency") purchased the Miracle Shopping Center. In February 2009, the Agency issued a Request for Qualifications/Proposals ("RFQ/P") for a Real Estate Development Opportunity for the site and selected a developer to redevelop the Development Site. The proposed development will consist of approximately 45,300 square feet of four single-story retail structures and 271 parking spaces. The redevelopment of the site is expected to commence when all of the tenants have been relocated from the site.

The redevelopment will cause the displacement of businesses located in the Miracle Shopping Center. On June 17, 2009, the Agency approved a relocation plan for the 9th & Palm Redevelopment Project and started the relocation process with the existing businesses. The Agency has successfully relocated the majority of the businesses. The Agency and the relocation consultant have made repeated attempts to relocate the business known as Southbay Drugs, located at 779 Palm Avenue. Also, Southbay Drugs has not paid the Agency rent since October 2009. Accordingly, the Agency commenced an unlawful detainer action, which was unsuccessful and is currently being appealed.

DISCUSSION

Southbay Drugs is owned by Shawki Bachoua. Southbay Drugs has been contacted by the relocation consultant and provided the relocation plan and estimate of its relocation benefits and the amount valued for its fixtures and equipment. The Agency's counsel hired an appraiser to appraise the remaining term of the lease and options to renew that lease. That value was communicated with notice of this hearing and the statutory offer made pursuant to Government Code Section 7267.2.

The unit located at 779 Palm Avenue is currently occupied by Shawki Bochoua dba Southbay Drugs. The lease is a five-year lease beginning, May 15, 1998, with two options to extend the term of the lease for five years as to each extension. An Addendum to the Lease, dated January 16, 2003, allows three options to extend the lease for five years each extension, beginning May 1, 2003. The second extension was executed, and the final extension is scheduled to expire on April 30, 2018. The lease does not include a provision for early termination. Southbay Drugs was current on payment of rent through the end of September 2009 when it stopped paying rent to the Agency.

As a result of Southbay Drug's failure to pay rent, the Agency proceeded with an unlawful detainer action. Because of the Court's ruling in the unlawful detainer action, the Agency may proceed with an appeal of that action and an eminent domain action to condemn Southbay Drug's leasehold interest, if any, in order to proceed with the proposed redevelopment. Staff notified Southbay Drugs in writing of the Agency's intent to adopt a Resolution of Necessity to acquire certain interest in real property by Eminent Domain (Exhibit A). The notification was drafted and approved by the Agency's General Counsel and delivered pursuant to California Redevelopment Law. The letter informed Southbay Drugs of the method and time period to respond to the notification and the hearing date for the Agency's action.

The Agency is legally required to provide relocation benefits and payment for fixtures and equipment, leasehold interest in the property, if any, and loss of goodwill compensation, if any. However, relocation benefits are provided after the relocated businesses have provided documentation of expenditures. Payment for fixtures and equipment is for the business owner's personal property that cannot be relocated. Those fixtures have been evaluated, and the amount determined by the Agency's appraiser was provided to Southbay Drugs in conjunction with the statutory offer sent as required by the Relocation Law.

The California Eminent Domain Law provides for the compensation for loss of goodwill only if the business owner proves that the following four conditions have been met:

- The loss is caused by the taking of the property or injury to the property from which the business operates;
- The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a prudent person would take and adopt in preserving the goodwill;
- Compensation for the loss is not included in payments made under relocation assistance programs; and
- Compensation for the loss is not duplicated in any other compensation awarded to the business owner.

Therefore, a business owner must prove that the condemnation was the cause for any loss of value and that every effort was made to mitigate the loss. However, it should be noted that not all businesses possess goodwill value. In order to receive payment for loss of goodwill, a

business must prove that it possessed goodwill at the original business location. A business cannot lose more goodwill than it possessed at the original business location. Although at this time staff does not believe that the Southbay Drugs will suffer a loss of goodwill and therefore is not entitled to receive that compensation, each business owner is allowed the opportunity to prove in a condemnation proceeding that the business has suffered a loss of goodwill.

Additionally, Southbay Drugs may have a right to a leasehold interest in the property. With the options to renew, the current lease is set to expire in 2018. The leasehold interest was evaluated by an appraiser hired by the Agency's counsel. The value of the remaining leasehold was provided to Southbay Drugs with the statutory offer required under the Redevelopment Law. The Agency, however, has appealed the Court's judgment in the unlawful detainer action. If the Agency is successful on appeal and Southbay Drugs is removed from the property for failure to pay rent, the Southbay Drugs will not be entitled to any compensation for leasehold interest as it will have terminated due to Southbay Drugs' failure to pay rent.

The Agency must adopt a Resolution of Necessity before an eminent domain proceeding can be commenced. Within six months of the adoption of the Resolution of Necessity, the Agency will commence eminent domain proceedings in the Superior Court of San Diego County. In that proceeding, the Court will determine the amount of compensation, if any, to which Southbay Drugs is entitled.

ENVIRONMENTAL IMPACT

This action is provided for and included in the Final Environmental Impact Report for the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project certified by the City Council of the City of Imperial Beach on January 17, 1996, by adoption of Resolution No. 96-4569.

FISCAL IMPACT

Funds for this action are budgeted and available in the Fiscal Year 2010-2011 Budget. The eminent domain proceedings in the Superior Court of San Diego County will determine the amount of additional compensation, if any, Southbay Drugs is entitled to receive.

DEPARTMENT RECOMMENDATION

Staff recommends that the Redevelopment Agency adopt Resolution No. R-10-227.

EXECUTIVE DIRECTOR'S RECOMMENDATION

Approve Department recommendation.



Gary Brown, Executive Director

Attachments:

1. Exhibit A
2. Resolution No. R-10-227

"EXHIBIT A"
DESCRIPTION OF REQUIRED PROPERTY

Property Owner:	Imperial Beach Redevelopment Agency
Tenant:	Shawki Bachoua doing business as Southbay Drugs
Item:	Commercial Unit
Location & APN:	779 Palm Avenue, Imperial Beach, CA (portion of) APN 626-250-05
Description:	Leasehold interest, if any; furniture, fixtures and equipment located in the commercial unit.

RESOLUTION NO. R-10-227

RESOLUTION OF NECESSITY OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY PERTAINING TO THE ACQUISITION OF CERTAIN PROPERTY OR INTEREST IN PROPERTY, LEASEHOLD INTEREST IN PROPERTY, IF ANY, AND LOSS OF GOODWILL PURSUANT TO SECTION 1263.510 OF THE CODE OF CIVIL PROCEDURE, IF ANY, FOR USE BY THE AGENCY IN THE DEVELOPMENT OF 9TH & PALM REDEVELOPMENT PROJECT IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1245.230 OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA

WHEREAS, on February 7, 1996, by adoption of Ordinance No. 96-901, the Imperial Beach City Council (the "City Council") approved a Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project ("the Original Project Area"); and

WHEREAS, on January 17, 1996, by adoption of Resolution No. 96-4569, the City Council certified the Final Environmental Impact Report for the Redevelopment Plan for the Palm Avenue/Commercial Redevelopment Project pursuant to the California Environmental Quality Act; and

WHEREAS, on October 19, 1994, by adoption of Resolution No. 94-4427, the City Council approved and adopted the Imperial Beach General Plan/Local Coastal Plan Text (GPA 93-01) and Local Coastal Plan Amendment (LCPA 93-01); and

WHEREAS, on March 14, 2005, by adoption of Resolution No. 05-65, the Imperial Beach Redevelopment Agency approved and adopted the Five-Year Implementation Plan; and

WHEREAS, on October 6, 2004, by adoption of Resolution No. 04-47, the Imperial Beach Redevelopment Agency approved and adopted the Economic Development Plan; and

WHEREAS, the Original Project Area provides for redevelopment projects such as the 9th & Palm Redevelopment Project and the use of eminent domain in furtherance of redevelopment projects such as the 9th & Palm Redevelopment Project; and

WHEREAS, the Agency seeks to acquire the certain property or interest in property, leasehold interest in property, if any, and loss of goodwill pursuant to Code of Civil Procedure Section 1263.510, if any, involved in order to complete the development of the 9th and Palm Redevelopment Project; and

WHEREAS, the property which shall be acquired is more specifically described in Exhibit "A" attached hereto and by this reference incorporated herein (hereinafter "Subject Property") and is situated within the City of Imperial Beach; and

WHEREAS, the acquisition of the Subject Property for the 9th and Palm Redevelopment Project is authorized by Code of Civil Procedure Sections 1240.010 *et seq.* and Health and Safety Code Section 33391(b); and

WHEREAS, the offer required pursuant to Government Code Section 7267.2 to acquire the Subject Property was presented to the property owner and was based upon an appraisal of the leasehold interest, an appraisal of the furniture, fixtures and equipment, and estimated relocation benefits as allowed by law; and

WHEREAS, pursuant to Code of Civil Procedure Section 1245.235, notice has been duly given to each person whose name and address appears of record or on the last equalized County assessment roll as property owners of the Subject Property located in the County of San Diego,

State of California, described herein, of the intention of the Board of Directors of the Imperial Beach Redevelopment Agency (the "Agency") to adopt a Resolution of Necessity and to direct the institution of eminent domain proceedings and informing them of their right to be heard of said matter; and

WHEREAS, the Agency finds and determines that notice of its intention to adopt this resolution of necessity was duly given as required by law, and on the date and at the time and place fixed for hearing, this Board did hear and consider all of the evidence presented; and

WHEREAS, on September 1, 2010, the Imperial Beach Redevelopment Agency considered the approval of a Resolution of Necessity for the acquisition by eminent domain of the Subject Property as stated herein and located at 779 Palm Avenue required for the 9th and Palm Redevelopment Project; and

WHEREAS, the proposed redevelopment of the Miracle Shopping Center in accordance with the 9th and Palm Redevelopment Project advances the Goals and Objectives of the Imperial Beach General Plan, the objectives of the Palm Avenue/Commercial Avenue Redevelopment Plan and the Five-Year Implementation Plan, and the strategies and mission of the Economic Development Plan to:

- pursue a public/private partnership to improve large commercial properties in the Palm Avenue commercial corridor that will stimulate further improvements in the area;
- facilitate redevelopment of the Palm and 9th Street Commercial Retail Properties; and
- strengthen the economic viability of Imperial Beach through expanding commercial retail activity, enhancing the character of the residential neighborhoods and improving the quality of life for the entire community; and

WHEREAS, the 9th and Palm Redevelopment Project includes approximately 45,300 square feet of four single-story retail structures and 271 parking spaces including the construction of sidewalks, curb and gutter, traffic signals and signage, and storm drains; and

WHEREAS, there is an urgent need to possess the Subject Property so that the Agency may complete a relocation plan and allow the Agency to initiate the redevelopment of the Miracle Shopping Center. Due to the decreasing revenue to the Agency and City of Imperial Beach and the high unemployment rate for the City of Imperial Beach, it is imperative that the Agency commence this project as soon as possible. The creation and development of local job opportunities and the preservation of the area's existing employment base will encourage investment by the private sector. The 9th & Palm Redevelopment Project will occupy and include work on all of the Subject Property. The Subject Property is necessary for the 9th & Palm Redevelopment Project because it is the intent of the Agency to demolish the existing structures to enable the creation of a commercial project that creates a gateway to the City of Imperial Beach. The construction of the 9th & Palm Redevelopment Project achieves greatest public good by strengthening the economic viability of the City of Imperial Beach through expanding commercial retail opportunities and enhancing the quality of life for the entire community.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Imperial Beach Redevelopment Agency hereby states:

1. That the public interest and necessity require the redevelopment of the Miracle Shopping Center through the 9th and Palm Redevelopment Project.
2. That 9th and Palm Redevelopment Project is planned or located in the manner which will be most compatible with the greatest public good and the least private injury inasmuch as it is

necessary to locate the Project upon the Subject Property.

- 3. That the property sought to be acquired is necessary for the Project.
- 4. That this resolution is exempt from the provisions of Section 33679 of the California Health and Safety Code (Redevelopment Law).
- 5. That, pursuant to Government Code Section 7267.2, an offer to acquire the Subject Property was presented to the property owner and was based upon an appraisal of the leasehold interest, an appraisal of the furniture, fixtures and equipment, and estimated relocation benefits as allowed by law.
- 6. That the General Counsel for the Agency is hereby authorized and directed to bring an action in the Superior Court of the State of California, in and for the County of San Diego, in the name of the Imperial Beach Redevelopment Agency against all owners and claimants of the Subject Property for the purpose of condemning and acquiring property for the public use of the Imperial Beach Redevelopment Agency and to do all things necessary to prosecute said action to its final determination in accordance with the provisions of applicable law.
- 7. That General Counsel for the Agency is hereby authorized and directed to move the Court for an Order for Possession before a judgment is rendered in the proceedings.
- 8. That Finance Director for the City of Imperial Beach is hereby authorized and directed to draw from the Agency's funds in the amount of \$116,348.00 to be deposited with the State Treasurer as security for the Order for Possession.

PASSED, APPROVED, AND ADOPTED by the Imperial Beach Redevelopment Agency at its meeting held on the 22nd day of September 2010 by the following roll call vote:

AYES:	BOARDMEMBERS:
NOES:	BOARDMEMBERS:
ABSENT:	BOARDMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
SECRETARY

I, City Clerk of the City of Imperial Beach and Secretary of the Imperial Beach Redevelopment Agency, do hereby certify the foregoing to be a true and correct copy of Resolution No. R-10-227 – RESOLUTION OF NECESSITY OF THE IMPERIAL BEACH REDEVELOPMENT AGENCY PERTAINING TO THE ACQUISITION OF CERTAIN PROPERTY OR INTEREST IN PROPERTY, LEASEHOLD INTEREST IN PROPERTY, IF ANY, AND LOSS OF GOODWILL PURSUANT TO SECTION 1263.510 OF THE CODE OF CIVIL PROCEDURE, IF ANY, FOR USE BY THE AGENCY IN THE DEVELOPMENT OF 9TH & PALM REDEVELOPMENT PROJECT IN COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1245.230 OF THE CODE OF CIVIL PROCEDURE OF THE STATE OF CALIFORNIA.

CITY CLERK

DATE

"EXHIBIT A"
DESCRIPTION OF REQUIRED PROPERTY

Property Owner:	Imperial Beach Redevelopment Agency
Tenant:	Shawki Bachoua doing business as Southbay Drugs
Item:	Commercial Unit
Location & APN:	779 Palm Avenue, Imperial Beach, CA (portion of) APN 626-250-05
Description:	Leasehold interest, if any; furniture, fixtures and equipment located in the commercial unit.



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: SEPTEMBER 22, 2010
ORIGINATING DEPT.: PUBLIC WORKS *Had*
SUBJECT: APPROVAL OF THE FISCAL YEAR 2009-10 ANNUAL REPORT FOR THE JURISDICTIONAL URBAN RUNOFF MANAGEMENT PLAN (JURMP)

BACKGROUND: The Jurisdictional Urban Runoff Management Plan (JURMP) lays out the City's policies regarding urban runoff management and is the primary guidance document for use by City employees to meet the requirements of the Municipal Stormwater Permit. On March 24, 2008, the City Council adopted Resolution No. 2008-6602, updating the City's JURMP to meet the new mandates of the San Diego Municipal Storm Water Permit, Board Order R9-2007-0001. The JURMP is the total account how the City plans to protect and improve the water quality of the Otay and Tijuana Rivers, San Diego Bay, Tijuana Estuary, and Pacific Ocean. The current Municipal Stormwater Permit also mandates participation in other regional programs including watershed urban runoff management plans (WURMPs) and a regional urban runoff management plan (RURMP). These other planning documents are separate from the City's JURMP but serve the same purpose to protect and enhance the water quality of the region.

The San Diego Regional Water Quality Control Board (SDRWQCB) issues and oversees compliance with the Municipal Storm Water Permit. Beginning in FY2007-08, the SDRWQCB changed the reporting due date for jurisdictions from January to September. As in previous annual JURMP reports, the City is required to prepare and submit to the SDRWQCB an annual report that summarizes program activities and accomplishments during the previous fiscal year. The annual JURMP report is due by September 30th of each year. The annual report is intended to document how jurisdictions meet compliance with Permit mandates, evaluate program effectiveness, and propose changes to the JURMP, including future program planning. The annual report is provided as Attachment 2.

DISCUSSION:

Significant effort continues to be made in attaining compliance with Permit mandates during Fiscal Year 2009-10 (July 1, 2009 through June 30, 2010). The following are a few highlights from the FY2009-10 implementation period:

- Inspected and cleaned 100% of municipal storm drain system and removed 8,230 pounds of sediment, trash, and organic materials through storm drain cleaning.
- Removed an additional 177 tons of material through frequent street sweeping.

- Conditioned 24 discretionary projects requiring developers or contractors to implement minimum best management practices (BMPs) and low impact development (LID) requirements to reduce pollutants and runoff to the maximum extent practicable (MEP). This compares to 24 projects during FY 2008-09, 48 projects during FY 2007-08 and 51 projects during FY2006-07.
- Educated municipal staff, businesses, project applicants, construction site operators, community groups, individual residents, underserved community, and school children about the importance of urban runoff management and pollution prevention. Educational activities included public presentations, distribution of brochures, interaction with individuals, clean up events, and regional education activities.
- Public Works Department and Community Development Department conducted routine inspections of construction sites for compliance with erosion control and site management BMPs.
- Conducted 71 commercial inspections of businesses, including automotive repair shops, restaurants, bars, gas stations, car washes, grocery stores, and mobile home parks. This is 21 more inspections than were conducted last reporting period.
- Responded to 153 code compliance cases related to storm water enforcement.
- Completed the final monitoring report for the Palm Avenue urban runoff diversion system at Seacoast Avenue. The City operates 2 low-flow urban runoff diverters (Palm and Date Ave.) along the beach front. Both diverters have the capacity to divert up to 250 gallons per minute of urban runoff and first flush rain water.
- Restarted the Tijuana River Bacteria Source Identification Study after a 15 month hiatus due to State budget issues. The study is now on schedule to be complete by March 2012.
- Updated the City's Storm Drain Master Plan and GIS files related to infrastructure and drainages.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

The general fund continued to be the source of the greatest share of program costs although the City has obtained some grant money for structural BMP's and the Sewer Enterprise Fund carries some of the incidental costs through the Storm Drain Maintenance Program and illegal discharge clean-up activities. Total man-hours expended to develop this JURMP Annual report is roughly 200 hours. As shown in the annual report, Section 10.0, the total program cost for FY 2009-10 was approximately \$835,000 when the effort across all City departments is considered.

DEPARTMENT RECOMMENDATION:

1. Open the Public Hearing
2. Receive the Report
3. Receive Public Testimony
4. Close the Public Hearing
5. Direct Annual Report changes as appropriate
6. Adopt Resolution 2010-6942, JURMP Annual Report including corrections, additions or deletions as directed.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

 FOR

Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6942
2. City of Imperial Beach FY2009-10 JURMP Annual Report

RESOLUTION NO. 2010-6942

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, AUTHORIZING THE PUBLIC WORKS DIRECTOR TO SIGN AND FORWARD THE CITY'S JURISDICTIONAL URBAN RUNOFF MANAGEMENT PROGRAM (JURMP) ANNUAL REPORT FOR FISCAL YEAR 2009-10 TO THE REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION

WHEREAS, the San Diego Regional Water Quality Control Board (SRWQCB) issued Order R9-2007-0001 establishing the requirement that "Copermittees shall prepare and submit to the SDRWQCB a Jurisdictional Urban Runoff Management Program Annual Report"; and

WHEREAS, the JURMP Annual Report shall contain a comprehensive description of all activities conducted by the Copermittee to meet all the requirements of each component of the JURMP; and

WHEREAS, the City of Imperial Beach has developed a JURMP Annual Report that meets or exceeds the requirements of the Regional Water Quality Control Board, San Diego Region, Order R9-2007-0001.

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

1. The above recitals are true and correct.
2. Authorize approval of the City of Imperial Beach FY2009-10 JURMP Annual Report – on file with City Clerk.
3. Authorize the Public Works Director to sign the City's JURMP Annual Report for submittal to the County of San Diego for consolidation with the other Copermittees' Annual Reports and final forwarding to the San Diego Regional Water Quality Control Board.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 22nd day of September 2010, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

Item No. 5.2

Attachment 2 JURMP Annual Report

**Available in the City Clerk's
Office for Review**

**You may also view the
document on our website:
www.cityofib.com**



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY R. BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR *GW*
JENNIFER LYON, CITY ATTORNEY

SUBJECT: ADOPT RESOLUTION NO. 2010-6947 – APPROVING THE EXCLUSIVE USE AND OCCUPANCY PERMIT BETWEEN THE CITY OF IMPERIAL BEACH AND THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

BACKGROUND:

Since 1995, the City has held a revocable license on the subject property, formerly owned by Western Salt Company. The City constructed a bikeway on the subject property in 1996. Ownership of the subject property was then transferred to the Port of San Diego and finally to the Airport Authority in 2003. The bikeway has existed on the property throughout the changes of ownership.

DISCUSSION:

The Exclusive Use and Occupancy Permit ("Permit") will allow the City to use the subject property for an acceptable general public use, such as a recreational use, for a period of fifteen years. The Airport Authority will have the option to cancel the Permit every five (5) years upon one hundred (180) days notice and the City will have a right to terminate at any time upon ninety (90) days notice. The City will be allowed to construct and maintain temporary improvements on the property subject to Airport Authority approval. Finally, in the event that the Airport Authority desires to sell the property during the term of the Permit, the Permit contains a first right of refusal process so that the City can be the first to attempt to purchase the property.

ENVIRONMENTAL IMPACT

The execution of this Permit will not change the existing use on the subject property and no environmental impacts will occur. The City has not committed the property as the site of any specific new project. If any new improvements will be constructed on the property pursuant to this Permit, the proper level of environmental review will occur as necessary.

FISCAL IMPACT:

Under the Permit, the City will pay the Airport Five Hundred and Fifty Dollars (\$550.00) per month.

DEPARTMENT RECOMMENDATION:

Adopt Resolution No. 2010-6947 approving the Permit between the City of Imperial Beach and the San Diego County Regional Airport Authority.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

 *For*

Gary R. Brown, City Manager

Attachments:

1. Exclusive Use and Occupancy Permit
2. Resolution 2010-6947

EXCLUSIVE USE AND OCCUPANCY PERMIT

THIS USE AND OCCUPANCY PERMIT ("Permit"), granted this [] day of September, 2010, by the SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, a local governmental entity of regional government (hereinafter "Authority"), to the CITY OF IMPERIAL BEACH, a California municipality (hereinafter "Tenant"),

WITNESSETH:

WHEREAS, the San Diego Unified Port District (hereinafter "District") is the trustee of certain tidelands owned by the State of California, including the San Diego International Airport at Lindbergh Field (hereinafter "Airport") located in the City of San Diego, California; and

WHEREAS, the San Diego County Regional Airport Authority Act (hereinafter "Act") establishes the Authority as a local governmental entity of regional government, with the exclusive power and authority to oversee the establishment, operation and coordination of airport facilities within the County of San Diego, as well as study, plan and implement any improvements, expansion, or enhancements at existing or future airports within its control; and

WHEREAS, the Act required the transfer of ownership (which transfer occurred effective January 1, 2003) from the District to the Authority of the Premises, as defined below, to be used by Tenant under this Permit; and

WHEREAS, Authority retains ownership of the Premises, as defined below, which were acquired with Airport funds in relation to real estate mitigation efforts and which rights over the Premises must be reserved by Authority for future potential environmental purposes; and

WHEREAS, Authority holds the Premises subject to Federal use restrictions and may grant certain permissible uses of the Premises under this Permit; and

WHEREAS, Authority, for the consideration hereinafter set forth, hereby grants to Tenant, upon the terms and conditions and for the purpose and use hereinafter set forth, the right to exclusively use and occupy a portion of those lands conveyed to Authority pursuant to the Act, which lands are more particularly described as follows:

Approximately 1.15 acres of unimproved land located at the northwest corner of the northern terminus of 13th Street, in the City of Imperial Beach, California, more particularly described on the legal description and map dated November 4, 2004, attached hereto as "Exhibit A" and by this reference made a part hereof (hereinafter "Premises").

NOW, THEREFORE, this Permit is granted upon the following terms and conditions:

1. **TERM:** The term of this Permit shall be for fifteen (15) years, commencing on the _____ day of _____ 2010, and ending on the _____ day of _____, 2025 unless earlier terminated as herein provided.
2. **RENT:** As and for the rental, Tenant agrees to pay to Authority the sum of Five Hundred and Fifty Dollars (\$550.00) per month, payable in advance on or before the tenth (10th) day of each and every month during the term of this Permit.

As a further part of the consideration for the use of the Premises, Tenant agrees to provide adequate and reasonable public notice, in a manner acceptable to Authority, the initial cost of which shall be borne by Authority, of Authority's participation in providing the Premises as a public amenity to enhance positive Airport community relations (i.e. signage or a plaque on the Premises to this effect and participation or acknowledgement at any ribbon-cutting and/or groundbreaking types of ceremonies, and press releases).

All payments shall be delivered to the Treasurer of the Authority. Checks shall be made payable to San Diego County Regional Airport Authority and mailed to the Office of the Treasurer, San Diego County Regional Airport Authority, P.O. Box 81323, San Diego, CA 92138-1323, or delivered to the Office of the Treasurer, San Diego County Regional Airport Authority, Commuter Terminal, 3225 North Harbor Drive, 3rd floor, San Diego, California. The designated place of payment and filing may be changed at any time by Authority upon ten (10) days' written notice to Tenant. Tenant assumes all risk of loss and responsibilities for late charges, as herein described, if payments are made by mail.

Tenant hereby acknowledges that late payment by Tenant to Authority of rent and other sums due hereunder will cause Authority to incur costs not contemplated by this Permit. Accordingly, in the event Tenant is delinquent in remitting the rent due in accordance with the rent provisions of this Permit, Tenant shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If rent is still unpaid at the end of fifteen (15) days, Tenant shall pay an additional five percent (5%) [being a total of ten percent (10%)]. The parties hereby agree that said late charges are appropriate to compensate Authority for loss resulting from rent delinquency including, without limitation, lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. Acceptance of such late charges and any portion of the late payment by Authority shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Authority from exercising any of its other rights and remedies. The President/CEO of Authority shall have the right to waive for good cause any late charges upon written application of Tenant for any such delinquency period.

All payments by Tenant to Authority shall be by a good and sufficient check. No payment made by Tenant or receipt or acceptance by Authority of a lesser amount than the correct amount of rent due under this Permit shall be deemed to be other than a payment on account of the earliest rent due hereunder, nor shall any

endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Authority may accept such check or payment without prejudice to Authority's right to recover the balance or pursue any other available remedy.

3. FIRST RIGHT TO NEGOTIATE:

First Right to Negotiate. In the event the Authority elects, during the term of this Permit, to sell the Premises, Authority shall advise Tenant in writing of its desire to sell the Premises and Tenant shall have the first right to negotiate for the purchase thereof. Tenant must exercise its right to negotiate for the purchase of the Premises by providing written notification to Authority of its intent to enter into good faith negotiations to purchase the Premises from Authority within sixty (60) days from the date of Authority's notice of its desire to sell the Premises.

If Authority receives Tenant's notification of its desire to enter into negotiations, the parties agree to promptly commence good faith negotiations with each other for a period not to exceed sixty (60) days after the date of Tenant's requisite notice to Authority, except as provided below.

If Authority does not receive Tenant's notice within the sixty (60) day period, Tenant's first right to negotiate will no longer be valid and Authority shall have the right to (i) enter into an agreement with a third party for the sale or other transfer of the Premises on terms and conditions acceptable to Authority, or (ii) elect not to sell the Premises, in the Authority's sole discretion. Any subsequent decision by the Authority to sell the Premises shall not entitle Tenant to a second "first right to negotiate" opportunity to negotiate for the purchase of the Premises as described in this Section 3.

This first right to negotiate shall only be valid as to Tenant (i.e., the City of Imperial Beach) and shall not be transferrable to any assignee of Tenant. Additionally, the obligation of Authority to provide this right to Tenant shall not be imposed upon any successor in interest of Authority.

Establishing Purchase Price. In the event Authority and Tenant do not within said sixty (60) day period enter into a legally binding, written agreement for the purchase and sale of the Premises because of a failure to agree on the purchase price of the Premises, the following appraisal process may be used to determine market value, where "market value" is defined as the most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress:

Upon written notice which must be given during the sixty (60) day negotiation period by one party to the other, each party shall appoint one appraiser within thirty (30) days. Notice of the appointment of an appraiser shall be given by each party to the other party when appointment is made. Each appraiser shall appraise the Premises within forty-five (45) days, and notify the other by written notice of the amount of their determinations of the market value of the Premises, which notices shall be accompanied by copies of the appraisals.

If the two appraisals present a difference within 10% of each other, then the two appraisals will be averaged. In the event the two appraisers are not within 10% on the market value of the Premises, the two appraisers shall immediately choose a third appraiser to conduct an appraisal of the Premises within forty-five (45) days. The third appraiser shall notify both parties by written notice of the amount of his or her determination of the market value of the Premises, which notices shall be accompanied by a copy of the appraisal. The final value of the land shall then be determined by averaging the third appraisal with the original appraisal closest in value. The Authority may or may not elect to sell the Premises to Tenant after this applicable appraisal process is completed and after presenting the results of this appraisal process to its Board.

All of the appraisers shall be qualified Member Appraisal Institute (MAI) real estate appraisers who are licensed to practice in the state of California and shall have no substantial direct or indirect financial or other business interests in the Premises. Each party shall bear the expenses of its own appointed appraiser and any costs and expenses for a third appraiser shall be split equally between the parties.

All appraisers shall determine the purchase price by considering: (1) the Premises based upon a fee simple interest and (2) the Premises as if made available on the open market for sale at market value on the date Authority provided written notice to Tenant of its desire to sell the Premises. In all cases, the market value shall be based upon recognized real estate appraisal principles and methods.

The market value determined by the appraisers shall be effective and retroactive to the first day of the Authority's written notice to Tenant of its desire to sell the Premises. The appraisals shall be in writing, supported by facts and analysis, and in accordance with law.

The foregoing appraisal process shall conclude within one hundred and forty-five (145) days following the sixty (60) day good faith negotiation period. Following the completion of the appraisal process, the parties shall continue to negotiate in good faith to finalize the terms and conditions of a purchase and sale agreement. If the parties are unable to reach an agreement on the terms of a purchase and sale agreement one hundred and forty-five (145) days after the completion of the appraisal process, Tenant's first right to negotiate will expire and Authority shall have the right to (i) enter into an agreement with a third party for the sale or other transfer of the Premises on terms and conditions acceptable to Authority, or (ii) elect not to

sell the Premises, in the Authority's sole discretion. Any subsequent decision by the Authority to sell the Premises shall not entitle Tenant to a second opportunity for a first right to negotiate for the purchase of the Premises.

This first right to negotiate shall only be valid as to Tenant (i.e., the City of Imperial Beach) and shall not be transferrable to any assignee of Tenant. Additionally, the obligation of Authority to provide this right to Tenant shall not be imposed upon any successor in interest of Authority. This section shall not be interpreted to prohibit Tenant from requesting to purchase the Premises at any time during this Permit. If Tenant requests to purchase the Premises, the Authority is not required to sell the Premises, is not bound by the provisions of this Section and is not required to negotiate with the Tenant regarding the sale of the Premises. However, if Authority does accept Tenant's offer to negotiate, the appraisal process outlined in this section 3 shall be followed.

The parties recognize and agree that the ultimate decision to purchase and/or sell the Premises rests with the Imperial Beach City Council and the Airport Authority's Board of Directors and either and/or both parties may refuse to execute a purchase and sale agreement. The parties further recognize and agree that either and/or both parties' decision not to enter into an agreement for the purchase and sale of the Premises will not constitute a failure to negotiate in good faith as required by this Section 3. In the event the parties agree to the sale and the purchase price, the parties understand and agree that the FAA may have the right to approve or deny the sale based upon applicable law.

4. **USE:** The Premises shall be used only and exclusively for acceptable general public use which may include public parks, recreation facilities, and bike and jogging paths in accordance with applicable law, including the DOT/FAA Policy and Procedures Concerning the Use of Airport Revenue ("Revenue Diversion Policy"), 64 Fed. Reg. 7696 *et seq.*, section VI.B.8 VI.D as mandated by the Federal Aviation Administration Authorization Act of 1994 and other federal laws, which include the following requirements:

- A. Acceptable General Public Use. The use of the Premises must be put to a "general public use desired by the local community" and only used for recreational purposes (VII.D.1) (Examples include a public park, recreational facilities, or a bike or jogging path. No purely governmental use, such as police, fire, parking or storage, is permitted. The Premises must not be used for any commercial activities.)
- B. No Conflict with Airport Operations. The public use must not "adversely affect the capacity, security, safety or operations of the airport." (VII.D.1)
- C. Enhancement of Public Acceptance. The Premises must be used in a manner which "enhances public acceptance of the airport in the community in the immediate area of the airport". (VII.D.1).

- D. No Expectation of Producing "Real" Income. The use of the Premises is conditioned upon the fact that the Premises must not be expected to "produce more than *de minimus* revenue during the term of the use. (VII.D.2)
- E. No Aeronautical Use Envisioned. The Premises are not reasonably expected to be used by an aeronautical tenant or otherwise needed in the foreseeable future for such a use. (VII.D.2)
- F. Community Use Cannot Preclude Airport Reuse. This Permit expressly does not prohibit the "reuse of the property [Premises] for airport purposes". (VII.D.3)
- G. No Airport Expenditures for Capital or Operating Costs. Authority and/or Airport revenue must not be used "to support the capital or operating costs associated with the community use." (VII.D.4)

The Premises must not be used for any other purpose whatsoever without the prior written consent of the President/CEO of Authority in each instance.

- 5. **ASSIGNMENT-SUBLEASE-ENCUMBRANCE:** Tenant shall not encumber this Permit, the Premises thereof and the improvements thereon by a deed of trust, mortgage, or any other security instrument without the express written consent of Authority, obtained in each instance in accordance with Authority policies. Furthermore, neither the whole nor any part of the Premises nor any of the rights or privileges granted by this Permit shall be assignable or transferable in any way without such consent. Nor shall Tenant grant any permission to any other person to occupy any portion of the Premises without such consent. Any such purported assignment, transfer, sublease, encumbrance, or permission given without such consent shall be void as to Authority. Authority consents to the Tenant allowing a developer or his/her contractors to enter onto the Premises to construct, install, maintain in a good state of repair and/or remove the improvements as shown in Exhibit B.
- 6. **IMPROVEMENTS:** In accordance with the procedures described herein, Tenant may, at its own expense, make alterations or changes, or cause to be made, built, installed, or removed any structures, machines, appliances, utilities, signs, or other improvements (hereinafter "Projects") necessary or desirable for the authorized use of the Premises. Said Projects, however, shall be in accordance with plans and specifications (hereinafter "Plans"), submitted to and approved in writing by Authority, prior to commencement of any Project, which approval shall not be unreasonably withheld if the proposed Projects are in compliance with terms and conditions of this Permit. All Plans are subject to changes as may be approved by Authority, in Authority's sole discretion. Further, all Projects shall be in accordance with all applicable laws, regulations, ordinances, and codes. Authority shall respond to the submission of Plans by Tenant within ninety (90) days of receipt of same.

Notwithstanding the foregoing, Tenant may not build or install any permanent structure, excepting a public use deck in accordance with specifications mutually to

be agreed upon and approved by the parties the schematic drawings and concept approval for which are included as Exhibit B attached hereto and by this reference, made a part hereof.

Tenant shall notify Authority prior to submitting application(s) to any governmental regulatory agency for any development or construction permit or license pertaining to the Premises. Tenant shall also provide Authority with a copy of all application(s) within five (5) days of making said application(s), along with copies of all plans submitted as part of the application(s). Tenant shall also provide Authority, within ten (10) days of Tenant's receipt, a copy of all permits, licenses, or other authorizations subsequently issued.

Tenant agrees that no banners, pennants, flags, spinners, or other advertising devices, shall be flown, installed, placed, or erected on the Premises without Authority's prior written consent, which will not be unreasonably withheld.

Any Projects or improvements installed by any third party upon the Premises shall, upon completion, immediately be transferred, deeded, and dedicated to Tenant through the appropriate legal process and written evidence thereof be provided to Authority. It is the intention of the parties that any such Projects and improvements shall be dedicated to and be open for use by members of the public.

Authority has conceptually approved the project submitted by Tenant to Authority per the correspondence attached hereto as Exhibit B which is subject to the terms and conditions of this Permit.

7. **MAINTENANCE:** Tenant hereby agrees that Tenant will take good care of the Premises and appurtenances, and that Tenant, as a part of the consideration for the rental stated above, will at Tenant's sole cost and expense keep and maintain said Premises, appurtenances, and Tenant's personal property in good and sanitary condition and repair during the term of this Permit, subject to normal and ordinary wear and tear resulting from the use of the Premises as herein provided. Authority shall at no time during the term of this Permit be required to maintain the Premises or to make any improvements or repairs thereto.
8. **TITLE TO IMPROVEMENTS:** On the commencement date of the term of this Permit, all existing structures, buildings, installations, and improvements of any kind located on the Premises are owned by and title thereto is vested in Authority. The parties acknowledge that a bike path is currently on the Premises. All structures, buildings, installations, and improvements placed on the Premises by Tenant subsequent to the commencement date of the term of this Permit shall at the option of Authority be removed by Tenant at Tenant's expense within sixty (60) days after the Authority has provided notice that Authority wants the improvements removed; provided, however, Tenant agrees to repair upon Authority's request any and all damage occasioned by the removal thereof. Authority may exercise said option as to any or all of the structures, buildings, installations, and improvements, either before or within sixty (60) days following the expiration or earlier termination of this

Permit. If Authority exercises such option and Tenant fails to remove such structures, buildings, installations and improvements within said sixty (60) days after notice was provided, Authority shall have the right to have such structures, buildings, installations, and improvements removed at the expense of Tenant. As to any or all structures, buildings, installations, and improvements owned by Tenant for which Authority does not exercise said option for removal, title thereto shall vest in Authority, without cost to Authority and without payment to Tenant.

Machines, appliances, equipment, and trade fixtures of any kind placed on the Premises by Tenant are owned by and title thereto is vested in Tenant and shall be removed by Tenant within the sixty (60) days referenced above after Authority has provided notice; provided, however, Tenant agrees to repair any and all damage occasioned by the removal thereof. If any such machines, appliances, equipment, and trade fixtures are not removed within the said sixty (60) days, the same may be considered abandoned and shall thereupon become the property of Authority without cost to the Authority and without payment to Tenant, except that Authority shall have the right to have the same removed at the expense of Tenant.

During any period of time employed by Tenant under this paragraph to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Tenant shall continue to pay the full rental to Authority in accordance with this Permit which said rental shall be prorated daily.

9. **REMOVAL OF MATERIALS:** Tenant hereby agrees that it will remove within sixty (60) days as provided for in Section 8 above all debris, surplus, and salvage materials from the land area forming a part of or adjacent to the Premises, so as to leave the same in as good condition as when first occupied by Tenant, subject to reasonable wear and tear; provided, however, that if any said debris, surplus, and salvage materials shall not be so removed within said sixty (60) days by Tenant, Authority may remove, sell, or destroy the same at the expense of Tenant; and Tenant hereby agrees to pay to Authority the cost of such removal, sale, or destruction; or at the option of Authority, the title to said debris, surplus, and salvage materials not removed shall become the property of Authority.

During any period of time employed by Tenant under this paragraph to remove debris, surplus and salvage materials, or test for and/or remediate Pollutants (as described below) as required in this Permit, Tenant shall continue to pay the full rental to Authority in accordance with this Permit which said rental shall be prorated daily.

10. **TERMINATION:**

By Authority With or Without Cause. This Permit may be terminated every five (5) years from the date of commencement by the President/CEO of Authority or his/her duly authorized representative as a matter of right with or without cause upon the giving of one hundred and eighty (180) days' notice in writing of such termination.

By Authority per FAA Action. Notwithstanding the foregoing paragraph, in the event the FAA makes a formal finding that this Permit violates federal law and further by formal action requires termination of this Permit, then the Authority shall have the right to terminate this Permit upon ninety (90) days written notice to Tenant. Authority agrees to notify Tenant upon receipt of any FAA inquiry concerning the Permit's potential violation of federal law and to cooperate with Tenant concerning a negative FAA finding requiring termination of this Permit.

By Tenant. Tenant may terminate this Permit at any time upon ninety (90) days' written notice to Authority of such termination.

11. **INDEMNIFICATION:** Except for those claims arising out of the sole active negligence or willful misconduct of Authority, Tenant shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Authority and its Board, officers, officials, directors, employees, volunteers and agents (hereinafter "Authority-Related Parties") from and against (i) any and all liability, damages, losses, expenses, claims, judgments, or demands, including attorneys' fees and court costs ("claims"), arising directly or indirectly from any act or omission of Tenant, its employees, agents, and representatives or out of the obligations undertaken in connection with or the performance of this Permit, or (ii) for claims based upon Authority's alleged breach of any statutory duty or obligation or Tenant's duty under contracts with third parties. The obligations in this Section shall apply for the entire time that any third party can make a claim against or sue Authority for liability arising out of Tenant's use, occupancy, or operation of the Premises, or arising from any defect in any part of the Premises.

12. **INSURANCE:** Throughout the duration of this Permit, Tenant shall maintain self-insurance or comprehensive general liability insurance covering bodily injury, personal injury and property damage arising out of the Tenant's operations provided for by this Permit. Tenant shall also maintain self-insurance or vehicular liability insurance covering bodily injury and property damage arising out of Tenant's operations provided for in this Permit. Tenant shall also maintain self-insurance or workers' compensation and employers' liability insurance coverage for injuries arising out of Tenant's operations provided for in this Permit. Tenant waives all rights against the Authority and its Authority-Related Parties for recovery of work-related injuries. At all such times as Tenant has in effect comprehensive general and vehicular liability insurance, said policies shall be endorsed to add the Authority and its Authority-Related Parties as additional insured's up to the full limits of coverage provided by all primary and excess liability policies. At all such times as Tenant has in effect a workers' compensation insurance policy, it shall contain a waiver of subrogation endorsement in favor of the Authority. Additionally, Tenant's comprehensive general and vehicular liability insurance shall be primary for all purposes and shall contain a severability of interest or cross-liability clause.

Prior to the commencement of this Permit and in sufficient time to permit Authority's review and approval, Tenant shall furnish to the Authority a letter of self-insurance, or, certificates of insurance evidencing that all required policies are in full force and

effect. Tenant shall provide at least thirty (30) days' written notice to the Authority prior to cancellation or reduction of any coverage.

13. **TAXES AND UTILITIES:** This Permit may result in a taxable possessory interest and be subject to the payment of property taxes. Tenant agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Tenant or the Premises by reason of this Permit or any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Tenant or by reason of the business or other activities of Tenant or Tenant's licensees or permittees upon or in connection with the Premises. Tenant shall also pay any fees imposed by law for licenses or permits for any activities of Tenant upon the Premises or under this Permit, and shall pay before delinquency any and all charges for utilities at or on the Premises.

14. **CONFORMANCE WITH RULES AND REGULATIONS:** In all activities on or in connection with the Premises and in all uses thereof, including activities and uses relating to aviation, Tenant shall abide by and conform to all provisions of the San Diego County Regional Airport Authority Act; any applicable ordinances of the city and the County in which the Premises are located, including the Building Code thereof; any ordinances, rules, and regulations of Authority; and any applicable laws of the State of California or United States government; as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility to comply with the requirements of (i) Article 8 of the Authority's Code entitled "Storm Water Code" and (ii) the Americans With Disabilities Act of 1990 ("ADA"), and Authority shall have no obligations or responsibilities as to the Premises.

Authority shall not be liable to Tenant for any diminution or deprivation of its rights hereunder on account of any such laws, ordinances, statutes, rules, regulations, orders, limitations, restrictions, or prohibitions. In the event, however, that any such laws, ordinances, statutes, rules, regulations, orders, limitations, restrictions, or prohibitions shall so interfere with the conduct of Tenant's activities and operations under this Permit by operation of law in accordance with the laws of the State of California, Tenant shall have the right to terminate this Permit by giving thirty (30) days' notice in writing of such termination. Such termination, however, shall not relieve the Tenant of any of its obligations and duties arising out of this Permit during Tenant's use and occupancy of the Premises, including without limitation its responsibility and liability regarding hazardous substances and wastes, and its obligation to defend, indemnify and hold the Authority harmless as provided in this Permit, however, in no event shall Tenant be required to continue to pay rent after it has vacated the Premises, removed all improvements and restored the Premises to its original condition in accordance with the terms and conditions of this Permit.

15. **DEFAULT:** If any default occur in the payment of the rental herein provided or in the fulfillment of any terms, covenants, or conditions hereof, and said default is not cured within thirty (30) days after written notice thereof, this Permit shall immediately terminate and Tenant shall have no further rights hereunder and shall immediately

remove from said Premises; and Authority may immediately thereupon, without recourse to the courts, have the right to reenter and take possession of said Premises. Authority shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Tenant in the amount necessary to compensate Authority for all the detriment and damages proximately caused by Tenant's failure to perform its obligations under this Permit or which in the ordinary course of things would be likely to result therefrom.

16. **LIENS:** Tenant shall keep the Premises free and clear of any mechanics liens and and/or materialmen's liens arising out of any improvements, repairs, or alterations to the Premises performed by or on behalf of Tenant. Tenant agrees that it will at all times indemnify, defend and hold harmless the Authority-Related Parties from and against any and all mechanics' liens and/or materialmen's liens arising out of, related to, or in any way connected with, directly or indirectly, any improvements, repairs, or alterations to the Premises performed by or on behalf of Tenant.
17. **BANKRUPTCY:** In the event that a petition is filed by or against Tenant (i) in any bankruptcy or other insolvency proceeding; (ii) seeking any relief under any state or federal debtor relief law; (iii) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in this Permit; or (iv) for the reorganization or modification of Tenant's capital structure, this Permit shall at the option of Authority immediately terminate and all rights of Tenant hereunder shall immediately cease and terminate.
18. **EASEMENTS:** This Permit and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved in, to, or over the Premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits, and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by Authority to be in the best interests of the development of Authority property.

Authority agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Tenant.
19. **TITLE OF AUTHORITY:** Authority's title is derived from the provisions of the San Diego County Regional Airport Authority Act. This Permit is granted subject to the terms and conditions of said Act.
20. **JOINT AND SEVERAL LIABILITY:** Nothing contained herein this Permit shall be deemed or construed as creating a partnership or joint venture between Authority and Tenant or between Authority and any other entity or party, or cause Authority to be responsible in any way for the debts or obligations of Tenant, or any other party or entity.
21. **ENTIRE UNDERSTANDING:** This Permit contains the entire understanding of the parties. Tenant, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the Premises. No

modification, amendment, or alteration of this Permit shall be valid unless it is in writing and signed by the parties hereto.

22. **PEACEABLE SURRENDER:** Upon the termination of this Permit, either by the expiration thereof or earlier termination as provided by the terms of this Permit, Tenant will peaceably surrender said Premises in as good condition, subject to normal and ordinary wear and tear resulting from the use of such Premises as herein provided, as the same may be at the time Tenant takes possession thereof, and to allow Authority to take peaceable possession thereof.
23. **HOLDOVER:** This Agreement shall terminate without further notice at expiration of the term. Any holding over by Tenant after either expiration or termination shall not constitute a renewal or extension or give Tenant any rights in or to the Premises. If Tenant, with the prior written consent of Authority, remains in possession of the Premises after expiration of the term or after the date in any notice given by Authority to Tenant terminating this Agreement, then such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice which may be given at any time by either party.

However, if Tenant, without the prior written consent of Authority, remains in possession of the Premises after expiration of the term or after the date in any notice given by Authority to Tenant terminating this Agreement, then such possession by Tenant shall be deemed to be a tenant at sufferance, only at a *per diem* rental rate equal to twice the then current daily rental rate, and otherwise upon the terms, covenants and conditions herein specified. In the case where Authority does not provide its prior written consent to Tenant to remain in possession of the Premises after expiration of the term or after the date in any notice given by Authority to Tenant terminating this Agreement, acceptance by Authority of *per diem* rent after such expiration or earlier termination shall not constitute a consent to a holdover hereunder or result in a renewal.

The foregoing provisions of this section are in addition to and do not affect Authority's rights hereunder or as otherwise provided by law or in equity. Tenant shall indemnify and hold Authority harmless from any loss or liability resulting from any delay by Tenant in surrendering the Premises, including, without limitation, any claims made by any succeeding tenant based on such delay.

24. **ACCEPTANCE OF PREMISES:** By accepting and executing this Permit, Tenant represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself of the condition of the Premises. Tenant agrees it is relying solely on such independent inspection, tests, investigations and observations in making this Permit. Tenant also acknowledges that the Premises are in the condition called for by this Permit, that Authority has performed all work with respect to Premises, and that Tenant does not hold Authority responsible for any defects in the Premises. Tenant furthermore accepts and shall be responsible for any risk of harm to any person and property, including without limitation employees of Tenant, from any latent defects in the

Premises unless caused by the sole active negligence or willful misconduct of Authority.

25. WARRANTIES-GUARANTEES: Authority makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Premises, including the physical condition thereof, or any condition which may affect the Premises. It is agreed that Authority will not be responsible for any loss, damage or cost which may be incurred by Tenant by reason of any such condition or conditions.

26. FEDERAL AVIATION ADMINISTRATION REGULATIONS:

- A.** Tenant for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provisions of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- B.** Tenant for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (ii) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (iii) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- C.** In the event of a breach of any of the above nondiscrimination covenants, Authority shall have the right to terminate this Permit and to reenter and repossess said land and the facilities thereon, and hold the same as if said Permit had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

- D.** Tenant shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.
- E.** Noncompliance with Provision (D), above, shall constitute a material breach thereof and in the event of such noncompliance Authority shall have the right to terminate this Permit and the interest hereby created without liability therefore or at the election of Authority or the United States either or both said governments shall have the right to judicially enforce these provisions.
- F.** Tenant agrees that it shall insert provisions (a), (b), (c), (d), and (e) above in any agreement by which said Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Premises herein covered by this Permit.
- G.** Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Tenant assures that it will require that its covered suborganizations provide assurances to Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effort.
- H.** This Permit shall be subordinate to the provisions and requirements of any existing or future agreement between Authority and the United States, relative to the development, operation or maintenance of San Diego International Airport.
- I.** There is hereby reserved to Authority, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises herein covered by this Permit. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the San Diego International Airport.
- J.** Tenant by accepting this Permit agrees for itself, its successors and assigns that it will not make use of the Premises covered by this Permit in any manner which might interfere with the landing and taking off of aircraft from San Diego

International Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, Authority reserves the right to enter upon the Premises hereby covered by this Permit and cause the abatement of such interference at the expense of Tenant.

- K. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. §40103; P.L. 103-272; 108 STAT. 1102, and as may be amended).
 - L. To the extent that this Permit constitutes a concession agreement covered by 49 CFR Part 26, Tenant acknowledges and agrees as follows; it is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of leases as defined in 49 CFR Part 26. Tenant is charged with knowledge and understanding of 49 CFR Part 26, and compliance with its provisions is a material part of the agreed upon performance of this Permit.
 - M. Tenant hereby assures that no person shall be excluded from participation in, denied the benefits of or otherwise discriminated against in connection with the award and performance of any contract, including leases, covered by 49 CFR Part 26 on the grounds of race, color, national origin or sex.
 - N. Tenant hereby assures that it will include the above provisions in all subleases and cause sublessees to similarly include said provisions in further subsubleases.
 - O. This Permit is subject to the requirements of the U.S. Department of Transportation's Regulations, 49 CFR Part 23, Subpart F. Tenant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR Part 23, Subpart F.
 - P. Tenant agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further concession agreements.
27. **ATTORNEY'S FEES:** In the event any suit is commenced to enforce, protect or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by Authority under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.
28. **ENVIRONMENTAL COMPLIANCES:**

A. Definitions.

“Environmental Laws” shall mean all applicable present and future federal, state, and local statutes, regulations, ordinances, permits, codes, orders, limitations, restrictions, or prohibitions of any governmental authority, including Authority codes and orders, relative to the occupancy and use of the Premises regarding the environment, including, without limitation, wetlands, waters of the United States, areas inhabited by Endangered, Threatened, or Sensitive Species, historic sites, the protection of the environment, public health, welfare or safety, including, without limitation, those related to Pollutants (as such term is defined herein).

“Endangered, Threatened and Sensitive Species” shall mean any flora or fauna identified by the provisions of the California Endangered Species Act (California Fish and Game Code §2050, et seq.), the Federal Endangered Species Act (16 U.S.C. §§1531-1543), and the Federal Migratory Bird Treaty Act (16 U.S.C. §§703-712), including the California least tern (*Sterna antillarum browni*), a seabird known to nest on the Airport.

“Hazardous Material” includes Solid Wastes/Process Waters and shall mean any substance whether solid, liquid, or gaseous in nature: (i) the presence of which requires investigation or remediation under any applicable federal, state or local statute, regulation, ordinance, order or common law; or (ii) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any applicable federal, state, or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act, and the Clean Water Act, and state and federal regulations relating to stormwater discharges, including without limitation, 40 CFR Part 122; or (iii) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises; or (iv) without limitation, which contains gasoline, diesel fuel, other petroleum hydrocarbons, natural gas liquids, polychlorinated biphenyls (PCBs), asbestos, or lead-based paint.

“Process Water” shall mean water which contains Hazardous Material or Solid Waste from any point or non-point source subject to the Clean Water Act, amendments thereto, and regulations promulgated pursuant thereto, including without limitation, requirements of the National Pollution Discharge Elimination System Program (“NPDES”), and the State of California Porter-Cologne Water Quality Control Act.

“Pollutants” shall mean Hazardous Materials, Solid Wastes, and Process Waters (as such terms are defined herein).

“Release” shall mean any depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.

“Solid Waste” shall have the same meaning as in the Resource Conservation and Recovery Act and shall include sewage.

“Duty to Comply with Environmental Laws”. Tenant shall, relative to its occupancy and use of the Premises, comply with all Environmental Laws.

B. Liability and Responsibility for Corrective Action. Tenant shall be liable and responsible for any Release of Pollutants arising out of the occupancy or use of the Premises which is caused by Tenant, employees, agents, representatives, or affiliates (hereinafter “Tenant Release” or “Tenant Releases”). Liability and responsibility for such Tenant Releases shall include, but not be limited to:

(1) all immediate actions reasonably necessary under applicable Environment Laws to promptly control any such Tenant Release and to mitigate any immediate threat to public health, safety, and the environment resulting from such Tenant Release;

(2) any further repairs or corrective actions, conducted in a timely manner, reasonably necessary under applicable Environmental Laws to remediate the Tenant Release and to protect public health, safety, and the environment, and to bring the affected areas on and/or outside the Premises, into compliance with applicable Environmental Laws and other applicable regulatory requirements;

(3) damages to persons, property and the Premises;

(4) all claims resulting from those damages;

(5) fines imposed by any governmental agency, and

(6) any other liability as provided by law.

C. Indemnification. Tenant shall defend, indemnify and hold harmless the Authority and Authority-Related Parties from any and all such responsibilities, damages, claims, fines, liabilities, including without limitation any costs, expenses and attorneys’ fees, resulting from a Tenant Release except to the extent caused by the sole active negligence or willful misconduct of Authority or by a third party with no relationship to Tenant. Authority shall have a direct right of action against Tenant even if no third party has asserted a claim.

D. Right to Inspect and Test. The Authority, or its designated representatives, may at any time during the term of this Permit enter upon the Premises and make any inspections, assessments, investigations, audits, tests or measurements Authority deems reasonably necessary, including boring into surfaces and/or the ground, in order to determine if a Release of Pollutants has occurred. Authority shall give Tenant a minimum of seventy-two (72) hours’ notice in writing prior to conducting any inspections or tests, unless, in Authority’s reasonable sole judgment, circumstances require otherwise, and

such tests shall be conducted in a manner so as to minimize any inconvenience and disruption to Tenant operations. If such tests indicate a Tenant Release has occurred, then Authority, at Authority's reasonable but sole discretion, may require Tenant, at Tenant's sole expense, to have tests for such Pollutants conducted by a qualified party or parties on the Premises. If Pollutants that originated from an Tenant Release have contaminated any area outside the Premises, including but not limited to surface, subsurface, surface water, and groundwater, then Authority, at Authority's reasonable but sole discretion, may require Tenant, at Tenant's sole expense, to have tests for such Pollutants conducted by a qualified party or parties on said area outside the Premises.

E. Duty to Furnish Information.

- (1) At the reasonable request of the Authority, Tenant shall make available for inspection and copying any or all substantive documents and materials that Tenant possesses associated with Tenant's operations at or occupancy or use of the Premises, by Tenant, including without limitation any and all associated records, test results, studies and/or other documentation regarding environmental conditions relating to the use, storage, or treatment of any Hazardous Materials and/or Solid Wastes and/or Process Waters. Notwithstanding the above within this section, Tenant shall not be required to provide any attorney-client privileged information, documents, or materials or any information, documents or materials that are exempt from disclosure under the California Public Records Act (Government Code sections 6250 *et. seq.*).
- (2) Immediately upon receipt by Tenant (and in no event later than five (5) business days after receipt), Tenant shall provide the Authority with copies of any notice or other document issued to Tenant (or any employee, agent, contractor, sub-lessee, or any other third party under Tenant's direction and/or control) by any governmental agency alleging non-compliance or investigating potential non-compliance with any Environmental Laws (a) arising out of the occupancy or use of the Premises by Tenant, or (b) on other properties and alleged to have arisen in whole or in part from Tenant's operations, activities, actions or omissions of Tenant or third parties under Tenant's direction and/or control.
- (3) At the request of the Authority (but in no event more than thirty (30) business days after such request), the Tenant shall provide the results of any tests conducted by Tenant or Tenant's qualified party at the Premises, including but not be limited to, comprehensive soil, emission, material, Process Water, surface water or groundwater sampling and testing or other procedures to determine any actual or possible Release of Pollutants.

Tenant shall report such known or identified Releases to Authority within seventy-two (72) hours and shall (a) if such Releases are determined to be a

Tenant Release, and (b) if necessary to determine compliance with Environmental Laws, diligently proceed to identify the horizontal and vertical extent of the Release, how it will be controlled and/or mitigated and/or remediated as required by applicable Environmental Law(s), when and by whom it will be controlled and/or mitigated and/or remediated, and the cost of such corrective actions. By way of clarification, the above requirements shall not apply to the extent that a Release of Pollutants was caused by the sole negligence or willful misconduct of the Authority or by a third party with no relationship to Tenant.

- F. Confidential Materials.** If Tenant provides privileged or confidential materials to Authority, Authority agrees to not disclose such materials unless required to by law.
- G. Term of Environmental Provisions.** The provisions of this Section, including the representations, warranties, covenants and indemnities of Tenant, shall expressly survive termination of this Permit and Tenant's obligations and liabilities under this Section shall continue so long as Authority bears any liability or responsibility under the Environmental Laws arising from Tenant's occupancy or use of the Premises during the term of this Permit.
- 29. ZONING, COASTAL ACT, 4(F):** Tenant shall not seek to rezone the Premises without the consent of the Authority. Tenant shall have sole responsibility to acquire all appropriate permits and/or approvals required by the California Coastal Act. Tenant agrees to use its best efforts (excluding any monetary commitment) to support the Authority in defense of any 4(f) claims and losses related to loss in use or value of the property due to 49 U.S.C. §303, 23 CFR Part 774.1 et seq., and 73 F.R. 13395.
- 30. NOTICES:** Any notice or notices provided for by this Permit or by law to be given or served upon Tenant may be given or served by certified or registered letter addressed to Tenant, C/O City Manager, Civic Center, 825 Imperial Beach Blvd., Imperial Beach, CA 91932, and deposited in the United States mail, or may be served personally upon said Tenant or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided for by this Permit or by law to be served upon Authority may be given or served by certified or registered letter addressed to President/CEO of Authority at the administrative offices of the San Diego County Regional Airport Authority, Post Office Box 82776, San Diego, California 92138-2776, and deposited in the United States mail, or may be served personally upon said President/CEO or his/her duly authorized representative; and that any notice or notices given or served as provided herein, shall be effectual and binding for all purposes upon the parties so served.
- 31. SECTION HEADINGS:** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.
- 32. SIGNATURE OF PARTIES:** It is an express condition of this Permit that said Permit shall not be complete nor effective until signed by either the President/CEO or

his/her authorized designee on behalf of Authority and by a duly authorized signatory or Tenant.

APPROVED AS TO FORM

**SAN DIEGO COUNTY REGIONAL
AIRPORT AUTHORITY**

By: _____

Office of General Counsel

By: _____

Name:

Title:

CITY OF IMPERIAL BEACH

By: _____

Print Name: _____

Print Title: _____

By: _____

Print Name: _____

Print Title: _____

S:\Real Estate\Working Files\Imperial Beach\Agreements\IB UOP.final.doc

Exhibit "A"

FLORENCE STREET - PREMISES

That portion of the Northwest Quarter of the Southeast Quarter of Section 20, Township 18, South, Range 2 West, in the City of San Diego, County of San Diego State of California being described as follows:

BEGINNING at the Southeast corner of said Northwest Quarter of the Southeast Quarter of said Section 20; thence along the Southerly line thereof North 89°21'08" West, 420.06 feet; thence leaving said Southerly line North 00°37'24" East, 87.74 feet to the Southerly line of said San Diego and Arizona Eastern Railway right-of-way, said point being a point on a curve concave to the North having a radius of 997.95 feet, to which said beginning a radial bears South 00°20'53" West; thence Easterly 434.13 feet along said curve through a central angle of 24°55'29" to the Easterly line of said Northwest Quarter of the Southeast Quarter; thence along said Easterly line South 00°38'17" West 182.87 feet to the POINT OF BEGINNING.

Exhibit "B"

Conceptual Approval Letter

September [redacted], 2010

Gary Brown, City Manager
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

Re: Concept Site Plan for Bikeway Village View Deck on Airport Authority Owned Property Located at 13th Street in Imperial Beach (Project Number 11001)

Dear Mr. Brown:

Thank you for your submission of the City of Imperial Beach's ("Tenant") concept proposal site plan, attached hereto, for the above-referenced project. The concept proposal is approved, subject to the following conditions:

1. Project-Specific Conditions:

- A. Tenant shall submit an *Application for Tenant Project Plan Approval* (link below)
- B. Tenant shall submit detailed construction documents to the Authority for review and approval prior to construction of the project. Construction documents shall address all elements of the proposal.
- C. All terms and conditions of the Exclusive Use and Occupancy Permit ("UOP") dated [redacted] between the Tenant and the Authority are by this reference incorporated herein.

2. In addition to the above requirements, tenant improvements shall conform to the following standards, construction and security requirements, as applicable:

- A. City of Imperial Beach building and development standards.
- B. Any applicable requirements under the California Environmental Quality Act.

3. The detailed construction documents must delineate the following:

- Public access to the deck and signage to be installed that clearly indicate the deck area is open to the public,
- Signage commemorating the contributors, including the Authority, to this new public amenity. The details of which must be coordinated with the Authority prior to finalizing the design.

4. It is contemplated that the deck is to be used by the public, including patrons of the adjacent restaurant owner. Any act or omission giving the appearance to the reasonable person that the deck is not open to the public must be avoided.

If you have any questions or I can be of any further assistance, please give me a call at (619) 400-2577 or at tleech@san.org.

Sincerely,

Troy Ann Leech, CCIM
Director, Real Estate Management

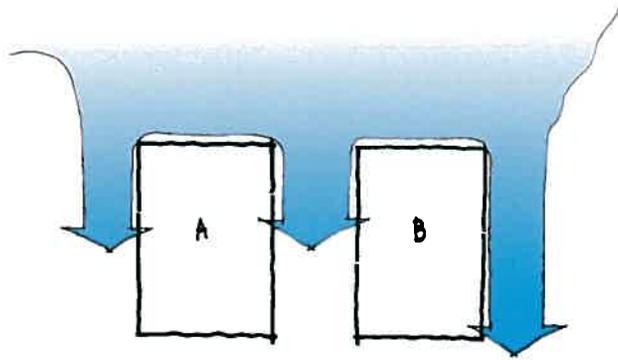
TAL/TK/lis

cc: T. Kuchta
W. Harvey
R. Adcock
R. Gilb
T. Cuppage
R. Strickland
N. Marmion

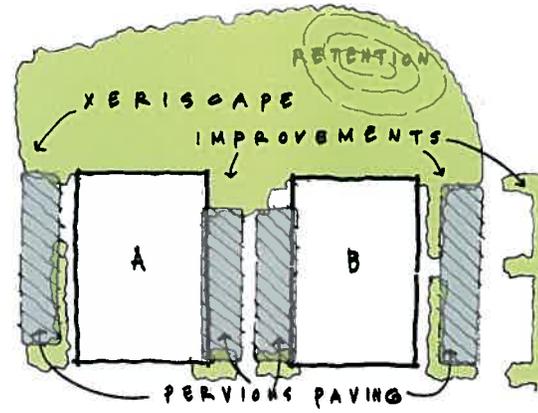
Attachments/ Links:

Application for Tenant Project Plan Approval
[http://www.san.org/documents/real_estate/Airport Tenant Project Plan Approval App.pdf](http://www.san.org/documents/real_estate/Airport_Tenant_Project_Plan_Approval_App.pdf)

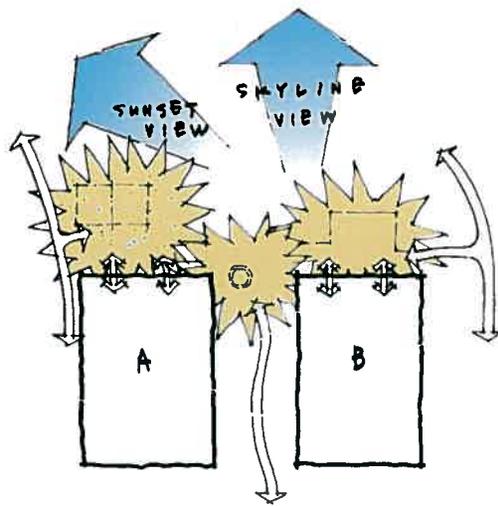
S.D. BAY



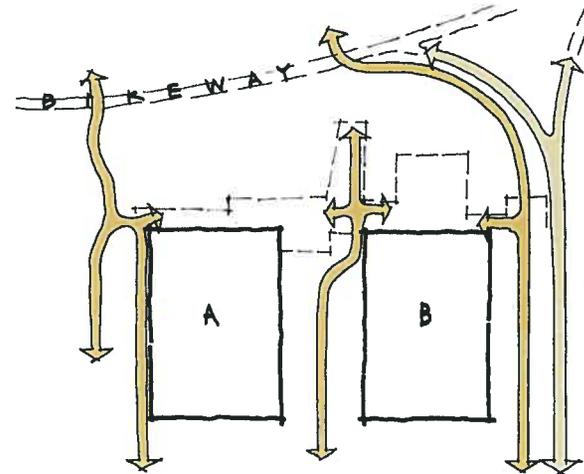
1. Bring Bay to City



3. Water Conservation



2. Create Shared Amenities



4. Community Access

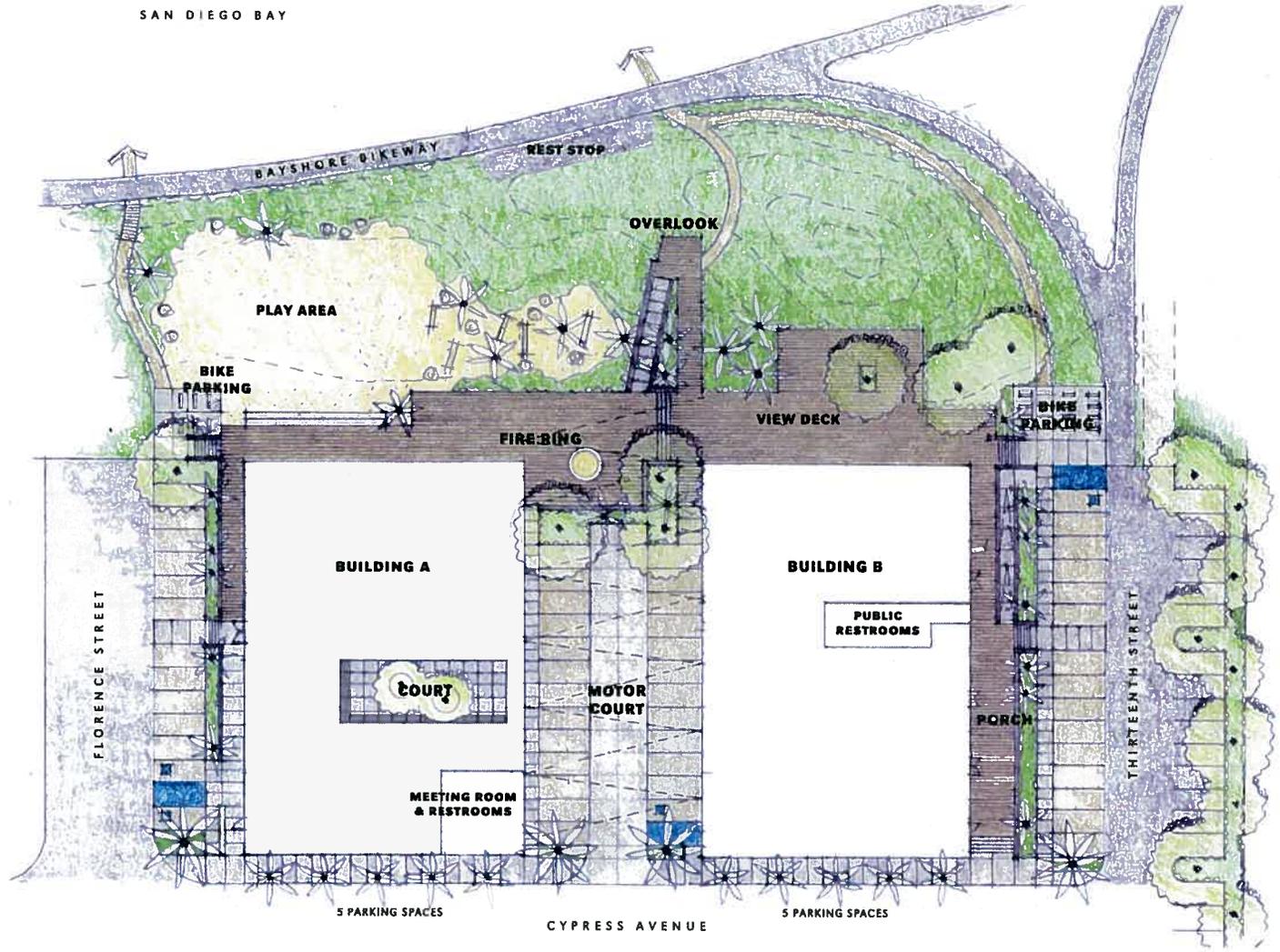
Site Design Principles

Bikeway Village • Imperial Beach, California

landLAB
landscape architecture • environmental design

STUDIO E
ARCHITECTS

NO SCALE NORTH 05 JANUARY 2010



Site Design Concept

Bikeway Village • Imperial Beach, California



RESOLUTION NO. 2010- 6947

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH AUTHORIZING THE CITY MANAGER TO EXECUTE THE EXCLUSIVE USE AND OCCUPANCY PERMIT BETWEEN THE CITY OF IMPERIAL BEACH AND THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

WHEREAS, since 1995, the City has held a revocable license on the subject property, formerly owned by Western Salt Company, and the City constructed a bikeway on the subject property; and

WHEREAS, since 2003, the Airport Authority has owned the subject property; and

WHEREAS, the parties now wish to enter into the Exclusive Use and Occupancy Permit ("Permit") to allow the City to use the subject property for an acceptable general public use, such as a recreational use, for a period of fifteen years; and

WHEREAS, under the Permit, the City will pay the Airport Authority Five Hundred and Fifty Dollars (\$550.00) per month; and

WHEREAS, the execution of this Permit will not change the existing use on the subject property and no environmental impacts will occur. The City has not committed the property as the site of any specific new project. If any new improvements will be constructed on the property pursuant to this Permit, the proper level of environmental review will occur as necessary.

NOW, THEREFORE, the City Council of the City of Imperial Beach, California, does hereby resolve as follows:

1. The above-listed recitals are true and correct.
2. The City Council hereby authorizes the City Manager to enter into the Exclusive Use and Occupancy Permit on behalf of the City of Imperial Beach.
3. The City Council hereby delegates to the City Manager the ability to perform all steps necessary to implement the purpose and intent of this Resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 22nd day of September 2010, by the following roll call vote:

**AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:**

JIM JANNEY, MAYOR

ATTEST:

**JACQUELINE HALD, CMC
CITY CLERK**



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

**ORIGINATING DEPT.: COMMUNITY DEVELOPMENT
GREG WADE, DIRECTOR
ELIZABETH CUMMING, ASSISTANT PROJECT MANAGER**

**SUBJECT: PROPOSED PROJECT PROPOSALS FOR THE FISCAL YEAR
2011-2012 COMMUNITY DEVELOPMENT BLOCK GRANT
(CDBG) PROGRAM**

BACKGROUND:

The Community Development Block Grant ("CDBG") Program is funded through the Department of Housing and Urban Development Department ("HUD"). The County of San Diego's Department of Housing and Community Development allocates funds to participating cities based on a formula that considers factors such as population, income level, and overcrowded housing.

The Draft Fiscal Year ("FY") 2011-2012 Annual Funding Plan Strategy ("Strategy") was presented to the Board of Supervisors in September 2011. The approval of the Strategy marks the start of the annual CDBG cycle that culminates in the funding of community development projects in FY 2011-2012. The final approval by the Board of Supervisors for submitted projects is expected to take place in May 2011. The HUD funding levels in FY 2011-2012 are still uncertain; therefore the Strategy assumes the same level of funding as 2010-2011 (\$137,000). Adjustments will be made when HUD issues the entitlement figures.

The purpose of this meeting is to provide comment and receive direction on proposed projects for the FY 2011-2012 (CDBG) program.

DISCUSSION:

CDBG funded activities are intended to primarily benefit low-income and moderate-income residents of Imperial Beach. The CDBG program activities are expected to improve communities and/or neighborhoods by creating suitable living environments. One of the expected outcomes of CDBG activities is to increase and improve the accessibility of public infrastructure and buildings. Staff has evaluated different projects for benefits to low-income and moderate-income residents of the community, the viability and timeliness of the proposed projects, and impacts to the livability on the community.

The following are proposed projects:

- Marina Vista Center Project – The Project at the Marina Vista Center is an unfunded project. The Project would install efficient lighting and new windows throughout all facilities, replace wood framing, walls and siding around and under window on east side of the senior center office.

The CDBG budget for the Marina Vista Center is as follows:

<u>Tasks</u>	<u>Estimated Costs</u>
Construction	128,000
Project Management	<u>9,000</u>
TOTAL	\$137,000

- Sports Park Restroom Remodel - The remodel of the bathroom at Sports Park Restroom Remodel is an unfunded project in the Capital Improvement Program. The remodel would replace sanitary fixtures and stalls; replace the floor and floor drains, replace faucets, doors, vents, and install a new roof and downspouts.

The budget for the Sports Park Restroom Remodel is as follows:

<u>Tasks</u>	<u>Estimated Costs</u>
Construction	128,000
Project Management	<u>9,000</u>
TOTAL	\$137,000

- Veteran's Park Restroom Remodel - The remodel of the bathroom at Veteran's Park is an unfunded project in the Capital Improvement Program. The remodel would replace sanitary fixtures and stalls; replace the floor and floor drains, replace faucets, doors, vents, and install a new roof and downspouts.

The budget for the Veterans Park Restroom Remodel is as follows:

<u>Tasks</u>	<u>Estimated Costs</u>
Construction	128,000
Project Management	<u>9,000</u>
TOTAL	\$137,000

- Sports Park Music Room Upgrade & Equipment Replacement Project- The upgrade and replacement of the music room equipment is an unfunded project. The funding would purchase equipment that would expand the capacity and capability of the music program. The upgraded equipment replacement would include new sound mixing software, additional new instruments and new size appropriate instruments, microphones, and speakers.

The budget for the Sport's Park Music Room Upgrade & Replacement Project is as follows:

<u>Tasks</u>	<u>Estimated Costs</u>
Purchase	65,000
Installation	<u>15,000</u>
TOTAL	\$80,000

- 5th Street & Imperial Blvd Crosswalk – Install median on Imperial Beach Boulevard to provide a safe island for pedestrians while crossing the street, and pop-outs on the east and west corners of 5th Street to provide better visibility and safety of pedestrians.

The budget for the 5th Street & Imperial Beach Boulevard Crosswalk is as follows:

<u>Tasks</u>	<u>Estimated Costs</u>
Construction	128,000
Project Management	9,000
TOTAL	\$137,000

- 13th Street and Ebony Avenue Crosswalks, Pop-Outs, and Ramps – Completion of the Intersection at 13th Street and Ebony Avenue. Install ADA ramps, pop-outs and crosswalks at the southwest and northwest corners of 13th Street and Ebony Avenue to provide better visibility and safety of pedestrians, especially for the school children.

The budget for the completion of installation of ADA ramps, pop-outs, and crosswalks at the southwest and northwest corners of 13th Street and Ebony Avenue is as follows:

<u>Tasks</u>	<u>Estimated Costs</u>
Construction	128,000
Project Management	9,000
TOTAL	\$137,000

- Public Safety Duel Pane Window Replacement, Purchase of Medical and Firefighting Equipment - The Public Safety Department proposes to use the funding to purchase duel pane windows, an auto pulse and one additional (Electrocardiograph) ECG machine, and miscellaneous firefighting equipment.

The budget for the undetermined Public Safety project is as follows:

<u>Tasks</u>	<u>Estimated Costs</u>
Project Implementation	132,000
Project Management	5,000
TOTAL	\$137,000

- Imperial Beach Library Redevelopment Project – The Imperial Beach Library Redevelopment Project proposes to use the funding for design and environmental review of a new/expanded library at its current location.

The budget for the Imperial Beach Library Redevelopment Project is as follows:

<u>Tasks</u>	<u>Estimated Costs</u>
Project Design	87,000
Environmental Review	50,000
TOTAL	\$137,000

FISCAL IMPACT:

While the actual amount of CDBG funds will not be determined until the County receives all CDBG funding requests and receives HUD notification of available funds, the estimated FY 2011-2012 CDBG allocation is approximately \$137,000.

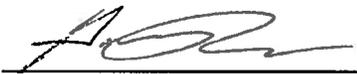
DEPARTMENT RECOMMENDATION:

That the City Council:

1. Consider staff report; and provide direction, and set public hearing for October 6, 2010.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: SEPTEMBER 22, 2010
ORIGINATING DEPT.: PUBLIC WORKS *Hof*
SUBJECT: ADOPTION OF RESOLUTION NO. 2010-6927 ACCEPTING THE
2010 STORM DRAIN STUDY

BACKGROUND:

On April 1, 2009, City Council adopted the Five Year Capital Improvement Program (CIP) Projects Budget for Fiscal Years 2009/2010 Through 2013/2014. In that approval City Council acknowledged the removal of the Storm Drain Master Plan project from the proposed funded projects and acknowledged that the "project will be largely done with in-house staff and O&M resources to minimize total project cost." Over the past 18 months, staff has been working on the update to the earlier Storm Drain Studies.

The first citywide storm drain study was prepared in 1960 by Curie Engineering Company and Merrill B. Wittman Engineers. The study was subsequently updated in 1991 by Bement-Dainwood-Sturgen Civil Engineers. The purpose of these and the most recent storm drain study was to evaluate the effectiveness of the existing storm drain system, identify problem areas, and recommend improvements that will reduce flooding or damage to the city during peak storm flows. The most recent study has been designed within and incorporated into the City's GIS system providing tremendous technological improvements for future system study and system improvements.

DISCUSSION:

The 2010 Storm Drain Study updated the 1991 BDS report and utilized the most recent hydrologic and geospatial data for the region to update drainage basin maps, storm drain capacity limitations, and preliminary recommendations for improvements to the storm drain system. The scope of work for the study included the following:

- Review of existing data
- Field verification and GIS mapping of system
- Hydraulic and hydrologic modeling for the 2-year, 5-year, and 10-year model storm flow
- Identification of system deficiencies and recommendations for improvements

This Storm Drain Study is a useful planning tool that identifies system deficiencies and limitations that are important to consider when evaluating future redevelopment projects including new developments, capital improvement projects, or collection system improvements. The report provides hydraulic, hydrologic, and capacity analysis for 7 large drainage areas and 15 smaller drainage areas in the City and provides preliminary recommendations on how to increase the capacity for the system where feasible. Geospatial data relating to drainage basins and storm drain infrastructure was also updated into the City's GIS database.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

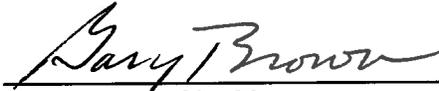
Much of the work on the Study was conducted in house through the Public Works Department. The Environmental Division worked a total of 105 hours on the project. Hydraulic and hydrologic modeling, field investigations, and GIS mapping was contracted through the City's GIS Consultant (Mike Piasecki Consulting) at a cost of \$18,540 funded from the storm water budget.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Receive the presentation prepared for City Council's interest.
3. Adopt Resolution No. 2010-6927 accepting the 2010 Storm Drain Study.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6927
2. City of Imperial Beach Storm Drain Study

RESOLUTION NO. 2010-6927

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, ACCEPTING THE 2010 STORM DRAIN STUDY

WHEREAS, the purpose of the 2010 Storm Drain Study (2010 Study) is to update the previous drainage study that was first prepared in 1960 and then subsequently updated in 1991 by Bement-Dainwood-Sturgen Engineers; and

WHEREAS, the 2010 Study utilizes the most recent hydrologic and geospatial data for the region to update drainage basin maps, storm drain capacity limitations, and preliminary recommendations for improvements to the storm drain system; and

WHEREAS, the 2010 Study is a useful planning tool that identifies system deficiencies and limitations that are important to consider when evaluating future redevelopment projects in the City;

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

1. The above recitals are true and correct.
2. The 2010 Storm Drain Study is accepted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 22nd day of September 2010, by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

Item No. 6.3

Attachment 2 Storm Drain Study

**Available in the City Clerk's
Office for Review**

**You may also view the
document on our website:
www.cityofib.com**



**STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY**

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY
FROM: GARY BROWN, EXECUTIVE DIRECTOR
MEETING DATE: SEPTEMBER 22, 2010
ORIGINATING DEPT.: PUBLIC WORKS *Hof*
SUBJECT: RESOLUTION R-10-229 APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE RECREATIONAL TRAILS PROGRAM

BACKGROUND: In September 2009, Agency Board authorized City staff to submit a Recreation Trails Program (RTP) grant application for Bayshore Bikeway Access Improvement project at the north end of 10th Street. The Project passed the first review of the applications received by the State which triggered a site visit by a State representative to view the project site plus discuss the City's application in person. The representative was quite impressed with the project's potential impact on the improved accessibility to the Bayshore Bikeway. However, in July 2010, the City received a letter announcing that the City of Imperial Beach was not among those awarded a grant during the 2009/2010 funding cycle. Despite the rejection notice, the City was encouraged by the State staff to reapply for the FY 2010/2011 funding cycle due to the strong merits of the proposed project. The grant application submission date for the FY 2010/2011 funding cycle is not later than October 1, 2010.

During the State's review of the project there were several requests for additional information and clarification about the scope of the project, mostly regarding the relocation of the loading dock. There was a general belief by the State that use of the RTP grant funds were to be specifically directed toward recreational purposes and the loading dock relocation served no recreation benefit or purpose. Further the relocation of the loading dock constituted approximately 33% of the total project cost, a relatively high expenditure with "no recreational value." In May 2010, in response to a query by the State about the Agency contributing a larger match to the grant such that the Agency would share a greater share of the loading dock relocation, Agency Board authorized the Executive Director to add an additional \$100,000 to the match (if awarded the grant) pending subsequent approval by the Agency Board.

DISCUSSION: Following the RTP grant rejection notice, staff was contacted by the State representative who encouraged City staff to receive a critique of the FY 2009/2010 RTP grant application with a view towards helping the City to prepare a more competitive FY 2010/2011 RTP grant application. A clear message in that critique was the loading dock should not be part of the grant application and the focus of the grant application should be on the recreational benefits and improvements. Staff is prepared to submit a FY 2010/2011 Funding cycle RTP grant with those modifications should the Agency Board so direct.

At the September 1, 2010 City Council / Agency Board meeting, staff briefed the Agency Board on Redevelopment Bond Funding – agenda item 6.1 - which included \$290,000 set aside for the

Bayshore Bikeway Access project. The estimated cost of the loading dock relocation was \$194,000 thus the Agency could fund the relocation independent of the RTP grant if so desired.

ENVIRONMENTAL DETERMINATION:

Resolution No. 2009-6800 approved the Mitigated Negative Declaration (SCH#2009071093) for the expansion of the Public Works Yard at 495 10th Street (Bayshore Bikeway Access Improvement Project). Notice of Determination was filed September 4, 2009.

FISCAL IMPACT:

- Project Engineer's Estimate \$590,000

- Project Engineer's Estimate without the loading dock relocation \$396,000
- FY 2010/2011 RTP Grant \$348,480
- Redevelopment Agency Match \$ 47,520

- RDA funds currently earmarked for the Bayshore Bikeway Access Improvement project is \$290,000, which is sufficient to cover the cost of the loading dock relocation plus the redevelopment agency match for the RTP grant.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Consider the Bayshore Bikeway Access Project merits relative to other projects proposed for RDA funds.
3. Direct staff to proceed with the RTP grant application submission or direct staff to terminate the RTP grant application work.
4. If staff is directed to proceed with the RTP grant application for the FY 2010/2011 funding cycle, adopt the attached resolution.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, Executive Director

Attachments:

1. Resolution No. R-10-229

RESOLUTION NO. R-10-229

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE RECREATIONAL TRAILS PROGRAM

WHEREAS, the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" provides funds to the State of California for Grants to federal, state, local and non-profit organizations to acquire, develop and/or maintain motorized and non-motorized trail projects; and

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing Project Application under the program; and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the Applicant to certify by resolution the approval of Application before submission of said Application to the State; and

WHEREAS, the Applicant will enter into a Contract with the State of California to complete the Project.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Imperial Beach as follows:

1. Approves the filing of an Application for the Recreational Trails Program; and
2. Certifies that the Project is consistent with the Applicant's general plan or the equivalent planning documents; and
3. Certifies that the said Applicant has or will have available prior to commencement of any work on the Project included in the Application, sufficient funds to operate and maintain the Project; and
4. Certifies that the Applicant has reviewed, understands, and agrees to the General Provision contained in the Contract shown in the Procedural Guide; and
5. Appoints the Public Works Director as agent to conduct all negotiations, execute and submit all documents, including, but not limited to Applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the Project; and
6. Agrees to comply with all applicable federal, state, and local laws, ordinances, rules, regulations and guidelines.

PASSED, APPROVED, AND ADOPTED by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 22rd day of September 2010, by the following vote:

**AYES: BOARDMEMBERS:
NOES: BOARDMEMBERS:
ABSENT: BOARDMEMBERS:**

**JAMES C. JANNEY
CHAIRPERSON**

ATTEST:

**JACQUELINE M. HALD, CMC
SECRETARY**



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL AND CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, CITY MANAGER/EXECUTIVE DIRECTOR

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, COMMUNITY DEVELOPMENT DIRECTOR *GW*

SUBJECT: MONTHLY UPDATE REPORT ON THE REDEVELOPMENT OF THE SEACOAST INN HOTEL

BACKGROUND:

At the City Council meeting on Wednesday, April 21, 2010, the City Council approved a Memorandum of Understanding (MOU) between the City/Redevelopment Agency and the Developer/Property Owners of the Seacoast Inn (Imperial Coast Limited Partnership) outlining financial and other commitments for the redevelopment of the Seacoast Inn. Also approved as part of the MOU was a Project Schedule detailing important project milestones for the project's development. At the meeting on April 21, 2010, the City Council also requested a monthly update report be made to advise the Council on progress made and compliance with the approved MOU and Project Schedule.

At the City Council meeting on May 19, 2010, City staff and Pacifica presented the first of the requested monthly updates. Staff advised the City Council that the demolition permit had been issued and the building permit plans (structural and architectural) had been resubmitted for plan check. Pacifica advised the City Council on progress made with respect to the schedule contained in the Memorandum of Understanding (MOU). The City Council requested that, for future monthly updates, all information and/or schedule updates should be provided to the City Council with their agenda packages rather than at the time of the meeting as a last minute agenda item. The City Council has received monthly updates at the second meeting of each month since that time.

DISCUSSION:

On Wednesday, September 22, 2010, the City Council will receive the monthly update from Pacifica. It is expected that Pacifica will report that they have paid off the existing loan on the hotel, have secured their Coastal Development Permit from the Coastal Commission and have commenced demolition of the existing hotel. Negotiations on the Redevelopment Agency financial participation are on-going.

FISCAL ANALYSIS:

No fiscal impact with this report.

ENVIRONMENTAL REVIEW

None required with this report.

DEPARTMENT RECOMMENDATION:

That the City Council/Redevelopment Agency receive the update report on the Seacoast Inn project and provide comment and input as necessary.

CITY MANAGER'S RECOMMENDATION

Approved Department recommendation.

 FOR

Gary Brown, City Manager/Executive Director

Attachments:

1. Project Schedule

PROJECT SCHEDULE

TASK	DESCRIPTION OF TASK (PACIFICA'S OBLIGATION UNLESS OTHERWISE NOTED)	DATE	COMMENT
1	Submit complete demolition permit application to City with all timely completion of all required coordination with APCD, SDG&E, etc. as necessary to accommodate City issuance of demolition permit	4/27/10	Complete
2	City issues demolition permit	4/30/10	Complete
3	Compliance with "prior to issuance condition."	----	----
3.1	Submit CC&Rs to Dept. of Real Estate	4/9/10	Complete
3.2	Submit CC&Rs to Coastal Commission	4/23/10	Complete
3.3	Record deed restriction with County	4/23/10	Complete
3.4	Submit final map to City with bond	4/20/10	Complete
3.5	County issues tax clearance certificate	5/13/10	Complete
3.6	Citibank issues subordination agreement	5/7/10	N/A
3.7	Final Map approved by City Council	4/21/10	Complete
3.8	Final Map recorded	9/8/10	Complete
3.9	<i>Submit certified recorded Final Map to Coastal Commission</i>	<i>Due Sept. 20</i>	
4	Submit payment for City's/Agency's staff and consultant	4/14/10	Complete
5	Submit payment for OPA legal fees	4/22/10	Complete
6	Submit payment to replenish deficient account	4/14/10	Complete
7	Submit evidence to reasonable satisfaction of City (i.e., copies of materials and list of lenders contacted/to be contacted) that it is pursuing construction financing for the project	4/19/10	Complete
8	Submit construction budget and supporting bid documents evidencing construction costs	4/14/10	Complete
9	Submit pro formas to City	4/14/10	Complete
10	Submit all documentation to Coastal Commission necessary for approval of "prior to issuance conditions"	9/8/10	Complete
11	Coastal Commission approves "prior to issuance conditions"	9/8/10	Complete
12	Coastal Commission extends CDP	5/14/10	Complete
13	Hazardous Materials abatement completed	6/1/10	Complete
14	Commence demolition	9/13/10	Complete
15	Complete demolition	Last week in October	
16	Submit revised building permit plans (and fee) to City	5/16/10	Complete

16.1	Submit MEP plans to City	6/30/10	Complete
17	Correction and resubmission to City of building permit application and portions thereof	Will resubmit by 7/28/10	
18	City/Agency submits draft OPA to Pacifica	6/22/10	
19	City/Agency approves OPA	7/22/10	
20	City issues building permit	5 days after plans are approved by Building Safety	
21	City issues redevelopment bonds	TBD by City	
22	Pacifica commences construction of project	45 days after completion of Tasks 19, 20 and 21	
23	Pacifica completes construction	18 months following completion of Task 22	



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: GARY BROWN, CITY MANAGER
MEETING DATE: SEPTEMBER 22, 2010
ORIGINATING DEPT.: PUBLIC WORKS
SUBJECT: SEASIDE POINT NEIGHBORHOOD STOP SIGN ALIGNMENT

BACKGROUND: City Staff was requested to investigate the merits of shifting the stop sign orientations on several intersections within the Seaside Point Neighborhood, specifically on the streets between Connecticut Street, Iris Avenue, 5th Street and Imperial Beach Boulevard. Currently all the stop signs in these blocks are positioned on the east – west streets. The traffic on the streets of Connecticut, East Lane, Loudon Lane, California, and 5th are uninterrupted by stop signs except as they approach Iris Avenue (south bound) and Imperial Beach Boulevard (north bound). See the attachment showing the street stop sign placements. There have been complaints that the north/south bound traffic commonly exceeds the 25 MPH prima fascia speed limit. The perception is that stop signs are needed on the north/south direction streets to reduce vehicle speeds on these residential streets.

DISCUSSION: City Staff consulted with the City Traffic Engineer, KOA Corporation, regarding the request. The Traffic Engineer accompanied staff on a site visit in August 2010. Additionally Public Safety had previously positioned their equipment to register traffic speeds and deputies to monitor the traffic flows. The Traffic Engineer has rendered the opinion that the current sign placement is consistent with good traffic engineering and that there would be no Engineering Warrant that would support a change in the stop sign orientation or placement within those blocks. That being said, the Traffic Engineer further reported that if there were a Council decision to change the sign orientation it would not increase any public safety liability for the City.

ENVIRONMENTAL DETERMINATION:
Not a project as defined by CEQA.

FISCAL IMPACT:
No impact by receiving this report. However, if there is further direction to reorient the signage within this neighborhood, there would be an estimated 24 person hours used to change out 12 of the 24 stop signs in those neighborhood blocks.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Evaluate the merits of the suggested stop sign reorientation within the blocks noted in the Seaside Point neighborhood.
3. Provide direction to staff.

4. If the decision is to reorient stop signs within this neighborhood, direct staff to return at a future Council meeting with a resolution to affirm the stop sign realignment.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

 FOR

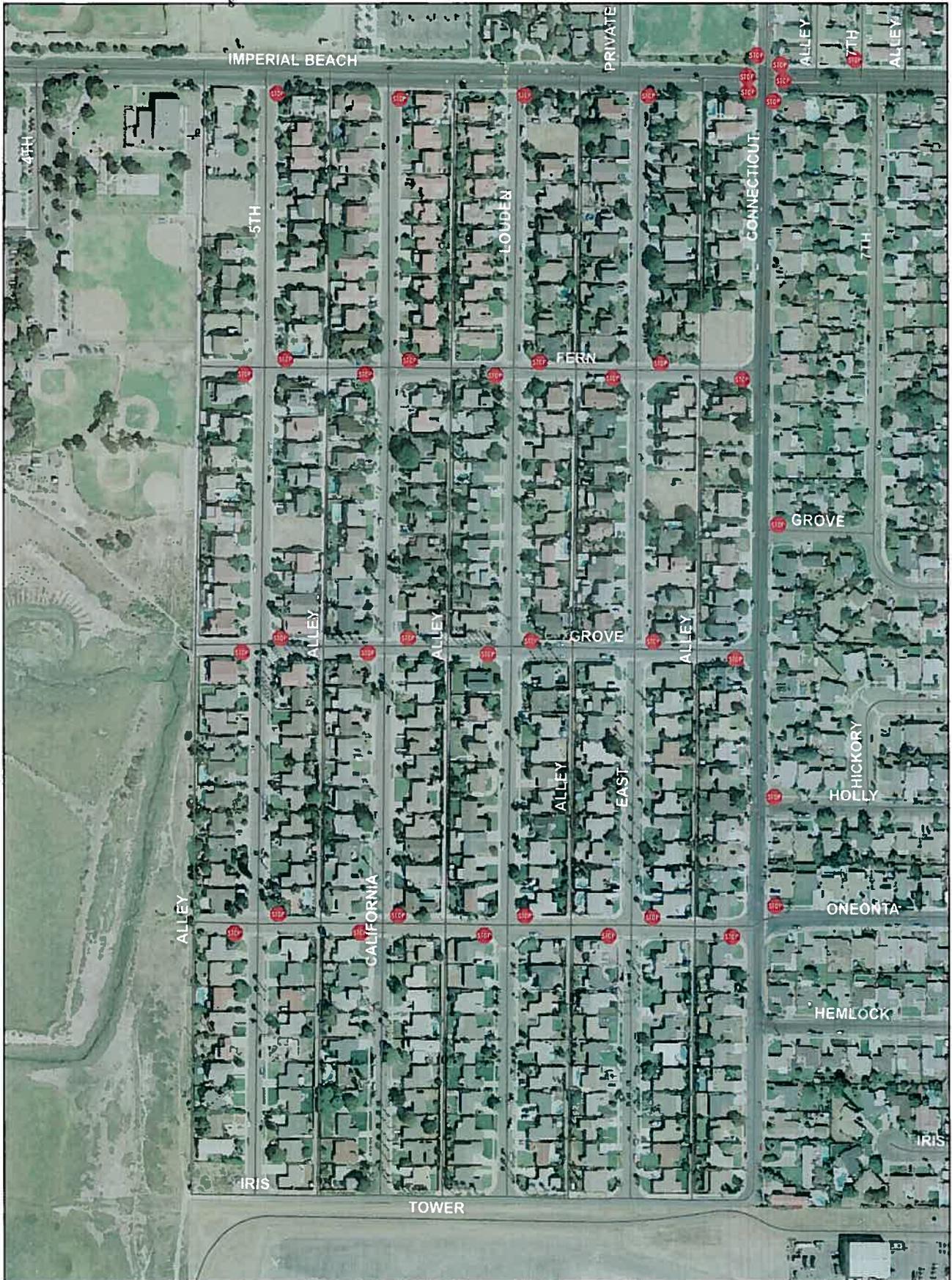
Gary Brown, City Manager

Attachments:

1. Neighborhood Street Map with the Stop Sign Overlay displayed thereon.



Revised Stop Signs Map





**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT
GREG WADE, DIRECTOR *[Signature]*
ELIZABETH CUMMING, ASSISTANT PROJECT MANAGER

SUBJECT: INSTALLATION OF SCULPTURAL "URBAN" TREE AT THE MARINA VISTA CENTER FRONTAGE OFF OF 8TH STREET

BACKGROUND:

Recently Public Works received a grant from California American Water Company (CALAM) for a new water conservation project within the City. CALAM suggested the City consider a sustainable landscape project adjacent to the Marina Vista Center similar to the project in front of the City of Imperial Beach Civic Center. The project has been completed by Life Scout, Nick Morrell, from Boy Scout Troop 53 as his Eagle Scout Rank Project. Life Scout Morrell submitted a materials list and associated costs to City Staff and, in turn, a grant proposal was submitted to CALAM to cover expenses related to material costs of the project. Public Works staff cleared, grubbed, and prepared the project site for Nick Morrell and Troop 53 to install the plant material and irrigation. Public Works also installed a new walkway, the focal point of which is a large ceramic urn that sits on a raised, circular, concrete slab.

DISCUSSION:

When the project was completed, Public Works purchased and installed a large urn to act as a focal point for the Marina Vista Center Entrance. Subsequently it was suggested the City install one of the "Urban Trees" from the Port of San Diego's Public Art Program "Urban Trees 6" installed along Harbor Drive. Mr. Levien and Ms. Cumming reviewed all the "Urban Trees 6" tree artworks and chose four that would best suit the Marina Vista site. All four trees are available and each artist is willing to loan the City of Imperial Beach their tree, if selected, for an undetermined period of time, but not less than one year. The one criterion for the loan is that the art piece be available for sale during the period of time that it is installed at the Marina Vista site.

Staff has proposed the following trees for consideration:

1. "Wind & Shadow" by Cathy Coverley



This urban tree sculpture's brightly colored powder-coated canopy, bearing multiple dichroic colored glass disks, rotates lazily in the shifting sea-breezes of the bay, casting colored patterns and ever changes shadows on the pavement below.

2. "Paper Airplanes" by Cameron Vogel



The planes in this sculpture are created from highly polished stainless steel and aluminum. Soaring 10 feet above the ground, they rotate with the wind. Conveying the artist's tribute to aviators, this artwork portrays how creativity and perspective are gained when we use our imaginations.

3. "Perpetual Motion" by David Boyer



Reaching 17 feet at its highest point, this artwork's style is reminiscent of the "steam punk" era of the industrial revolution. During that time, large machines were built to look like art sculptures. Stainless steel paddlewheels, tubing and hollow steel spheres give the artwork its retro look and the strength to withstand winds up to 100 mph.

4. "Synthesis" by Todd Williams



This stainless steel sculpture is based on the concept of synthesis where often the greatest discoveries result from the paring of what at first appear to be non-complementary elements. The composition combines elements of architecture and industry with those of free flowing organic nature. It references the human condition and the synthesis of the temporal with the metaphysical or abstract.

After reviewing the four "Urban" Trees, City staff is recommending "Wind and Shadow" by Cathy Coverley as it has multiple colors, movement and does not have attachments that could be easily vandalized. The sculpture has an external blue color, an internal color of bright yellow and is further embellished by colored glass inserts. Additionally, in breezy or windy condition the sculpture moves in a circular mode and in certain lighting conditions colored patterns form on the ground below. This "Urban Tree" combines elements of movement, color, and light, and combined with the benefit of deterring vandalism, it will make it a successful selection for the site at the Marina Vista Center.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

The Urban Tree donation is at no cost to the City. The transportation and installation cost is estimated to be not more than \$2,000. Funding for the transportation and installation is proposed to come from the Redevelopment Agency budget.

DEPARTMENT RECOMMENDATION:

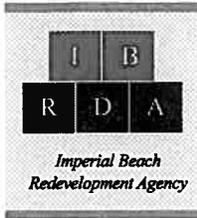
1. Receive this report.
2. Review the four selected Urban Trees
3. Approve the location for installation of "Wind and Shadow" sculpture in front of the Marina Vista Center.
4. Authorize the City Manager or his designee to work with the Port of San Diego and the artist for the loan of the Urban Tree for the Urban Tree selected.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager



**STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY**

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: PUBLIC WORKS

SUBJECT: RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR, IMPERIAL BEACH REDEVELOPMENT AGENCY, TO ENTER INTO A CONTRACT WITH STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF ACCEPTING THE FISCAL YEAR 2010-11 ENVIRONMENTAL JUSTICE GRANT

BACKGROUND: On April 7, 2010, the Redevelopment Agency approved Resolution No. R-10-215 authorizing an application for the Environmental Justice – Transportation Planning – Grant Fiscal Year 2010-2011. The resolution authorized the Public Works Director to enter into a contract with CALTRANS if awarded the Grant and approved the use of Redevelopment Agency funds for the required 7.5 percent match. Recently the City received a letter from the California Department of Transportation, Division of Transportation Planning, congratulating the City on the award of a Fiscal Year 2010-11 Environmental Justice Grant. In that letter the Agency was directed to submit a revised resolution authorizing the Executive Director to enter into the contract with the Department of Transportation.

DISCUSSION: The Redevelopment Agency is directed to forward the revised resolution along with several other application modifications not later than October 5, 2010. City staff is working with our application partner, Walk San Diego, to make those modifications and to have them resubmitted before October 5, 2010. The grant award is for \$100,000 to develop pedestrian safety and traffic calming “action plans” for improvements within the City’s streets, with a particular focus around City schools. The City’s required cash match is 7.5% (\$8,300). The City’s required in-kind match is 2.5% (\$2,750). The funding is contingent on passage of the State budget.

ENVIRONMENTAL DETERMINATION:

Not a project as defined by CEQA.

FISCAL IMPACT:

- Award/receipt of \$100,000 from California Department of Transportation
- Cash match from RDA funds of \$8,300.
- In kind match from City Staff time from O&M funds of \$2,750.
- Total project investment / expenditure \$110,250.

DEPARTMENT RECOMMENDATION:

1. Receive this report.

2. Adopt the attached resolution authorizing the City of Imperial Beach Redevelopment Agency Executive Director to enter into an agreement with CALTRANS for the award of the Fiscal Year 2010-11 Environmental Justice Grant for \$100,000.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve Department recommendation.

 FOR

Gary Brown, Executive Director

Attachments:

1. Resolution No. R-10-228

RESOLUTION NO. R-10-228

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AUTHORIZING THE EXECUTIVE DIRECTOR, IMPERIAL BEACH REDEVELOPMENT AGENCY, TO ENTER INTO A CONTRACT WITH STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF ACCEPTING THE FISCAL YEAR 2010-11 ENVIRONMENTAL JUSTICE GRANT

WHEREAS, the City of Imperial beach received a letter from the California Department of Transportation, Division of Transportation Planning, congratulating the City on the award of a Fiscal Year 2010-11 Environmental Justice Grant; and

WHEREAS, the Agency was directed to submit a revised resolution authorizing the Executive Director to enter into the contract with the Department of Transportation; and

WHEREAS, the grant award is for \$100,000 to develop pedestrian safety and traffic calming "action plans" for improvements within the City's streets, with a particular focus around City schools; and

WHEREAS, the Agency's required cash match is 7.5% (\$8,300). ; and

WHEREAS, State funding is contingent on passage of the State budget.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Imperial Beach as follows:

1. The above recitals are true and correct.
2. The Executive Director, Imperial Beach Redevelopment Agency, Gary Brown, is authorized to enter into an Agreement with the California Department of Transportation for the Fiscal Year 2010-11 Environmental Justice Grant.

PASSED, APPROVED, AND ADOPTED by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 22 day of September 2010, by the following vote:

AYES:	BOARDMEMBERS:
NOES:	BOARDMEMBERS:
ABSENT:	BOARDMEMBERS:

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, CMC
SECRETARY



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL/CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, CITY MANAGER/EXECUTIVE DIRECTOR

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: COMMUNITY DEVELOPMENT DEPARTMENT
GREG WADE, DIRECTOR

SUBJECT: RATIFICATION OF THE COMMERCIAL ZONING REVIEW RECOMMENDATIONS INCLUDING REVISIONS PROPOSED BY THE AD HOC COMMITTEE

BACKGROUND:

On Wednesday, August 18, 2010, staff advised the City Council that the summary document being prepared for the Commercial Zoning Review Recommendations to be presented to the public was not yet complete but that it was expected to be provided to City Council at their meeting on September 1, 2010. On September 1, 2010, staff advised the City Council that the draft summary document for review by the public was not yet complete. Due to the timeline previously established by the City Council and the dates previously set for public workshops on the draft document, the City Council gave direction to staff regarding release of the summary document and established an ad hoc Council Committee to review the document for content prior to its release to the public.

DISCUSSION:

The draft summary document was provided to the City on Tuesday, September 7, 2010, and a copy was provided to the ad hoc Council Committee for its review. The ad hoc committee reviewed the draft summary document and provided direction to City staff and their consultant for suggested revisions to the document. The document is included with this staff report and staff is seeking City Council ratification of the document and comments on it. While the document includes three appendices, a comprehensive overview of the recommended zoning amendments is contained in the 31-page summary document.

Public input on the draft document will be received during public workshops currently scheduled for Tuesday, September 28, 2010, and Thursday, October 7, 2010. Once this input has been received, City staff will present the public comments to the City Council on Wednesday, October 20, 2010, and the Council can make any final revisions to the document so that City staff and the consultant can begin drafting the zoning/ordinance amendments. This will also initiate the environmental review process along with other necessary actions to affect the proposed changes to Commercial Zoning.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

This discussion of the recommended zoning amendments is not, in itself, subject to CEQA.

FISCAL IMPACT:

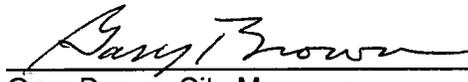
None with this item.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council ratify and comment on the Commercial Zoning Review Recommendations document as presented by the ad hoc committee.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, City Manager

Attachments: 1. Commercial Zoning Review Recommendations
 2. Appendices A through C

Item No. 6.9

Attachment 1 Commercial Zoning Review Recommendations

**Available in the City Clerk's
Office for Review**

**You may also view the
document on our website:
www.cityofib.com**

Item No. 6.9

Attachment 2 Commercial Zoning Review Appendices

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Office for Review**

**You may also view the
document on our website:
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**STAFF REPORT
IMPERIAL BEACH REDEVELOPMENT AGENCY**

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: GARY BROWN, EXECUTIVE DIRECTOR

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: PUBLIC WORKS

SUBJECT: RESOLUTION NO. R-10-230 – AWARDING A CONTRACT FOR ELM AVENUE / 7TH STREET UNDERGROUND UTILITY DISTRICT STREET LIGHT TRENCH WORK, CONDUIT INSTALLATION AND LIGHT POLE FOUNDATIONS AND RATIFYING ACTIONS WITH RESPECT TO EXECUTION OF THE CONTRACT

BACKGROUND:

City Council Resolution No. 2008-6702 established the formation of Elm Avenue and 7th Street Underground Utility District – CIP Project No. S08-901. This project was funded through SDG&E 20A funds allocated to the City of Imperial Beach. The Five-Year Capital Improvement Program (CIP) Projects Budget for Fiscal Years 2009-2010 through 2013-2014 approved by Resolution No. 2009-6732 included the installation of street lights within the District in coordination with the utility undergrounding. The CIP budget provided \$200,000 from Redevelopment Agency funds toward the installation of the new street lights.

In late August 2010, SDG&E awarded a contract with A.M. Ortega Construction, Inc. to underground the utilities within the District. Shortly thereafter, Agency staff invited A.M. Ortega Construction, Inc. to provide the Agency a quote to install new street light infrastructure coincident with undergrounding the overhead utilities. This infrastructure includes the trench work, conduit installation, utility pull box installation and light pole foundations.

DISCUSSION:

A.M. Ortega Construction, Inc. has provided the Agency a very reasonable cost quote of \$54,000 for the performance of this work. The District will have 16 new concrete light poles installed following completion of the underground work. Eight of those new poles will be installed using the salvaged poles from the Old Palm Avenue Renovation CIP project. After Street Improvements Phase 3B is completed on Seacoast Drive, 8 poles salvaged from Seacoast Drive project will be installed to complete the Elm Avenue / 7th Street Underground Utility District street light installation. The use of salvaged poles will save approximately \$20,000 in pole costs. A point of caution, however, is that these poles are all previously used and, therefore, their expected lifespan will not be that of a new pole. This approach should defer new pole purchases another ten years or more.

Another issue to point out is that this pole installation plan will mean that only 8 of the 16 planned street light poles will be installed coincident with the completion of the District project. The remaining 8 street lights will be installed following construction of the Street Improvements Phase 3B project, anticipated in late 2011.

The A.M. Ortega Construction, Inc. sole source contract for the performance of this work is in the Agency's interest because:

- To bring in a second contractor for the street light infrastructure installation, the work must be done after A.M. Ortega Construction, Inc. has completed their work thus the streets would need to be retrenched adding additional cost to the project. A.M. Ortega Construction, as proposed herein, would be installing the street light infrastructure coincident with underground utilities installation, saving substantial trenching costs.
- Eight (8) new street lights would be operational in the District immediately after the utilities are placed underground. To bring in a second contractor for the street light infrastructure after A.M. Ortega Construction, Inc. has completed their work would delay the street light installation several months after the District is undergrounded – leaving the District neighborhood dark particularly around the adjacent schools.
- A.M. Ortega Construction, Inc. has provided a very reasonable bid.

The trench work for the District started the week of September 7, 2010. In order not to incur additional expenses for the street light infrastructure installation, the Executive Director has signed the contract with A.M. Ortega Construction, Inc. for street light infrastructure installation coincident with the work being done for the District. Staff recommends that the Agency Board ratify this contract. (See attachment 2).

ENVIRONMENTAL DETERMINATION:

An environmental review was conducted on this project and it was determined that the project is categorically exempt from CEQA pursuant to CEQA Guidelines Section 15302(c): Replacement or Reconstruction of Existing Utility Systems and Facilities.

FISCAL IMPACT:

Expenditure of \$60,000 RDA funds for the installation of new street light infrastructure within the Elm Avenue / 7th Street Underground Utility District to benefit the redevelopment of the area.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Consider the proposed street light installation plan.
3. Adopt Resolution No. R-10-230, ratifying the Executive Director's execution of the contract with A.M. Ortega for the installation of the Elm Avenue / 7th Street Underground Utility District street light infrastructure.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

Approve Department recommendation.



Gary Brown, Executive Director

Attachments:

1. Resolution No. R-10-230
2. Contract Agreement between A.M. Ortega and the City of Imperial Beach

RESOLUTION NO. R-10-230

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, TO AWARD A CONTRACT FOR ELM AVENUE / 7TH STREET UNDERGROUND UTILITY DISTRICT STREET LIGHT TRENCH WORK, CONDUIT INSTALLATION AND LIGHT POLE FOUNDATIONS AND TO RATIFY EXECUTION OF THE CONTRACT

WHEREAS, City Council Resolution 2008-6702 established the formation of Elm Avenue and 7th Street Underground Utility District – CIP Project No. S08-901; and

WHEREAS, this project was funded through SDG&E 20A funds allocated to the City of Imperial Beach; and

WHEREAS, the Five-Year Capital Improvement Program (CIP) Projects Budget for Fiscal Years 2009-2010 through 2013-2014 approved by Resolution No. 2009-6732 included the installation of street lights within the District in coordination with the utility undergrounding; and

WHEREAS, the CIP budget provided \$200,000 from Redevelopment Agency funds toward the installation of the new street lights; and

WHEREAS, in late August 2010, SDG&E awarded a contract with A. M. Ortega Construction, Inc. to underground the utilities within the District; and

WHEREAS, Agency staff invited A. M. Ortega to provide the Agency a quote to install new street light infrastructure coincident with undergrounding the overhead utilities; and

WHEREAS, this infrastructure includes the trench work, conduit installation, utility pull box installation and light pole foundations; and

WHEREAS, A.M. Ortega Construction, Inc. has provided the Agency a cost quote of \$54,000 for the performance of this work; and

WHEREAS, the District will have 16 new concrete light poles installed following completion of the underground work; and

WHEREAS, A.M. Ortega Construction, Inc. is recommended for a sole source contract for the performance of this work due to the efficiency of installing the street light infrastructure coincident with the District underground utility installation; and

WHEREAS, the Agency Board finds the justifications for issuing a sole source contract listed in the staff report to be true, accurate, and adequate justification to demonstrate that competitive bidding for this service is not in the public interest.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of the City of Imperial Beach as follows:

1. The above recitals are true and correct.
2. A.M. Ortega Construction, Inc. is awarded a sole source contract for the purpose of installing the Elm Avenue / 7th Street Underground Utility District street light infrastructure at their quoted price of \$54,000, and the Agency finds that under the circumstances of this project, the services to be provided can be obtained from only one vendor and that the services involved are required to match or be compatible

with other furnishings, materials or equipment presently on hand and are to be purchased from the supplier of such on-hand items.

3. The Agency Board hereby ratifies the agreement entered into by the Executive Director with A.M. Ortega Construction, Inc. at the quoted price for the purpose of installing the Elm Avenue / 7th Street Underground Utility District street light infrastructure, executed on September 22, 2010.
4. The Executive Director is authorized to approve a purchase order for A.M. Ortega Construction, Inc. at the quoted price for the purpose of installing the Elm Avenue / 7th Street Underground Utility District street light infrastructure

PASSED, APPROVED, AND ADOPTED by the Redevelopment Agency of the City of Imperial Beach at its meeting held on the 22nd day of September 2010, by the following vote:

AYES:	BOARDMEMBERS:
NOES:	BOARDMEMBERS:
ABSENT:	BOARDMEMBERS:

JAMES C. JANNEY
CHAIRPERSON

ATTEST:

JACQUELINE M. HALD, CMC
SECRETARY

**PUBLIC WORKS CONTRACT
BETWEEN THE CITY OF IMPERIAL BEACH AND
A.M.ORTEGA; GENERAL ENGINEERING CONTRACTOR INC.**

This CONTRACT is entered into this 13th day of September, 2010, by and between the CITY OF IMPERIAL BEACH, a municipal corporation ("CITY"), and A.M.~~ORTEGA~~ **ORTEGA** GENERAL ENGINEERING CONTRACTOR INC, a California corporation ("CONTRACTOR").

1. CONSIDERATION.

- a. As partial consideration, CONTRACTOR agrees to perform the work listed in the SCOPE OF SERVICES, below;
- b. As additional consideration, CONTRACTOR and CITY agree to abide by the terms and conditions contained in this Contract;
- c. As additional consideration, CITY agrees to pay CONTRACTOR the sum of **Fifty-Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$ 53,750.00)** for full performance of the work listed in the SCOPE OF SERVICES, unless otherwise agreed to between the parties by written agreement. The approximate sum is based on the total cost of the various items as determined by the Lump Sum estimate bid price, as set forth by the CONTRACTOR in the Bidder's Proposal for the work of this Contract, and as accepted by CITY in the Award of Contract. The actual contract amount will be based upon the actual units completed at the bid price, all as set forth in Paragraph 28, ENTIRE CONTRACT.

2. SCOPE OF SERVICES.

- a. CONTRACTOR will perform services specified in Paragraph 28 of this Agreement and the Plans for City of Imperial Beach Elm Avenue Street Light Trenching 3rd Street to 7th Street; 7th Street and Elm Avenue to 7th Street and Donax Avenue (20A Elm Ave. Street Light Trench) Sheets 1 thru 7 which are incorporated herein as if fully set forth.
- b. The work to be performed pursuant to this Contract shall occur for the purpose of installing new street light infrastructure coincident with SDG&E Contractor undergrounding the overhead utilities.
- c. CONTRACTOR shall at its own cost and expense, in a professional manner, furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, tools, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculation, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by CITY, necessary or proper to perform and complete the work and provide the services required of CONTRACTOR by this Contract.

- 3. PROJECT COORDINATION AND SUPERVISION.** The Director of Public Works, currently H. A. Levien, is designated as CITY's PROJECT COORDINATOR and will monitor the progress and execution of this Contract. CONTRACTOR's General Manager currently Frank Barrett, is designated as CONTRACTOR's PROJECT MANAGER and will provide supervision and have overall responsibility for the progress and execution of this Contract.

- 4. EFFECT OF ACCEPTANCE.** CITY's review or acceptance of, or payment for, work performed by CONTRACTOR under this Contract shall not be construed to operate as a waiver of any rights CITY may have under this Contract or of any cause of action arising from CONTRACTOR's performance.

- 5. CERTIFICATION.** CITY shall provide a final certificate of completion and make final payment to CONTRACTOR upon satisfactory completion of the work described in Paragraph 2. Such certificate and payment shall be the only conclusive evidence of contract performance, either in whole or in part,

against any CITY claim, and no payment shall be construed to be acceptance of any defective work or improper materials.

CONTRACTOR agrees that its acceptance of the mutually agreed upon final amount due under the contract, and payment for work done pursuant to project alterations, shall release CITY, its agents, employees, or representatives, from any claim or liability for the cost of work performed pursuant to this Contract, including overhead and profit.

6. **TERM.**

- a. Unless otherwise determined by written amendment between the parties, this Contract shall terminate in the following instances:
 - i. Completion of the work specified in Paragraph 28 and the Plans (if applicable) as determined by CITY upon issuance of a final certificate of completion and final payment;
 - ii. October 30, 2010 unless extended under Paragraph 7;
 - iii. Termination as stated in Paragraph 8.
- b. Should CONTRACTOR begin work on any phase in advance of receiving written authorization to proceed, any such services are at CONTRACTOR's own risk.

7. **TIME EXTENSIONS.** Should CONTRACTOR be delayed by causes beyond CONTRACTOR's control, CITY may grant a time extension for the completion of the contracted services. If delay occurs, CONTRACTOR must notify CITY's PROJECT COORDINATOR within forty-eight (48) hours, in writing, of the cause and the extent of the delay and whether such delay interferes with the item's critical path schedule by extending the item beyond the scheduled completion date. The PROJECT COORDINATOR may extend the completion time, when appropriate, for the completion of the contracted services.

8. **TERMINATION.**

- a. CITY may terminate this Contract at any time. Notice will be in writing at least ten (10) days before the effective termination date. If CITY terminates the Contract, it will pay CONTRACTOR for all effort and material expended under the terms of this Contract, up to the date of notice.
- b. Subject to Paragraph 9, below, CONTRACTOR may terminate this Contract at any time with CITY's mutual consent. Notice will be in writing at least fifteen (15) days before the effective termination date.
- c. Subject to Paragraph 9, below, if CONTRACTOR fails to properly perform its obligations in a timely manner due to any cause, or if CONTRACTOR violates any part of this Contract, CITY shall have the right to terminate this Contract. Notice will be in writing at least fifteen (15) days before the effective termination date. Should this occur, all finished or unfinished documents, data, studies, surveys, drawing, maps, reports and other materials prepared by CONTRACTOR shall, at CITY's option, become CITY's property, and CONTRACTOR shall receive just and equitable compensation for any work satisfactorily completed up to the effective date of notice of termination, not to exceed the total costs under Paragraph 1(c).
- d. Should the Contract be terminated pursuant to this Paragraph, CITY may procure on its own terms services similar to those terminated.
- e. By executing this document, CONTRACTOR waives any and all claims for damages that might otherwise arise from CITY's termination under this Paragraph.

9. **NOTICE OF BREACH AND OPPORTUNITY TO CURE.** Neither party shall be deemed to be in breach of this Agreement based on a breach, which is capable of being cured until after it has received written

notice of the breach from the other party. The party charged with breach shall have ten (10) days from the date of receiving such notice in which to cure the breach or otherwise respond. If the circumstances leading to the charge that the Agreement was breached have not been cured or explained to the satisfaction of the other party within ten (10) days from the date on which the party received notice of breach, the non-breaching party may terminate this Agreement.

10. **CHANGES.** CITY may order changes in the Scope of Services within the general scope of this Contract consisting of additions, deletions, or other revisions. The Contract amount and time shall be adjusted to reflect any such change. All such changes shall be authorized in writing and executed by CONTRACTOR and CITY. The cost or credit to CITY resulting from changes in the services shall be determined in accordance with the procedure described in Paragraph 11, below.
11. **COMPENSATION FOR CHANGES.** CONTRACTOR shall seek compensation for any change made by CITY pursuant to Paragraph 10, in the following manner:
 - a. CONTRACTOR shall submit a written claim for compensation in the form of a lump sum proposal (unless otherwise requested) with an itemized breakdown of all increases or decreases in the cost of CONTRACTOR's and all Subcontractors' work. Any or all of the following detail may be required by CITY:
 - i. Material quantities and unit costs;
 - ii. Labor costs (identified in terms of manhour by labor skill and labor class);
 - iii. Construction equipment;
 - iv. Worker's Compensation and Public Liability Insurance;
 - v. General and field overhead;
 - vi. Profit; and
 - vii. Employment taxes.
 - b. The overhead and profit percentages included in the proposal shall not exceed the maximums given in subparagraph (c), and shall be considered to include, without limitation, insurance other than that mentioned in this Paragraph, bond or bonds, use of small tools, incidental job burdens, and general office expense. Percentages for overhead or profit may vary according to the nature, extent, and complexity of the work involved. Not more than three percentages, not to exceed the maximum in subparagraph (c), will be allowed regardless of the number of subcontractors; that is, any markup of Subcontractor's work is limited to one overhead percentage and one profit percentage in addition to CONTRACTOR'S percentage. Only the net change will be calculated in proposals covering both increases and decreases in the contract amount. Overhead and profit will be added to the direct cost decrease for proposals that decrease the Contract amount.
 - c. Overhead and profit will each be limited to ten percent (10%) of the total sum of proposed changes for work performed by CONTRACTOR and its Subcontractors.
 - d. Any request for a time extension will be included with CONTRACTOR's proposal.
 - e. CITY shall consider CONTRACTOR's proposal in detail, utilizing unit prices where specified or agreed upon for calculating CONTRACTOR's estimates, to determine equitable compensation.
 - f. After receiving CONTRACTOR's detailed proposal, the PROJECT COORDINATOR shall promptly review and take action on it. When the immediate need to proceed with a change, as indicated through written communication by CONTRACTOR to CITY or reasonably apparent to CITY, allows insufficient time to review a proposal, or should the parties fail to reach an agreement regarding a proposal, CITY may direct CONTRACTOR in writing to proceed on the basis of a price determined at the earliest practicable date but not more than the increase or less than the decrease proposed by CONTRACTOR.
 - g. Any claim for compensation due to Differing Site Conditions, as defined by the Green Book, is subject to and shall be in accordance with the requirements and limitations set forth in

subparagraphs (a) through (g) of this Paragraph 11. All other claims for compensation submitted by CONTRACTOR under this Contract shall be subject to the requirements and limitations of subparagraphs (a) through (c) of this Paragraph 11.

- h. Upon written request by the PROJECT COORDINATOR, CONTRACTOR shall submit a proposal, in accordance with the requirements and limitations set out in subparagraphs (a) through (g) of this Paragraph 11, for work involving contemplated changes covered by request, within the time limit indicated in the request or any extension of such time limit that may be subsequently granted. If, within a reasonable time after receiving CONTRACTOR's proposal, the PROJECT COORDINATOR directs CONTRACTOR to proceed with performing the proposed work, the proposal shall constitute CONTRACTOR's claim for compensation.
 - i. With the exception of emergencies, which may be approved by the City Manager, CONTRACTOR understands that project changes in excess of \$10,000 must be approved by CITY's City Council. Such approval may occur only during regularly scheduled City Council meetings that occur twice a month.
12. **DELAY DAMAGES.** Should CITY delay CONTRACTOR through the willful or negligent failure to perform duties assigned to it by this Contract or law, CONTRACTOR may be entitled to time extensions, compensation, or both. Should such delay occur CONTRACTOR shall inform CITY, pursuant to the procedure in Paragraph 7, regarding how CITY caused, and why it is responsible for, such delay. CITY will follow the procedure in Paragraph 7 for granting a time extension. Any damages resulting from such delay will be calculated by CITY's PROJECT COORDINATOR by dividing the contract amount by the contract time (including time extensions, if any) and multiplying that sum by fifteen percent (15%). This sum shall be the daily delay damages to which CONTRACTOR may be entitled. Office overhead and profit shall be included in this calculation. No other formula, e.g., the Eichleay or other method, shall be used to calculate daily damages for office overhead, profit, or other purported loss. Under no circumstances will CITY pay CONTRACTOR compensation for any alleged delay that does not extend beyond the contract completion date determined in Paragraph 6(a)(ii).
13. **OWNERSHIP OF DOCUMENTS.** All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONTRACTOR under this Contract shall be considered CITY's property. CONTRACTOR may retain copies of said documents and materials as desired, but shall deliver all original materials to CITY upon CITY's written notice.
14. **PUBLICATION OF DOCUMENTS.** Except as necessary for performance of service under this Contract, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Contract shall be released by CONTRACTOR to any other person or agency without CITY's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by CITY, unless otherwise provided by written Contract between the parties. After project completion, CONTRACTOR may list the project and the general details in its promotional materials.
15. **STORM WATER MANAGEMENT.** If Contractor is accused of having violated Chapter 8.30 of the Imperial Beach Municipal Code, regarding discharges into City's storm water system, City will notify Contractor in writing. Within ten (10) days of receiving notice, Contractor may submit to the Project Coordinator a written request for a hearing. A hearing before the city manager or the city manager's designee will, if feasible, be held within ten (10) days after the Project Coordinator receives a request from Contractor. At the hearing, the city manager or the city manager's designee must determine whether Contractor was in violation of Chapter 8.30 of the Imperial Beach Municipal Code.

If Contractor does not timely request a hearing, or if it is determined at a hearing that Contractor committed a violation, the monetary consideration in paragraph 1 of this contract will be offset by one thousand dollars (\$1,000). Subsequent violations, or Contractor's failure to timely request subsequent hearings, will offset the monetary consideration for this contract by twenty-five hundred dollars (\$2,500) each.

16. **STANDARD PROVISIONS.** CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin, nor shall CONTRACTOR discriminate against any qualified individual with a disability. CONTRACTOR will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.
17. **PAYROLL RECORDS; CALIFORNIA LABOR CODE.**
- a. CONTRACTOR will comply with Cal. Labor Code § 1776, and related provisions, relating to the maintenance, certification, and inspection of accurate payroll records for all persons CONTRACTOR, or its subcontractors, employs for the work in this Contract.
 - b. CONTRACTOR shall strictly adhere to the Labor Code provisions regarding minimum wage, the eight (8) hour day and forty (40) hour week, overtime, weekend and holiday work and the provisions of Labor Code §1777.5 relating to apprentices. CONTRACTOR is required to secure the payment of employee compensation in accordance with Labor Code § 3700.
 - c. CONTRACTOR shall forfeit to CITY the penalties prescribed in Labor Code §§1776, 1777.7, 1813, and related sections, for any violations.
18. **SOLICITATION.** CONTRACTOR warrants that it has not employed nor retained any company or person, other than CONTRACTOR's bonafide employee, to solicit or secure this Contract. Further, CONTRACTOR warrants that it has not paid nor has it agreed to pay any company or person, other than CONTRACTOR's bonafide employee, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract. Should CONTRACTOR breach or violate this warranty, CITY may rescind this Contract without liability.
19. **HOLD HARMLESS.**
- a. CONTRACTOR shall release, defend (with counsel satisfactory to CITY), indemnify and hold CITY harmless from and against any and all liability, costs, and expense for loss of or damage to property and for injuries to or death of any person arising from, relating to, or resulting from:
 - i. Any work performed by CONTRACTOR pursuant to this Contract;
 - ii. Any materials furnished at the instance or request of CONTRACTOR or any agent or employee of CONTRACTOR;
 - iii. Default under this Contract by CONTRACTOR, or by any agent or employee of CONTRACTOR, or failure by CONTRACTOR or any agent or employee of CONTRACTOR to comply with any requirement of Law.
 - b. Upon written notice from CITY, CONTRACTOR agrees to assume the defense of any lawsuit, administrative action, or other proceeding brought against CITY by any public body, individual, partnership, corporation, or other legal entity relating to any matter covered by this Contract for which CONTRACTOR has an obligation to assume liability for and/or to indemnify and hold harmless CITY. CONTRACTOR shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments.
 - c. It is expressly understood and agreed that the foregoing provisions shall survive the termination of this Contract.

- d. The requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR as required by Paragraph 22 below, and any approval of said insurance by CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Contract, including but not limited to the provisions concerning indemnification.
20. **ASSIGNABILITY.** This Contract shall not be assigned by either party without the prior written approval of the other.
21. **INDEPENDENT CONTRACTOR.** CONTRACTOR, its employees and agents, shall be independent contractors and not CITY's agents.
22. **AUDIT OF RECORDS.** At any time during normal business hours and as often as may be deemed necessary CONTRACTOR shall make available to a representative of CITY for examination all of its records with respect to all matters covered by this contract and will permit CITY to audit, examine and/or reproduce such records. CONTRACTOR will retain such financial and program service records for at least four (4) years after termination or final payment under this Contract.
23. **INSURANCE/WORKER'S COMPENSATION.** CONTRACTOR shall provide proof of liability coverage which meets CITY's insurance requirements as set forth in the Instructions to Bidders, and designates CITY as additional insured. Such policy shall insure against all liability of CONTRACTOR and its authorized representatives arising out of and in connection with CONTRACTOR's work under this Contract.
24. **MEDIATION.** The parties mutually agree that any dispute arising out of or relating to this Contract, or its breach, that cannot be settled by negotiation shall be first submitted to mediation under the Commercial Mediation Rules of the American Arbitration Association before resorting to arbitration, litigation, or other action.
25. **ARBITRATION.**
- a. Claims, disputes and other matters in question between the parties to this Contract, arising out of or relating to this Contract or the breach thereof, shall be decided by arbitration in accordance with the rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. No arbitration arising out of or relating to this Contract, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Contract except by written consent containing a specific reference to this Contract and signed by CONTRACTOR, CITY, and any other person sought to be joined.
 - b. Any consent to arbitration involving an additional person or persons shall not constitute consent of any dispute not described therein or with any person not named or described therein. This Contract to arbitrate and any Contract to arbitrate with additional person or persons duly consented to by the parties to this Contract shall be specifically enforceable under the prevailing arbitration law.
 - c. Notice of the demand for arbitration is to be filed in writing with the other party to this Contract and with the American Arbitration Association. The demand is to be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event is the demand for arbitration to be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

26. **NOTICES.** All communications to either party by the other party shall be deemed made when received by such party at its respective name and address, as follows:

CITY

Hank Levien
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach CA 91932

CONTRACTOR

Maurice Ortega
10125 Channel Rd.
Lakeside, CA. 920040
619-390-1988

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

27. **INTERPRETATION.** This Contract and its performance shall be governed, interpreted, construed and regulated by the laws of the State of California.

28. **ENTIRE CONTRACT.**

- a. This Contract, its Attachments, and the Documents set forth in subparagraph (b) sets forth the entire understanding of the parties. There are no other understandings, terms or other contracts expressed or implied, oral or written.
- b. These Documents are incorporated within this Contract as if fully set forth:
- i. ~~Notice Advertising for Bids~~; (Not Applicable)
 - ii. Instructions to Constructor;
 - iii. Contractor's Proposal; (see attachment 1)
 - iv. Bid Acceptance;
 - v. Performance Bond;
 - vi. Labor and Material Bond;
 - vii. Policy of Insurance;
 - viii. Special Provisions ; (Per Proposal)
 - ix. Special Requirements;
 - x. The edition of the Standard Specifications for Public Works Construction (the "Green Book") as set forth in the Special Provisions;
 - xi. The Standard Special Provisions for use in connection with the Standard Specifications;
 - xii. The General Prevailing Wage Rate of per diem wages as determined by the Director of Industrial Relations;
 - xiii. The Non-Collusion Affidavits;
 - xiv. California Public Contract Code § 20104.50;
 - xv. All addenda setting forth any modifications or interpretations of these documents.

29. **SEVERABILITY.** If any portion of this Contract is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Contract shall continue in full force and effect.

30. **TIME IS OF ESSENCE.** Time is of the essence for each and every provision of this Contract.

31. **STATEMENT OF EXPERIENCE.** By executing this Contract, CONTRACTOR represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Contract in a manner satisfactory to CITY. CONTRACTOR represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private owners, and experience in dealing with public agencies all suggest that CONTRACTOR is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

32. **RISK.** By executing this Contract, CONTRACTOR acknowledges and understands that all work performed pursuant to this Contract involves inherent business risks. Such risks may occur before acceptance or during the progress of work performed for this Contract and may involve damage or losses resulting from, without limitation:

- a. Inclement weather;
- b. Unforeseen conditions arising during work performance;
- c. Suspension or discontinuance of work due to labor disputes, or other reasons;
- d. Earthquakes and/or floods;
- e. Changes in law;
- f. Actions by third-parties, including Utility Companies; and
- g. Other Federal, State, or Local Government actions.

CONTRACTOR is solely responsible for such risk and loss except where this Contract or State law specifies that CITY bears such responsibility.

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF IMPERIAL BEACH,
a municipal corporation.

Amy Brown
City Manager

11-91505-9063
City of Imperial Beach
Business License No.

Jaqueline M. Haed
City Clerk

APPROVED AS TO CONTENT:
Frank Lorenzi
Director of Public Works

APPROVED AS TO FORM:
Janine Samson
City Attorney

CONTRACTOR

[Signature] 9.13.2010

Council Date: 9/22/10
Item #: 6-1C
Resolution No. 2-10-230



CALIFORNIA CONTRACTOR'S LICENSE # A-486311 MINORITY OWNED / 148% CERTIFIED

September 3, 2010

Page 1 of 2

Attention: Larry Martin
Public Works Dept.
City of Imperial Beach
Via email: lmartin@cityofib.org

BID PROPOSAL

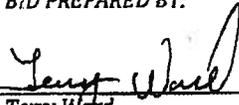
INCLUDES: City of Imperial Beach Plans
Sheet 1 thru 7

DATED: 0

Elm Ave 20A Street Light Trench-Revised 9/7

#	DESCRIPTION	QTY	UM	UNIT PRICE	TOTAL PRICE
<u>STREET LIGHT TRENCH</u>					
1	SAWCUT TRENCHLINE	1012	LF		
2	DIG,LAY CONDUIT,BACKFILL TRENCH	578	LF		
3	PROVIDE CONDUIT	780	LF		
4	PROVIDE SLURRY BACKFILL	578	LF		
5	GRIND 3" AC PAVING	414	LF		
6	BASE PAVE 3" AC	414	LF		
7	REPLACE CONCRETE SIDEWALK	410	SF		
8	MANDREL CONDUIT	780	LF		
<u>STREET LIGHT TRENCH SUBTOTAL</u>					\$ 41,327.00
<u>STREET LIGHT BOX</u>					
9	PROVIDE & INSTALL #3E HANDHOLE	17	EA		
<u>STREET LIGHT BOX SUBTOTAL</u>					\$ 3,383.00
<u>STREET LIGHT POLE BASE</u>					
10	PROVIDE AND INSTALL STREET LIGHT POLE BASE	16	EA		
<u>STREET LIGHT POLE BASE SUBTOTAL</u>					\$ 9,040.00
<u>GRAND TOTAL</u>					\$ 53,750.00

BID PREPARED BY:


Terry Ward
Estimator

JOB SPECIFIC CONDITIONS:

- * Street light wire, streetlights provided and installed by others. Connections by others.
- * Bid excludes layout and surveying.
- * Trench repair per City of Imperial beach provided detail revision #3.
- * All work to be done in conjunction with SDG&E's Elm Ave 20A Conversion.
- * Bid excludes engineering, all permits and testing.
- * City of Imperial beach to provide example anchor bolts and templates for Street Light Poles.

SEE PAGE 2 FOR GENERAL BID CONDITIONS...



CALIFORNIA CONTRACTOR'S LICENSE # A-486311 MINORITY OWNED / MBE CERTIFIED

September 3, 2010

Page 2 of 2

BID PROPOSAL

INCLUDES: City of Imperial Beach Plans
Sheet 1 thru 7

Attention: Larry Martin
Public Works Dept.
City of Imperial Beach
Via email: lmartin@cityofib.org

DATED:

*****Elm Ave 20A Street Light Trench-Revised 9/7*****

GENERAL CONDITIONS:

UNLESS SPECIFICALLY ADDRESSED IN PROPOSAL, THE FOLLOWING CONDITIONS APPLY:

1. BID INCLUDES ONE MOVE ON ONLY. ALL OTHER MOVE ONS WILL REQUIRE ADDITIONAL COMPENSATION.
2. BID EXCLUDES BONDS, ENGINEERING/SURVEY, INSPECTION, TESTING, FEES, & PERMITS.
3. BID PRICING VALID FOR 30 DAYS.
4. ROCK CLAUSE: IF EXCAVATION CANNOT BE ACCOMPLISHED PRODUCTIVELY WITH A CASE 580 BACK HOE THEN ROCK EXCAVATION WILL BE PAID FOR ON A TIME AND MATERIAL BASIS. DRILLING OR BLASING FOR ROCK, OR ANY ROCK HANDLING/REMOVAL IS SPECIFICALLY EXCLUDED.
5. BID EXCLUDES DE-WATERING.
6. PROGRESS PAYMENTS TO BE DUE 30 DAYS AFTER INVOICE WITH FINAL PAYMENT DUE 35 DAYS AFTER NOTICE OF COMPLETION OF WORK.
7. BID INCLUDES IMPLEMENTATION OF SWWPP AND BMP'S.
8. ALL WORK IS ASSUMED TO BE ACCOMPLISHED DURING NORMAL BUSINESS HOURS OF 7:00 AM - 5:00 PM. WORK OUTSIDE THIS TIMEFRAME TO BE PAID AT RE-NEGOTIATED RATES.
9. REMOVAL OR CAPPING OF EXISTING UTILITIES IS EXCLUDED.
10. BID INCLUDES POTHOLES FOR UTILITIES SHOWN ON THE PLANS ONLY. POTHOLING FOR UNMARKED STRUCTURES/ UTILITIES TO BE PAID ON A TIME AND MATERIAL BASIS.
11. IN THE EVENT THAT THIS AGREEMET IS PLACED WITH AN ATTORNEY TO ENFORCE ITS PROVISIONS, THE PREVAILING PARTY SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES AND ASSOCIATED COSTS.



**STAFF REPORT
CITY OF IMPERIAL BEACH**

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: GARY BROWN, CITY MANAGER

MEETING DATE: SEPTEMBER 22, 2010

ORIGINATING DEPT.: PUBLIC WORKS

SUBJECT: RESOLUTION AFFIRMING A SERVICE CONTRACT WITH STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS, INMATE COMMUNITY WORK CREWS (AGREEMENT NUMBER 5600001362)

BACKGROUND: In June 2007 City Council adopted Resolution No. 2007-6510 approving a new three-year contact with the State of California for Inmate Community Work Crews (Donovan Prison Inmate work crews). The purpose of these work crews was to assist the City in parks and street landscape maintenance. The Agreement expired on June 30, 2010.

DISCUSSION: The State of California and the City have been in negotiations regarding a new Agreement for the next three years since middle July 2010. As of September 1, 2010, the Donovan Crew ceased providing scheduled service pending a new Agreement. The State of California and City staff have recently agreed on the terms of the new agreement. Since the State would not resume work until a signed contract was signed by both parties, the City Manager signed the Agreement on Thursday, September 2, 2010 and delivered the signed copy to the State. Since the State claims it will take a week or more to obtain the State's signature, Donovan Work Crews are expected to resume work within the City the week of September 20, 2010. Staff recommends that City Council affirm the City Manager's action by adopting the attached resolution authorizing the City Manager to sign a three year agreement for a maximum total cost over the three years of \$160,000. This provides the City a Donovan crew two days a week, 52-weeks of the year for three years. This is the same level of service (at the same cost) the City has received for the previous three years.

ENVIRONMENTAL DETERMINATION:
Not a project as defined by CEQA.

FISCAL IMPACT:
Annual general fund cost of \$53,333 per year.

DEPARTMENT RECOMMENDATION:

1. Receive this report.
2. Approve the Agreement between the City of Imperial Beach and State of California, Department of Corrections.
3. Affirm the City Manager signature on the Agreement between the City of Imperial Beach and the State of California, Department of Corrections.

CITY MANAGER'S RECOMMENDATION:

Approve Department recommendation.

 FOR

Gary Brown, City Manager

Attachments:

1. Resolution No. 2010-6944 with Exhibit A - Inmate Community Services Work Crew Agreement

RESOLUTION NO. 2010-6944**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, AFFIRMING A SERVICE CONTRACT WITH STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS, INMATE COMMUNITY WORK CREWS (AGREEMENT NUMBER 5600001362)**

WHEREAS, in June 2007 City Council adopted Resolution No. 2007-6510 approving a new three-year contact with the State of California for Inmate Community Work Crews (Donovan Prison Inmate work crews); and

WHEREAS, the purpose of these work crews was to assist the City in parks and street landscape maintenance; and

WHEREAS, the Agreement expired on June 30, 2010; and

WHEREAS, the State of California and the City have been in negotiations regarding a new Agreement for the next three years since middle July 2010; and

WHEREAS, the State of California and City staff have recently agreed on the terms of a new agreement consisting of a three year agreement for a maximum total cost over the three years of \$160,000; and

WHEREAS, the City Manager signed the Agreement on Thursday, September 2, 2010 and delivered the signed copy to the State; and

WHEREAS, this provides the City a Donovan crew two days a week, 52 weeks of the year for three years; and

WHEREAS, this is the same level of service (at the same cost) the City has received for the previous three years.

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

1. The above recitals are true and correct.
2. The Inmate Community Service Work Crews Agreement (Agreement number 5600001362) with the State of California, Department of Corrections is approved – See Exhibit A.
3. This legislative body affirms the City Manager, City of Imperial Beach, signature authorization on the Inmate Community Service Work Crews Agreement (Agreement number 5600001362) with the State of California, Department of Corrections.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 22nd day of September 2010, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

JAMES C. JANNEY, MAYOR

ATTEST:

JACQUELINE M. HALD, CMC
CITY CLERK

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER 5600001362
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California Department of Corrections and Rehabilitation (CDCR)

CONTRACTOR'S NAME

City of Imperial Beach

2. The term of this Agreement is: Upon Approval through June 30, 2013

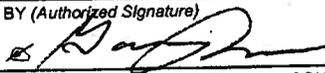
3. The maximum amount of this Agreement is: \$ 160,000.00 (REIMBURSEMENT/REVENUE)
 One Hundred Sixty Thousand Dollars

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work	5 pages
Exhibit B – Budget Detail and Payment Provisions	1 page
Exhibit B-1 Rate Sheet	1 page
Exhibit B-2 Sample Invoice Statement	1 page
Exhibit C* – General Terms and Conditions	GTC – 610
Exhibit D – Special Terms and Conditions	13 pages

Items shown with an Asterisk (), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language*

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) City of Imperial Beach		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 9/2/10	
PRINTED NAME AND TITLE OF PERSON SIGNING Gary R. Brown, City Manager		
ADDRESS 825 Imperial Beach Blvd. Imperial Beach, CA 92032 (619) 423-8311		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Corrections and Rehabilitation (CDCR)		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Linda K. Patterson, Chief, Institution Contracts Section		
ADDRESS 10000 Goethe Road, Suite C1, Sacramento, CA 95827		

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER

5600001362.

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CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		
City of Imperial Beach		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
Gary R. Brown, City Manager		
ADDRESS		
825 Imperial Beach Blvd. Imperial Beach, CA 92032 (619) 423-8311		
STATE OF CALIFORNIA		
AGENCY NAME		
California Department of Corrections and Rehabilitation (CDCR)		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
		
PRINTED NAME AND TITLE OF PERSON SIGNING		
Linda K. Patterson, Chief, Institution Contracts Section		
ADDRESS		
10000 Goethe Road, Suite C1, Sacramento, CA 95827		
		<input type="checkbox"/> Exempt per:

INMATE COMMUNITY SERVICE WORK CREWS

1. INTRODUCTION/SERVICE

Contractor shall provide all equipment, materials, supplies, and tools necessary for the California Department of Corrections and Rehabilitation (CDCR), at Richard J. Donovan Correctional Facility (RJD), 480 Alta Road, San Diego, CA 92179, to allow inmate work crews to perform clean up, maintenance and restoration services for the City of Imperial Beach-owned properties. The services to be performed shall consist of the work listed herein.

This Agreement provides a meaningful, useful, and manageable work program as part of the work incentive for inmates at Richard J. Donovan Correctional Facility to render public service. Under no circumstances are inmates to be considered employees or agents of the City of Imperial Beach under the terms of this Agreement.

Services to be provided by CDCR inmate work crews shall consist of, but not be limited to, the following:

Graffiti removal	Weed abatement
Litter removal	Miscellaneous landscaping work
Painting	Pruning trees and shrubs
General cleanup and other activities as mutually agreed upon.	

2. CONTRACTOR RESPONSIBILITIES

Contractor shall:

- a. Designate a Project Coordinator (PC) representative for each assigned project who will assist and give instructions and technical supervision for each project performed by inmates, as well as deadlines for projects, if applicable.
- b. Not use inmate work crews in lieu of paid staff or in violation of the Public Contract Code.
- c. Ensure that there is no commingling of inmate work crews with the public or Contractor staff other than the immediate technical direction by Contractor to ensure quality control of the work to be performed.
- d. Provide training to inmate work crews in all safety procedures and a safe working environment. CDCR realizes and acknowledges that the performance of work in and around the work sites can be hazardous and that injuries to workers can occur which cannot be reasonably avoided by any of the parties hereto. Contractor agrees not to assign any inmate work crews to work in any area which Contractor knows to be unsafe or in a dangerous condition.
- e. Provide assignments and necessary equipment, materials, plans, technical guidance, and supplies as necessary for all projects to be completed except when agreed upon in advance that CDCR will furnish all or part. Provide any special clothing and/or safety equipment required in addition to what CDCR provides.
- f. Provide any heavy equipment necessary for the completion of projects and personnel to operate the heavy equipment.

CITY OF IMPERIAL BEACH
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)
SCOPE OF WORK

Agreement Number 5600001362
Exhibit A
Page 2 of 5

- g. Maintain all equipment in good working condition. The cost of equipment, materials, and supplies will be at the sole expense of Contractor.
- h. Ensure that all equipment necessary to complete project is delivered to the worksite.
- i. Ensure that inmate work crews shall not operate any tools, equipment, or motorized vehicles that they have not been trained and authorized to use.
- j. Ensure inmate workers are not allowed to operate any mobile equipment on a public road, except in extreme emergency and must report such instance to the inmate work crew supervisor immediately following the emergency as outlined the California Code of Regulations, Title 215, Section 3408, VEHICLES.
- k. Provide traffic control and adequate equipment/materials (i.e., barricades, cones and signs, etc.) to ensure the safety of all workers.
- l. Provide portable toilets, or access to facilities, if a permanent toilet is not on or adjacent to the worksite.
- m. Report all disputes/concerns from the community, labor unions and institution staff. Contractor shall inform the Institution Contract Liaison within seven (7) days in writing.
- n. Assist in protecting community safety and security by informing local law enforcement office of inmate crew location for the purpose of providing periodic patrol or for escape pursuit.
- o. Ensure that Contractor staff working in and around inmates will be familiar with the laws, rules and regulations governing conduct in associating with prison inmates. Contractor shall be responsible for ensuring employees adhere to the laws, rules and regulations relating to inmates.

3. **CDCR RESPONSIBILITIES**

CDCR shall:

- a. Assign qualified custodial qualified inmate workers to perform general labor on the properties under the jurisdiction of Contractor. Under no circumstances will said work crew be used on public works projects or projects requiring skilled labor or projects requiring public bidding.
- b. Reject any project that could jeopardize the use of inmate laborers or bring undue criticism to the use of this resource.
- c. Maintain, through proper classification procedures, a list of approved inmates to be utilized as off-reservation work detail workers.
- d. Determine the quantity of inmates that will be committed to a specific work site based on safety/security factors. Inmate work crew size will be limited to a minimum of eight (8) and a maximum of fifteen (15) inmates per custodial supervisor.
- e. Be responsible for maintaining a daily log and control of all tools, equipment and fuel assigned to the inmate work crew. All tools must be accounted for at the end of each workday.
- f. Provide qualified custody supervision for the discipline, security, control, welfare and safety of inmates.
- g. Bear any obligations to provide worker's compensation insurance for the assigned inmate workers and custody staff to the extent that such obligations may apply, except as specified by law (Section 3370-3371, Labor Code).

- h. Perform all necessary paperwork including but not limited to, hours worked, travel logs, and invoicing for services.
- i. Provide transportation of inmate work crews to the worksite and for their return to the institution at the end of each workday.
- j. Provide gloves and protection coveralls for the inmate work crews. Provide inmates with all personal protective equipment and/or safety gear for each project as necessary. The CDCR will provide first aid kit as required by CAL OSHA.
- k. Ensure the inmate work crew wears all safety equipment provided at all times. Contractor is responsible for instructing which safety item must be worn at the worksite.
- l. Provide sack lunches for inmate workers at the work project.
- m. Reject any project that could jeopardize the use of inmate laborers or bring undue criticism to the use of this resource.
- n. Temporarily suspend work on any project without prior notification based on unforeseen custodial or situational circumstances. Written notification will be given if suspension will exceed twenty-four (24) hours. Contractor agrees that scheduled work crew activities may be delayed and/or canceled as a result in institution security issues such as lockdowns and/or inclement weather that poses a security hazard such as fog. The CDCR shall not be liable for any delay.
- o. Transport the portable toilets provided by Contractor on Contractor's trailer to and from the work site.

4. LIABILITIES

- a. Neither Contractor, nor any officer or employee hereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by CDCR under or in connection with any work, authority or jurisdiction not delegated to Contractor under this Agreement. It is also agreed that, pursuant to Government Code Section 895.4, CDCR shall fully indemnify and hold Contractor harmless for any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CDCR under or in connection with any work not delegated to Contractor under this Agreement.
- b. Neither CDCR, nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by Contractor under or in connection with any work, authority or jurisdiction delegated to Contractor under this Agreement. It is also agreed that, pursuant to Government Code Section 895.4, Contractor shall fully indemnify and hold CDCR harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Contractor under or in connection with any work not delegated to CDCR under this Agreement.
- c. Nothing in this Agreement is intended to, nor shall operate so as to abrogate any legal immunity afforded either CDCR or Contractor, including, but not limited to, immunities provided by Government Code sections 844.6, 845.8 or similar such immunities afforded under law.
- d. It is understood that the contractual relationship of CDCR and Contractor is that of independent Contractor. The agents and employees of CDCR on assignment to

Contractor are not, and shall not be considered employees or agents of Contractor.

5. **WORK SCHEDULE**

Inmate crew will be provided to Contractor between the hours of 6:00 a.m. and 4:00 p.m., up to two (2) days per week, Tuesday and Wednesday. Except in cases of emergency, there shall be no project work on Saturday, Sunday, Monday or those holidays defined in Section 6700 through 6705 of the California Government Code as designated holidays for state employees. Work schedule shall commence and end at the institution. The maximum hours allowed per day for custody staff and inmate workers is ten (10) hours.

6. **DISCIPLINE**

Discipline of the inmate workers is the sole responsibility of institution staff. Contractor, whenever possible, assists Correctional Officers in control of inmates in emergency situations on work locations under the guidance of custody staff. Contractor personnel shall report through established channels all acts of inmate workers contrary to law, regulations, or City rules.

7. **ACCIDENTS/DAMAGES**

Damage caused to the equipment covered herein due to fire, abuse, Act of God, accident, unauthorized alterations, disasters, the elements, failure of electrical power, misuse, use of unauthorized agents, vandalism or negligence by the State or its officers, agents, employees, or CDCR inmates, are not covered by this Agreement except on a time and material basis. Contractor shall perform such repairs.

8. **CDCR CONTRACT INFORMATION**

Should questions or problems arise during the term of this Agreement, Contractor should contact the following offices:

Billing/Payment Issues:

- El Centro Regional Accounting Office
Phone Number: (760) 337-4847
FAX Number: (760) 337-4854

Performance Issues:

- Institution Contract Liaison, Procurement & Services Officer II or designee
Phone Number: (619) 661-7834
FAX Number: (619) 661-6357

General Contract Issues:

- Office of Contract Services
Phone Number: (916) 255-5624
FAX Number: (916) 255-6187

CITY OF IMPERIAL BEACH
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)
SCOPE OF WORK

Agreement Number 5600001362
Exhibit A
Page 5 of 5

9. **NOTICES**

Notices (correspondence) to be given between the parties shall be in writing. Addresses are as follows:

Richard. J. Donovan Correctional Facility
480 Alta Road
San Diego, CA 92179
Attn: Procurement Officer II
Phone: (619) 661-7834
Fax: (619) 661-6357

City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 92032
Attn: Gary Brown, City Manager
Phone: (619) 423-8311
Fax: (619) 429-4861

CITY OF IMPERIAL BEACH

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR) Exhibit B
BUDGET DETAIL AND PAYMENT PROVISIONS

Agreement Number 5600001362

Page 1 of 1

INMATE COMMUNITY SERVICE WORK CREWS

1. Invoicing and Payment

- a. CDCR will submit an Invoice (Exhibit B-2) to Contractor, attention Director, Department of Public Works by the 15th day of each month for the preceding month's services, based on the rates specified in Exhibit B-1, Rate Sheet, which is attached hereto and made a part of this Agreement.
- b. Payment will be due within thirty (30) days of the statement date and shall be submitted to:

California Department of Corrections and Rehabilitation
El Centro Regional Accounting Office
Richard J. Donovan Correctional Facility
Attention: Accounts Receivable
P. O. Box C5282
El Centro, CA 92244

CITY OF IMPERIAL BEACH
 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)
 RATE SHEET

Agreement Number 5600001362
 Exhibit B-1
 Page 1 of 1

INMATE COMMUNITY SERVICE WORK CREWS

Contractor shall reimburse CDCR, monthly in arrears, as follows:

Correctional Officer Reimbursement	\$48.42*	Per hour, per custody staff.
---	-----------------	------------------------------

1. *Salaries were calculated using top-step wages as of July 1, 2010. This amount may increase per contract negotiations. Any changes to the Correctional Officer reimbursement rate as a result of contract negotiations will require a formal amendment to this Agreement.
2. City of Imperial Beach agrees to pay the San Diego Crime Victims Fund an amount equal to ten percent (10%) of the value of the State's monthly invoices approved by the City. The City may pay the Crime Victims Fund once by the end of July for the invoices the City received during the prior Fiscal Year (ending June 30).

All payments for the Crime Victims Fund will be sent to the following address:

P. O. Box 152050
 San Diego, CA 92195

CITY OF IMPERIAL BEACH
 CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)
 SAMPLE INVOICE STATEMENT

Agreement Number 5600001362
 Exhibit B-2
 Page 1 of 1

SAMPLE

INMATE COMMUNITY SERVICE WORK CREWS

INVOICE STATEMENT

Invoice Number 003
 Month December Year 2010

CORRECTIONAL OFFICER REIMBURSEMENT

Date of Service	Number of Officers		Number of Hours Per Officer		Cost Per Officer, Per Hour		Total Cost of Officers
December 15, 2010	1	X	10	X	\$48.42	=	\$ 484.20
December 16, 2010	1	X	10	X	\$48.42	=	484.20
December 17, 2010	2	X	4	X	\$48.42	=	387.36
December 18, 2010	1	X	8	X	\$48.42	=	387.36
December 19, 2010	2	X	10	X	\$48.42	=	968.40
December 22, 2010	1	X	10	X	\$48.42	=	484.20
December 23, 2010	1	X	6	X	\$48.42	=	290.52
TOTAL						=	\$3,486.24

INMATE COMMUNITY SERVICE WORK CREWS

1. Contract Disputes with Public Entities (Supersedes provision number 6, Disputes, of Exhibit C)

As a condition precedent to Contractor's right to institute and pursue litigation or other legally available dispute resolution process, if any, Contractor agrees that all disputes and/or claims of Contractor arising under or related to the Agreement shall be resolved pursuant to the following processes. Contractor's failure to comply with said dispute resolution procedures shall constitute a failure to exhaust administrative remedies.

Pending the final resolution of any such disputes and/or claims, Contractor agrees to diligently proceed with the performance of the Agreement, including the delivering of goods or providing of services. Contractor's failure to diligently proceed shall constitute a material breach of the Agreement.

The Agreement shall be interpreted, administered, and enforced according to the laws of the State of California. The parties agree that any suit brought hereunder shall have venue in Sacramento, California, the parties hereby waiving any claim or defense that such venue is not convenient or proper.

A county, city, district or other local public body, state board or state commission, another state or federal agency, or joint-powers authority shall resolve a dispute with CDCR, if any, through a meeting of representatives from the entities affected. If the dispute cannot be resolved to the satisfaction of the parties, each entity may thereafter pursue its right to institute litigation or other dispute resolution process, if any, available under the laws of the State of California.

2. Confidentiality of Data

All financial, statistical, personal, technical and other data and information relating to State's operation, which are designated confidential by the State and made available to carry out this Agreement, or which become available to the Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.

If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used with the written consent of the State. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data already rightfully in the Contractor's possession that is independently developed by the Contractor outside the scope of the Agreement or is rightfully obtained from third parties.

No reports, information, inventions, improvements, discoveries, or data obtained, repaired, assembled, or developed by the Contractor pursuant to this Agreement shall be released, published, or made available to any person (except to the State) without prior written approval from the State.

Contractor by acceptance of this Agreement is subject to all of the requirements of California Government Code Section 11019.9 and California Civil Code Sections 1798, et seq., regarding the collection, maintenance, and disclosure of personal and confidential information about individuals.

3. Accounting Principles

The Contractor will adhere to generally accepted accounting principles as outlined by the American Institute of Certified Public Accountants. Dual compensation is not allowed; a contractor cannot receive simultaneous compensation from two or more funding sources for the same services performed even though both funding sources could benefit.

4. Taxes

Unless required by law, the State of California is exempt from federal excise taxes.

5. Right to Terminate (Supersedes provision number 7, Termination for Cause, of Exhibit C)

The parties hereto agree that either party may cancel this Agreement by giving the other party written notice thirty (30) days in advance of the effective date of such cancellation. In the event of such termination, the State agrees to pay Contractor for actual services rendered up to and including the date of termination.

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

6. Extension of Term

If it is determined to be in the best interest of the State, upon agreement, the State may extend this contract, with no increase in service cost, for a period of one (1) year or less.

7. Contractor Employee Misconduct

During the performance of this Agreement, it shall be the responsibility of the Contractor whenever there is an incident of use of force or allegation(s) of employee misconduct associated with and directly impacting inmate and/or parolee rights, to immediately notify the CDCR of the incident(s), to cause an investigation to be conducted, and to provide CDCR with all relevant information pertaining to the incident(s). All relevant information includes, but is not limited to: a) investigative reports; b) access to inmates/parolees and the associated staff; c) access to employee personnel records; d) that information reasonably necessary to assure CDCR that inmates and/or parolees are not or have not been deprived of any legal rights as required by law, regulation, policy and procedures; and e) written evidence that the Contractor has taken such remedial action, in the event of unnecessary or excessive force, or employee misconduct with inmates and/or parolees, as will assure against a repetition of incident(s) or retaliation. To the extent that the information provided by the Contractor fails to so assure CDCR, CDCR may require that any implicated Contractor staff be denied access to and the supervision of CDCR inmates and/or parolees at the facility and access to inmate and/or parolee records. Notwithstanding the foregoing, and without waiving any obligation of the Contractor, CDCR retains the power to conduct an independent investigation of any incident(s). Furthermore, it is the responsibility of the Contractor to include the foregoing terms within any and all subcontracts, requiring that subcontractor(s) agree to the jurisdiction of CDCR to conduct an investigation of their facility and staff, including review of subcontractor employee personnel records, as a condition of the Agreement.

8. Subcontracting

Services provided are to be performed primarily with the staff of the public entity or, in the case of educational institutions, auxiliaries or foundations, by the faculty, staff or students associated with the particular institution. Agreements are not to be used by state agencies to circumvent the competitive bidding requirements of Public Contract Code Section 10340.

If more than twenty-five (25) percent of the total contract amount or \$50,000.00, whichever is less, is subcontracted, non-competitive bid approval must be obtained from the Secretary of CDCR and the Department of General Services prior to the commencement of services, unless the subcontract was competitively bid or the subcontractor(s) also qualifies as a state agency, governmental agency, or joint power.

9. Subcontractor/Consultant Information

Contractor is required to identify all subcontractors and consultants who will perform labor or render services in the performance of this Agreement. Additionally, the Contractor shall notify the Department of Corrections and Rehabilitation, Office of Business Services, in writing, within ten (10) working days, of any changes to the subcontractor and/or consultant information.

10. Liability for Nonconforming Work

The Contractor will be fully responsible for ensuring that the completed work conforms to the agreed upon terms. If nonconformity is discovered prior to the Contractor's deadline, the Contractor will be given a reasonable opportunity to cure the nonconformity. If the nonconformity is discovered after the deadline for the completion of the project, CDCR, in its sole discretion, may use any reasonable means to cure the nonconformity. The Contractor shall be responsible for reimbursing CDCR for any additional expenses incurred to cure such defects.

11. Temporary Nonperformance

If, because of mechanical failure or for any other reason, the Contractor shall be temporarily unable to perform the work as required, the State, during the period of the Contractor's inability to perform, reserves the right to accomplish the work by other means and shall be reimbursed by the Contractor for any additional costs above the Agreement price.

12. Contract Violations

The Contractor acknowledges that any violation of Chapter 2, or any other chaptered provision of the Public Contract Code (PCC), is subject to the remedies and penalties contained in PCC Sections 10420 through 10425.

13. Employment of Ex-Offenders

Contractor cannot and will not either directly, or on a subcontract basis, employ in connection with this Agreement:

- a. Ex-Offenders on active parole or probation, who have been on active parole or probation during the last three years preceding their employment;
 1. Contractor shall only employ ex-offenders who can provide written evidence of having satisfactorily completed parole or probation, and who have remained off parole or probation, and have had no arrests or convictions within the past three years.
- b. Ex-offenders convicted of drug trafficking in a prison/jail; escape or aiding/abetting escape; battery on a Peace Officer or Public Official; arson offenses; or, any violations of Penal Code Sections 4570-4574 (unauthorized Communications with Prisons and Prisoners Offenses).
- c. Ex-Offenders are required to register as a sex offender pursuant to Penal Code Section 290.
- d. Any ex-offender who has an offense history involving a "violent felony" as defined in subparagraph (c) of Penal Code Section 667.5; or
- e. Any ex-offender in a position which provides direct supervision of parolees.

An ex-offender whose assigned duties involve administrative or policy decision-making, accounting, procurement, cashiering, auditing, or any other business-related administrative function shall be fully bonded to cover any potential loss to the State or contractor. Evidence of such bond shall be supplied to CDCR prior to employment of the ex-offender.

14. Conflict of Interest

The Contractor and their employees shall abide by the provisions of Government Code (GC) Sections 1090, 81000 et seq., 82000 et seq., 87100 et seq., and 87300 et seq., Public Contract Code (PCC) Sections 10335 et seq. and 10410 et seq., California Code of Regulations (CCR), Title 2, Section 18700 et seq. and Title 15, Section 3409, and the Department Operations Manual (DOM) Section 31100 et seq. regarding conflicts of interest.

a. Contractors and Their Employees

Consultant contractors shall file a Statement of Economic Interests, Fair Political Practices Commission (FPPC) Form 700 prior to commencing services under the Agreement, annually during the life of the Agreement, and within thirty (30) days after the expiration of the Agreement. Other service contractors and/or certain of their employees may be required to file a Form 700 if so requested by the CDCR or whenever it appears that a conflict of interest may be at issue. Generally, service contractors (other than consultant contractors required to file as above) and their employees shall be required to file an FPPC Form 700 if one of the following exists:

- (1) The Agreement service has been identified by the CDCR as one where there is a greater likelihood that a conflict of interest may occur;
- (2) The Contractor and/or Contractor's employee(s), pursuant to the Agreement, makes or influences a governmental decision; or
- (3) The Contractor and/or Contractor's employee(s) serves in a staff capacity with the CDCR and in that capacity participates in making a governmental decision or performs the same or substantially all the same duties for the CDCR that would otherwise be performed by an individual holding a position specified in the CDCR's Conflict of Interest Code.

b. Current State Employees

- (1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
- (3) In addition to the above, CDCR officials and employees shall also avoid actions resulting in or creating an appearance of:
 - (a) Using an official position for private gain;
 - (b) Giving preferential treatment to any particular person;
 - (c) Losing independence or impartiality;
 - (d) Making a decision outside of official channels; and
 - (e) Affecting adversely the confidence of the public or local officials in the integrity of the program.
- (4) Officers and employees of the Department must not solicit, accept or receive, directly or indirectly, any fee, commission, gratuity or gift from any person or business organization doing or seeking to do business with the State.

c. Former State Employees

- (1) For the two year (2-year) period from the date he or she left state employment, no former state officer or employee may enter into an Agreement in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Agreement while employed in any capacity by any state agency.

- (2) For the twelve-month (12-month) period from the date he or she left state employment, no former state officer or employee may enter into an Agreement with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed Agreement within the 12-month period prior to his or her leaving state service.

In addition to the above, the Contractor shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to inmates or parolees. The Contractor shall not itself employ or offer to employ inmates or parolees either directly or indirectly through an affiliated company, person or business unless specifically authorized in writing by CDCR. In addition, the Contractor shall not (either directly, or indirectly through an affiliated company, person or business) engage in financial dealings with inmates or parolees, except to the extent that such financial dealings create no actual or potential conflict of interest, are available on the same terms to the general public, and have been approved in advance in writing by CDCR. For the purposes of this paragraph, "affiliated company, person or business" means any company, business, corporation, nonprofit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind which has any ownership or control interest whatsoever in the Contractor, or which is wholly or partially owned (more than 5% ownership) or controlled (any percentage) by the Contractor or by the Contractor's owners, officers, principals, directors and/or shareholders, either directly or indirectly. "Affiliated companies, persons or businesses" include, but are not limited to, subsidiary, parent, or sister companies or corporations, and any company, corporation, nonprofit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind that is wholly or partially owned or controlled, either directly or indirectly, by the Contractor or by the Contractor's owners, officers, principals, directors and/or shareholders.

The Contractor shall have a continuing duty to disclose to the State, in writing, all interests and activities that create an actual or potential conflict of interest in performance of the Agreement.

The Contractor shall have a continuing duty to keep the State timely and fully apprised in writing of any material changes in the Contractor's business structure and/or status. This includes any changes in business form, such as a change from sole proprietorship or partnership into a corporation or vice-versa; any changes in company ownership; any dissolution of the business; any change of the name of the business; any filing in bankruptcy; any revocation of corporate status by the Secretary of State; and any other material changes in the Contractor's business status or structure that could affect the performance of the Contractor's duties under the Agreement.

If the Contractor violates any provision of the above paragraphs, such action by the Contractor shall render this Agreement void.

Members of boards and commissions are exempt from this section if they do not receive payment other than payment for each meeting of the board or commission, payment for preparatory time and payment for per diem.

15. Notification of Personnel Changes

Contractor must notify the State, in writing, of any changes of those personnel allowed access to State premises for the purpose of providing services under this Agreement. In addition, Contractor must recover and return any State-issued identification card provided to Contractor's employee(s) upon their departure or termination.

16. Security Clearance/Fingerprinting

The State reserves the right to conduct fingerprinting and/or security clearance—through the Department of Justice, Bureau of Criminal Identification and Information (BCII)—prior to award and at any time during the term of the Agreement, in order to permit Contractor (and/or Contractor employee) access to State premises. The State further reserves the right to terminate the Agreement should a threat to security be determined.

17. Computer Software

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

18. Expendable Equipment

Expendable equipment is defined as expendable items which change with use and have a unit acquisition cost of less than \$5,000 per unit (i.e. fax machines, computers, printers, etc.). Title to any expendable equipment purchased or built with State funds as part of this agreement will vest in the State. The Contractor must retain a listing of expendable equipment purchases that are considered "theft-sensitive" items, such as cameras, calculators, two-way radios, computer equipment, etc., for audit purposes. Upon completion or termination of the agreement, Contractors are required to leave all expendable equipment for use by subsequent contractors or for the State to dispose of accordingly. The State may authorize the continued use of such equipment for work to be performed under a different agreement.

The cost of expendable equipment purchased should be comparable to the prevailing price for similar items in the surrounding area.

19. Electronic Waste Recycling

The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

20. Liability for Loss and Damages

Any damages by the Contractor to the State's facility including equipment, furniture, materials or other State property, will be repaired or replaced by the Contractor to the satisfaction of the State at no cost to the State. The State may, at its option, repair any such damage and deduct the cost thereof from any sum due Contractor under this Agreement.

21. Disclosure

Neither the State nor any State employee will be liable to the Contractor or its staff for injuries inflicted by inmates or parolees of the State. The State agrees to disclose to the Contractor any statement(s) known made by any inmate or parolee which indicate violence may result in any

specific situation, and the same responsibility will be shared by the Contractor in disclosing such statement(s) to the State.

22. Workers' Compensation

Contractor hereby represents and warrants that Contractor is currently and shall, for the duration of this agreement, carry workers' compensation insurance, at Contractor's expense, or that it is self-insured through a policy acceptable to CDCR, for all of its employees who will be engaged in the performance of this agreement. Such coverage will be a condition of CDCR's obligation to pay for services provided under this agreement.

Prior to approval of this agreement and before performing any work, Contractor shall furnish to the State evidence of valid workers' compensation coverage. Contractor agrees that the workers' compensation insurance shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires or is canceled at any time during the term of this agreement, Contractor agrees to give at least thirty (30) days prior notice to CDCR before said expiration date or immediate notice of cancellation. Evidence of coverage shall not be for less than the remainder of the term of the agreement or for a period of not less than one year. The State reserves the right to verify the Contractor's evidence of coverage. In the event the Contractor fails to keep workers' compensation insurance coverage in effect at all times, the State reserves the right to terminate this agreement and seek any other remedies afforded by the laws of this State.

Contractor also agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all of Contractor's workers' compensation claims and losses by Contractor's officers, agents and employees related to the performance of this agreement.

23. Mutual Hold Harmless

Contractor agrees, to the fullest extent permitted by law, to hold harmless, defend and indemnify the State, its officers, agents and employees from and against any liabilities, damages and costs (including reasonable attorneys fees and cost of defense) to the extent caused, during performance of services under this Agreement, by the negligent acts, errors and omissions of the Contractor or anyone for whom Contractor is legally responsible.

The State agrees, to the fullest extent permitted by law and subject to the availability of funds to hold harmless, defend and indemnify the Contractor, its officers, directors, principals and employees, from any liabilities, damages and costs (including reasonable attorneys fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the State as allowed by law.

24. Loss Leader

It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. A "loss leader" is any article or product sold at less than cost: (a) Where the purpose is to induce, promote or encourage the purchase of other merchandise; or (b) Where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers; or (c) Where the effect is to divert trade from or otherwise injure competitors.

25. Insurance Requirements

Insurance as required herein shall be a condition of the State's obligation to pay for services provided under this Agreement. Prior to approval of this Agreement and before performing any work, Contractor and any subcontractor shall furnish to the State evidence of valid coverage. The following shall be considered evidence of coverage: A certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Contractor's insurance carrier. Binders are not acceptable as evidence of coverage. Providing evidence of coverage to the State conveys no rights or privileges to the State, nor does it insure any State employee or insure any premises owned, leased, used by or otherwise or under the control of the State. It does, however, serve to provide the State with proof that the Contractor and any subcontractors are insured at the minimum levels required by the State of California.

Contractor agrees that any liability insurance required in the performance of this Agreement shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires or is canceled during the term of this Agreement, Contractor's insurance provider must agree to give at least thirty (30) days prior notice to the State before said expiration date or notice of cancellation. Evidence of coverage required in the performance of this Agreement shall not be for less than the remainder of the term of this Agreement or for a period of not less than one year. The State and the Department of General Services (DGS) reserve the right to verify the Contractor's evidence of coverage; evidence of coverage is subject to the approval of the DGS. In the event the Contractor fails to keep insurance coverage as required herein in effect at all times, the State reserves the right to terminate this Agreement and to seek any other remedies afforded by the laws of the State of California.

Contractor hereby represents and warrants they (and any subcontractors) are currently and shall for the duration of this Agreement be insured. Contractor shall provide proof of self-insurance.

26. Tuberculosis (TB) Testing

In the event that the services required under this Agreement will be performed within a CDCR institution/parole office/community-based program, prior to the performance of contracted duties, Contractors and their employees who are assigned to work with inmates/parolees on a regular basis shall be required to be examined or tested or medically evaluated for TB in an infectious or contagious stage, and at least once a year thereafter or more often as directed by CDCR. Regular basis is defined as having contact with inmates/parolees in confined quarters more than once a week.

Contractors and their employees shall be required to furnish to CDCR, at no cost to CDCR, a form CDCR 7336, "Employee Tuberculin Skin Test (TST) and Evaluation," prior to assuming their contracted duties and annually thereafter, showing that the Contractor and their employees have

been examined and found free of TB in an infectious stage. The form CDCR 7336 will be provided by CDCR upon Contractor's request.

The following provisions apply to services provided on departmental and/or institution grounds:

27. Blood borne Pathogens

Provider shall adhere to California Division of Occupational Safety and Health (CAL-OSHA) regulations and guidelines pertaining to blood borne pathogens.

28. Primary Laws, Rules, and Regulations Regarding Conduct and Association with State Prison Inmates

Individuals who are not employees of CDCR, but who are working in and around inmates who are incarcerated within California's institutions/facilities or camps, are to be apprised of the laws, rules and regulations governing conduct in associating with prison inmates. The following is a summation of pertinent information when non-departmental employees come in contact with prison inmates.

By signing this Agreement, the Contractor agrees that if the provisions of the Agreement require the Contractor to enter an institution/facility or camp, the Contractor and any employee(s) and/or subcontractor(s) shall be made aware of and shall abide by the following laws, rules and regulations governing conduct in associating with prison inmates:

- a. Persons who are not employed by CDCR, but are engaged in work at any institution/facility or camp must observe and abide by all laws, rules and regulations governing the conduct of their behavior in associating with prison inmates. Failure to comply with these guidelines may lead to expulsion from CDCR institutions/facilities or camps.

SOURCE: California Penal Code (PC) Sections 5054 and 5058; California Code of Regulations (CCR), Title 15, Sections 3285 and 3415

- b. CDCR does not recognize hostages for bargaining purposes. CDCR has a "NO HOSTAGE" policy and all prison inmates, visitors, and employees shall be made aware of this.

SOURCE: PC Sections 5054 and 5058; CCR, Title 15, Section 3304

- c. All persons entering onto institution/facility or camp grounds consent to search of their person, property or vehicle at any time. Refusal by individuals to submit to a search of their person, property, or vehicle may be cause for denial of access to the premises.

SOURCE: PC Sections 2601, 5054 and 5058; CCR, Title 15, Sections 3173, 3177, and 3288

- d. Persons normally permitted to enter an institution/facility or camp may be barred, for cause, by the CDCR Director, Warden, and/or Regional Parole Administrator.

SOURCE: PC Sections 5054 and 5058; CCR, Title 15, Section 3176 (a)

- e. It is illegal for an individual who has been previously convicted of a felony offense to enter into CDCR institutions/facilities or camps without the prior approval of the Warden. It is also illegal for an individual to enter onto these premises for unauthorized purposes or to refuse to leave said premises when requested to do so. Failure to comply with this provision could lead to prosecution.

SOURCE: PC Sections 602, 4570.5 and 4571; CCR, Title 15, Sections 3173 and 3289

- f. It is a crime to encourage and/or assist a prison inmate to escape. It is illegal to bring firearms, deadly weapons, explosives, tear gas, drugs or drug paraphernalia on CDCR institutions/facilities or camp premises. It is illegal to give prison inmates firearms, explosives, alcoholic beverages, narcotics, or any drug or drug paraphernalia, including cocaine or marijuana.

SOURCE: PC Sections 2772, 2790, 4533, 4535, 4550, 4573, 4573.5, 4573.6 and 4574

- g. It is illegal to give or take letters from inmates without the authorization of the Warden. It is also illegal to give or receive any type of gift and/or gratuities from prison inmates.

SOURCE: PC Sections 2540, 2541 and 4570; CCR, Title 15, Sections 3010, 3399, 3401, 3424 and 3425

- h. In an emergency situation the visiting program and other program activities may be suspended.

SOURCE: PC Section 2601; CCR, Title 15, Section 3383

- i. For security reasons, visitors must not wear clothing that in any way resembles state issued prison inmate clothing (blue denim shirts, blue denim pants).

SOURCE: CCR, Title 15, Section 3171 (b) (3)

- j. Interviews with SPECIFIC INMATES are not permitted. Conspiring with an inmate to circumvent policy and/or regulations constitutes a rule violation that may result in appropriate legal action.

SOURCE: CCR, Title 15, Sections 3261.5, 3315 (3) (W), and 3177.

29. Clothing Restrictions

While on institution grounds, Contractor and all its agents, employees, and/or representatives shall be professionally and appropriately dressed in clothing distinct from that worn by inmates at the institution. Specifically, blue denim pants and blue chambray shirts, orange/red/yellow/white/chartreuse jumpsuits and/or yellow rainwear shall not be worn onto institution grounds, as this is inmate attire. Contractor should contact the institution regarding clothing restrictions prior to requiring access to the institution to assure the Contractor and their employees are in compliance.

30. Tobacco-Free Environment

Pursuant to Penal Code Section 5030.1, the use of tobacco products by any person on the grounds of any institution or facility under the jurisdiction of the Department of Corrections and Rehabilitation is prohibited.

31. Prison Rape Elimination Policy

CDCR is committed to providing a safe, humane, secure environment, free from sexual misconduct. This will be accomplished by maintaining a program to ensure education/prevention, detection, response, investigation and tracking of sexual misconduct and to address successful community re-entry of the victim. The CDCR shall maintain a zero tolerance for sexual misconduct in its institutions, community correctional facilities, conservation camps and for all offenders under its jurisdiction. All sexual misconduct is strictly prohibited.

As a contractor with the CDCR, you and your staff are expected to ensure compliance with this policy as described in Department Operations Manual, Chapter 5, Article 44.

32. Security Regulations

- a. Unless otherwise directed by the entrance gate officer and/or Contract Manager, the Contractor, Contractor's employees and subcontractors shall enter the institution through the main entrance gate and park private and nonessential vehicles in the designated visitor's parking lot. Contractor, Contractor's employees and subcontractors shall remove the keys from the ignition when outside the vehicle and all unattended vehicles shall be locked and secured while on institution grounds.
- b. Any State- and Contractor-owned equipment used by the Contractor for the provision of contract services, shall be rendered temporarily inoperative by the Contractor when not in use, by locking or other means unless specified otherwise.
- c. In order to maintain institution safety and security, periodic fire prevention inspections and site searches may become necessary and Contractor must furnish keys to institutional authorities to access all locked areas on the worksite. The State shall in no way be responsible for Contractor's loss due to fire.
- d. Due to security procedures, the Contractor, Contractor's employees and subcontractors may be delayed at the institution vehicle/pedestrian gates and sally ports. Any loss of time checking in and out of the institution gates and sally ports shall be borne by the Contractor.
- e. Contractor, Contractor's employees and subcontractors shall observe all security rules and regulations and comply with all instructions given by institutional authorities.
- f. Electronic and communicative devices such as pagers, cell phones and cameras/microcameras are not permitted on institution grounds.
- g. Contractor, Contractor's employees and subcontractors shall not cause undue interference with the operations of the institution.
- h. No picketing is allowed on State property.

33. Gate Clearance

CITY OF IMPERIAL BEACH
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION (CDCR)
SPECIAL TERMS AND CONDITIONS FOR PUBLIC ENTITY AGREEMENTS

Agreement Number 5600001362

Exhibit D

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Contractor and Contractor's employee(s) and/or subcontractor(s) must be cleared prior to providing services. The Contractor will be required to complete a Request for Gate Clearance for all persons entering the facility a minimum of ten (10) working days prior to commencement of service. The Request for Gate Clearance must include the person's name, social security number, valid state driver's license number or state identification card number and date of birth. Information shall be submitted to the Contract Liaison or his/her designee. CDCR uses the Request for Gate Clearance to run a California Law Enforcement Telecommunications System (CLETS) check. The check will include Department of Motor Vehicles check, Wants and Warrants check, and Criminal History check.

Gate clearance may be denied for the following reasons: Individual's presence in the institution presents a serious threat to security, individual has been charged with a serious crime committed on institution property, inadequate information is available to establish positive identity of prospective individual, and/or individual has deliberately falsified his/her identity.

All persons entering the facilities must have a valid state driver's license or photo identification card on their person.