

# **AGENDA of THE LAGUNA WOODS CITY COUNCIL**

**Adjourned Regular Meeting  
June 24, 2009  
2:00 P.M.**

**Council Chambers  
Laguna Woods City Hall  
24264 El Toro Road  
Laguna Woods, CA 92637**

**Councilmember Cynthia Conners – appearing by Teleconference  
Wyndham Grand Resort  
265 E. Harmon Ave.  
Las Vegas, NV 89109**

AGENDA DESCRIPTION: The Agenda descriptions are intended to give notice, to members of the public, of a general summary of items of business to be transacted or discussed. The listed Recommended Action represents staff or a particular Committee's recommendation. The City Council may take any action, which it deems to be appropriate on the agenda item and is not limited in any way by the recommended action. Any person wishing to address the City Council on any matter, whether or not it appears on this agenda, is requested to complete a "Request to Speak" form available at the door. The completed form is to be submitted to the City Clerk prior to an individual being heard by the City Council. Whenever possible, lengthy testimony should be presented to the City Council in writing (8 copies) and only pertinent points presented orally. Requests to speak to items on the agenda shall be heard at the appropriate point on the agenda; requests to speak about subjects not on the agenda will be heard during the Public Comment section of the meeting.

## **I. CALL TO ORDER**

## **II. FLAG SALUTE**

### III. ROLL CALL

COUNCILMEMBERS: \_\_\_ Conners \_\_\_ Hack \_\_\_ Rhodes  
\_\_\_ Robbins, Mayor Pro Tem \_\_\_ Ring, Mayor

### IV. CONSENT CALENDAR

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

4.1 Approve the reading by title of all ordinances and resolutions. Said ordinances and resolutions that appear on the public agenda shall be determined to have been read by title only and further reading waived.

RECOMMENDED ACTION: Waive reading of ordinances and resolutions.

4.2 Fiscal Year 2009-10 Budget

RECOMMENDED ACTION: Adopt four resolutions related to the implementation of the Fiscal Year 2009-10 budget, entitled:

A. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING APPROPRIATIONS FOR THE FISCAL YEAR COMMENCING JULY 1, 2009 AND ENDING JUNE 30, 2010

AND

B. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING A SEVEN-YEAR CAPITAL IMPROVEMENT PROGRAM IN CONFORMANCE WITH MEASURE M REQUIREMENTS

AND

C. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING THE ANNUAL APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2009-10

AND

D. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ESTABLISHING A GENERAL GOVERNMENTAL OVERHEAD RATE OF 46%

4.3 Fiscal Year 2009-10 Law Enforcement Services

RECOMMENDED ACTION: Approve an agreement with the County of Orange for Fiscal Year 2009-10 law enforcement services in the City of Laguna Woods, and authorize the Mayor to execute the agreement subject to approval as to form by the City Attorney.

4.4 Fiscal Year 2009-10 Proposition 1B Funding

RECOMMENDED ACTION: Adopt a resolution authorizing an application to the State of California for Proposition 1B funds for the El Toro Road/Avenida Sevilla Storm Drain Project, entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING THE APPLICATION TO THE STATE OF CALIFORNIA FOR PROPOSITION 1B FUNDS FOR THE EL TORO ROAD/AVENIDA SEVILLA STORM DRAIN PROJECT

**V. PUBLIC HEARINGS**

5.1 Moulton Parkway Construction Schedule

RECOMMENDED ACTION:

A. Receive Staff Report

B. Open Public Hearing

C. Receive Public Comment

D. Close Public Hearing

E. Approve either:

1. Work on the roadway during the day, with traffic limited to one lane in each direction

OR

2. **Staff and Public Safety Committee recommendation:** A noise variance authorizing construction work on the roadway in the late evening/early morning hours.

## **VI. CITY MANAGER**

### 6.1 Landfill Disposal of Municipal Solid Waste

**RECOMMENDED ACTION:** Approve an agreement with the County of Orange for the disposal of municipal solid waste; and authorize the City Manager to execute the agreement subject to approval as to form by the City Attorney.

## **VII. PUBLIC COMMENTS**

## **VIII. CITY COUNCIL COMMENTS AND ANNOUNCEMENTS**

## **IX. ADJOURNMENT**


The meeting will be adjourned to a Regular Meeting of the City Council at 2:00 p.m. on Wednesday, July 15, 2009 held at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637.

AMERICANS WITH DISABILITIES ACT: In compliance with Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (949) 639-0500 (Voice) or, TDD (949) 639-0535 or the California Relay Service at (800) 735-2929 if you have a TDD or (800) 735-2922 if you do not have a TDD. Notification 48 hours prior to the meeting should enable the City to make reasonable arrangements to assure accessibility to the meeting.

AGENDA: The City Council agenda and agenda back-up materials are available from the Office of the City Clerk, after 4:30 p.m., on the Friday prior to the City Council meeting. The office of the City Clerk is located at Laguna Woods City Hall, 24264 El Toro Road, Laguna Woods, CA 92637. Copies of the agenda are provided at no cost. Agenda back-up materials are available at City Hall for inspection and copies are available at no charge prior to the meeting. A per page copy cost does apply after the meeting. If you wish to be added to the e-mail or regular mail list to receive a copy of the agenda, a request must be made to the City Clerk in writing. Copies of the agenda are mailed only if stamped, self-addressed envelopes are provided. The City of Laguna Woods mailing address is 24264 El Toro Road, Laguna Woods, CA 92637. Phone: (949) 639-0500, FAX (949) 639-0591.

**4.1 - 4.4**  
**CONSENT CALENDAR SUMMARY**

## City of Laguna Woods Agenda Report

**FOR:** June 24, 2009 City Council Meeting  
**TO:** Honorable Mayor and Councilmembers  
**FROM:** Leslie A. Keane, City Manager   
**Agenda Item:** Consent Calendar

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### **Recommendation:**

Approve all proposed actions on the June 24, 2009 Consent Calendar by single motion and Council action.

### **Discussion:**

In general, the Consent Calendar contains routine matters or matters that have already been discussed by Council. It is adopted in total with a single motion and Council action. However, if any councilmember or member of the public has questions or wishes to discuss an item further, it may be removed from the Consent Calendar and placed later in the agenda for discussion and action. The way to remove an item from the Consent Calendar is to request its removal, by agenda item number, immediately prior to the adoption of the Consent Calendar. Members of the public may fill out a request to speak on the item they wish removed and the City Clerk will note the item. No reason need be given with the request. Items pulled from the Consent Calendar are not discussed at the time they are pulled; they are scheduled for discussion immediately after action on the balance of the Consent Calendar.

The June 24<sup>th</sup> Consent Calendar contains the following four items:

- 4.1 Approval of a motion to allow reading proposed ordinances and resolutions by title only – this is a standard practice in cities. If this motion is not approved, all ordinances and resolutions must be read out loud in their entirety during the Council Meeting.

4.2 Approval of four resolutions implementing the Fiscal Year 2009-10 all funds budgets. The City Council discussed budget proposals at three public meetings. The mayor and City manager also conducted a televised town hall meeting to discuss revenue estimates and expenditures proposals. On June 17, 2009, the City Council discussed the city manager’s proposed Fiscal Year 2009-10 budget and directed staff to prepare the appropriate actions for implementation. Four separate resolutions are required to implement the proposed budget.

The city manager’s proposed budget totals \$22 million; this figure includes the base FY 2009-10 budget and the balance of the capital improvement program carried for from prior years: The following specific Fund budgets are proposed:

|  |              |
|--|--------------|
| General Fund                           | \$ 4,523,255 |
| Transportation Fund                    | 3,847,996    |
| Grant Fund                             | 728,306      |
| Self Insurance Fund                    | 141,858      |
| Development Impact Fee Fund            | 265,987      |
| Capital Improvement Program carryover* | 12,516,188   |

\* This amount is the estimate program balance on July 1, 2009

This proposed budget continues all existing programs and staff, does not include any new or increased taxes and continues the suspension of cable television franchise fees. In addition to establishing the approved appropriations, the proposed resolutions establish the City’s appropriation limit, approve the seven year capital improvement program and modify the City’s overhead rate.

Article XIII of the California State Constitution requires local governments to establish an annual appropriations limit. The base limit was established by Laguna Woods voters in 2002. This limit is modified each year by the change in County or State population and the change in personal income or non-residential assessed valuation. Cities are not able to retain any proceeds of taxes that exceed their approved limit. The City’s appropriations limit does not result in any changes to taxes or fees paid by residents or businesses; it simply allows the City the ability to retain funds it anticipates receiving during the fiscal year if they total less than the limit. Revenues included in the Fiscal Year 2009-10 budget subject to this limit total \$7,489,669. Specific calculation data is available from the assistant city

manager; the City only anticipates actually receiving \$3,362,843 in Fiscal Year 2009-10 revenues that are subject to the appropriations limit.

The City's overhead rate is calculated each year in conformance with the federal Office of Management and Budget's Circular A-87. This percentage is applied when the City bills hourly rates for services so that office, support and fringe benefit expenses are recovered. This year's overhead rate is proposed to increase from 42% to 46%; which is significantly less than the current 383% rate charged by the County of Orange.

4.3 Approval of the Fiscal Year 2009-10 law enforcement services contract with the Orange County Sheriff's Department in the amount of \$ 1,298,309. This represents a .58% increase in the current year contract amount. The proposed contract includes continuation of the existing service level:

- 1 patrol vehicle and officer, two shifts per day, seven days a week
- As needed after hours services from the Cities of Aliso Viejo and Laguna Hills
- 1 traffic deputy, available four days per week
- 1 investigator
- Supervision and support equipment and services

4.4 Approval of a resolution authorizing the City Manager to apply to the State of California for \$176,627 in Proposition 1B fund for the El Toro Road/Avenida Sevilla Storm Drain Project. The project involves the installation of a storm drain to prevent flooding at the southwest corner of the intersection, which could pose a safety hazard. Proposition 1B was designed to help agencies accelerate implementation of road maintenance projects, for which this project qualifies. Proposition 1B funds must be spent within three years. If the City is unsuccessful in amassing the remainder of the funds required for the storm drain project, Proposition 1B funding could be applied to a different roadway project.

The above matters are routine and/or have been reviewed by the Council on other occasions. Staff recommends that they be approved as part of the June 24, 2009 Consent Calendar.

If you have questions about any of the above items, feel free to call me prior to the meeting so that I may provide additional information.

**4.2**  
**FISCAL YEAR 2009-10 BUDGET**

## ITEM 4.2 A

### RESOLUTION NO. 09-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING APPROPRIATIONS FOR THE FISCAL YEAR COMMENCING JULY 1, 2009 AND ENDING JUNE 30, 2010

THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The budget of the City of Laguna Woods for the fiscal year commencing July 1, 2009 and ending June 30, 2010 as prepared and submitted by the City Manager and as modified by the City Council, is hereby approved and adopted as the budget of the City of Laguna Woods for Fiscal Year 2009-10.

SECTION 2. From the effective date of said budget, the total amount as stated therein for each departmental activity account in the operating budget shall be, and is, appropriated subject to expenditure pursuant to all applicable ordinances of the City and statutes of the State. The operating budget may be reallocated by the City Manager providing there is no change in the total appropriations within any fund as authorized by the City Council.

SECTION 3. At the close of the fiscal year, unexpended appropriations in the operating budget will be encumbered as necessary to underwrite the expense of outstanding purchase commitments. Unexpended appropriations for capital projects as approved by the City Council will be carried forward to the next succeeding budget upon approval of the City Manager.

SECTION 4. Total appropriations within Funds will be increased only by amendment of the budget by motion of the City Council.

SECTION 5. The City Manager may decrease revenue estimates to reflect economic change during the fiscal year and may reduce expenditure appropriations within funds as a method of fiscal control.

SECTION 6. The following budget appropriations for Fiscal Year 2009-10 are hereby authorized:

**ITEM 4.2 A**

|                             |           |              |
|-----------------------------|-----------|--------------|
| GENERAL FUND                |           | \$ 4,523,255 |
| City Council                | 49,573    |              |
| Administrative Services     | 1,045,396 |              |
| Community Development       | 523,661   |              |
| Community Services          | 189,465   |              |
| Public Safety               | 1,666,844 |              |
| Public Works                | 426,208   |              |
| Non-Departmental            | 622,108   |              |
| TRANSPORTATION FUND         |           | \$ 3,847,996 |
| DEVELOPMENT IMPACT FEE FUND |           | \$ 265,987   |
| GRANT FUND                  |           | \$ 728,306   |
| SELF INSURANCE FUND         |           | \$ 141,858   |

SECTION 7. The following full time staff positions are hereby authorized as a part of the Fiscal Year 2009-10 budget:

- 1.00 Administrative Coordinator
- 1.00 Assistant City Manager
- 1.00 City Manager
- 1.00 Code Enforcement Officer
- 1.00 Community Development Director
- 1.00 Community Services Manager
- 1.00 Deputy Building Official
- 1.00 Deputy City Clerk
- 1.00 Finance Manager
- 1.00 Special Projects Manager

SECTION 8. The Deputy City Clerk shall certify to the adoption of this resolution.

**ITEM 4.2 A**

PASSED, APPROVED AND ADOPTED this \_\_\_\_\_<sup>th</sup> day of June, 2009.

\_\_\_\_\_  
ROBERT B. RING, Mayor

ATTEST:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA        )  
COUNTY OF ORANGE        ) ss.  
CITY OF LAGUNA WOODS    )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do  
HEREBY CERTIFY that the foregoing **Resolution No. 09-XX** was duly adopted  
by the City Council of the City of Laguna Woods at a regular meeting thereof, held  
on the \_\_\_\_\_<sup>th</sup> day of June 2009, by the following vote:

AYES:        COUNCIL MEMBERS:  
NOES:        COUNCIL MEMBERS:  
ABSENT:     COUNCIL MEMBERS:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

**RESOLUTION NO. 09-xx**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADOPTING A SEVEN-YEAR CAPITAL IMPROVEMENT PROGRAM IN CONFORMANCE WITH MEASURE M REQUIREMENTS

WHEREAS, the City of Laguna Woods seeks to maintain eligibility to receive an apportionment of Measure M sales tax revenues that can be used to fund transportation-related projects and programs; and

WHEREAS, a prerequisite of such eligibility is the annual filing of a Measure M eligibility package for review and approval by the Orange County Transportation Authority; and

WHEREAS, one component of the Measure M eligibility package for Fiscal Year 2009-2010 is the preparation and City Council adoption of a Seven-Year Capital Improvement Program (CIP) which includes, at minimum, all projects and programs which are needed to meet and maintain adopted levels of service performance standards, in addition to all projects and programs proposed to receive Measure M funding; and

WHEREAS, the FY 2009-2010 expenditures identified in the CIP are consistent with the adopted City of Laguna Woods FY 2009-2010 budget; and

WHEREAS, the CIP is recognized as a program/project finance and planning tool to assist local governments in the longer-term development and funding of transportation-related programs and projects, and not a budget commitment; and

WHEREAS, the CIP is updated annually to include adjustments to funding and project schedules.

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

SECTION 1. The City Council of the City of Laguna Woods adopts the City of Laguna Woods Seven-Year Capital Improvement Program, attached hereto as Exhibit 1 and incorporated herein by reference, in conformance with Measure M requirements.

SECTION 2. The Deputy City Clerk shall certify to the adoption of this Resolution.

PASSED APPROVED AND ADOPTED on this \_\_\_\_ day of June 2009.

\_\_\_\_\_  
ROBERT B. RING, Mayor

ATTEST:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss.  
CITY OF LAGUNA WOODS )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 09-xx** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the \_\_\_ day of June 2009, by the following vote:

AYES: COUNCIL MEMBERS:  
NOES: COUNCIL MEMBERS:  
ABSENT: COUNCIL MEMBERS:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

**SEVEN YEAR CAPITAL IMPROVEMENT PROGRAM (CIP)  
FY 08/09 through 14/15**

Item 4.2 B Exhibit 1

| Project   | Funding   | FY 09/10                                 | FY 10/11 | FY 11/12 | FY 12/13 | FY 13/14 | FY 14/15 | FY 15/16 |
|---|---|--|----------|----------|----------|----------|----------|----------|
| <b><u>Road Improvements</u></b>   |   |  |          |          |          |          |          |          |
| Moulton Smart Street Project -<br>Via Campo Verde -<br>Santa Maria Ave.                           | Measure M<br>County funds<br>Total  | 2,919,782<br>2,919,782                   |          |          |          |          |          |          |
| El Toro Road Eastbound<br>Pavement Rehabilitation -<br>Southerly City boundary to<br>Calle Sonora | Prop 1B funds<br>OC CAP<br>RAC funds<br>Traff Cong Relief<br>Measure M<br>Total | 43,043<br>35,000                         |          |          |          |          |          |          |
| Santa Maria Ave Pavement<br>Resurfacing - Moulton<br>Pkyw to Avenida Sosiega                      | Measure M<br>Laguna Hills<br>AHRP<br>Total                                      | 350,000<br>100,000<br>250,000<br>700,000 |          |          |          |          |          |          |
| El Toro Rd/Avenida Sevilla<br>Stormdrain  | Prop 1B<br>Total  | 176,627<br>176,627                       |          |          |          |          |          |          |
| Slurry Seal Program   | Measure M<br>Total  | 50,000<br>50,000                         | 50,000   | 50,000   | 50,000   | 50,000   | 50,000   | 50,000   |
| <b><u>Parks</u></b>   |   |  |          |          |          |          |          |          |
| Ridge Route Linear Park   | Fuel Tax<br>Park In Lieu Fees<br>Total  | 75,000<br>75,000                         |          |          |          |          |          |          |
| City Centre Park  | Park Bond<br>Park In Lieu Fees<br>Total   | 190,987<br>190,987                       |          |          |          |          |          |          |

**SEVEN YEAR CAPITAL IMPROVEMENT PROGRAM (CIP)**

Item 4.2 B Exhibit 1

FY 08/09 through 14/15

| Project          | Funding             | FY 09/10  | FY 10/11 | FY 11/12 | FY 12/13 | FY 13/14 | FY 14/15 | FY 15/16 |
|------------------|---------------------|-----------|----------|----------|----------|----------|----------|----------|
|                  | <b>Measure M</b>    |           |          |          |          |          |          |          |
| CIP Revenues     |                     | 0         | 400,000  | 50,000   | 50,000   | 50,000   | 50,000   | 50,000   |
| CIP Expenditures |                     | 0         | 400,000  | 50,000   | 50,000   | 50,000   | 50,000   | 50,000   |
| Balance          |                     | 0         | 0        | 0        | 0        | 0        | 0        | 0        |
|                  | <b>Prop 1B</b>      |           |          |          |          |          |          |          |
| CIP Revenues     |                     | 176,627   |          |          |          |          |          |          |
| CIP Expenditures |                     | 176,627   |          |          |          |          |          |          |
| Balance          |                     | 0         |          |          |          |          |          |          |
|                  | <b>Federal</b>      |           |          |          |          |          |          |          |
| CIP Revenues     |                     |           | 250,000  |          |          |          |          |          |
| CIP Expenditures |                     |           | 250,000  |          |          |          |          |          |
| Balance          |                     | 0         | 0        | 0        | 0        | 0        | 0        | 0        |
|                  | <b>Park In Lieu</b> |           |          |          |          |          |          |          |
| CIP Revenues     |                     | 265,987   |          |          |          |          |          |          |
| CIP Expenditures |                     | 265,987   |          |          |          |          |          |          |
| Balance          |                     | 0         | 0        | 0        | 0        | 0        | 0        | 0        |
|                  | <b>Other Funds</b>  |           |          |          |          |          |          |          |
| CIP Revenues     |                     | 2,997,825 | 100,000  | 0        | 0        | 0        | 0        | 0        |
| CIP Expenditures |                     | 2,997,825 | 100,000  | 0        | 0        | 0        | 0        | 0        |
| Balance          |                     | 0         | 0        | 0        | 0        | 0        | 0        | 0        |

**RESOLUTION NO. 09-xx**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING THE ANNUAL APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2009-10

WHEREAS, the voters of California, on November 6, 1979, added Article XIII B to the State Constitution, placing various limitations on appropriations of state and local governments; and

WHEREAS, Article XIII B provides that the appropriations limit for the fiscal year 2009-10 is calculated by adjusting the base year appropriations of fiscal year 2008-09 and subsequent years for changes in the cost of living and population; and

WHEREAS, Proposition 111 (Section 1.5 of Article XIII B), enacted by the voters on June 5, 1990, modified the method of calculating the limit; and

WHEREAS, the voters of Laguna Woods set the permanent appropriations limit for the City of Laguna Woods at \$4,165,544, and approved the increase in the appropriations limit for the Fiscal Years 2002-03 through 2005-06 by an amount determined by the statutory increase in motor-vehicle-in-lieu fees provided to newly incorporated cities; and

WHEREAS, the City of Laguna Woods has complied with all of the provisions of Article XIII B in determining the appropriations limit for fiscal year 2008-09;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The City of Laguna Woods chooses to use the change in per capita personal income as the inflation adjustment factor for Fiscal Year 2009-10.

SECTION 2. The City of Laguna Woods chooses to use the change in population for the County of Orange as the growth adjustment factor for Fiscal Year 2009-10.

ITEM 4.2 C

SECTION 3. Documentation for calculation of the limit is on file in the Finance Department and will be reviewed by the City's auditors during the annual financial audit, as required by Proposition 111.

SECTION 4. The Fiscal Year 2009-10 appropriations limit for the City of Laguna Woods is hereby established as \$7,489,669.

SECTION 5. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED and ADOPTED this \_\_\_\_ day of June 2009.

\_\_\_\_\_  
ROBERT B. RING, Mayor

ATTEST:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS   )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 09-xx** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the \_\_\_\_ day of June 2009, by the following vote:

AYES:                   COUNCIL MEMBERS:  
NOES:                   COUNCIL MEMBERS:  
ABSENT:                COUNCIL MEMBERS:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

**RESOLUTION NO. 09-XX**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ESTABLISHING A GENERAL GOVERNMENTAL OVERHEAD RATE OF 46%

WHEREAS, the City Council desires to recapture the full cost of City services supported by fees to avoid placing an unfair financial burden on the citizens of the City; and

WHEREAS, the City of Laguna Woods overhead rate is currently 42% and the City Council desires to adopt a general governmental overhead rate that more accurately reflects the costs of providing services in the City of Laguna Woods; and

WHEREAS, a general governmental overhead rate is calculated by adding the cost of support provided by the City Council and the Administrative Services Department to service-providing departments, as reflected in the attached "Overhead Calculation for Fiscal Year 2009-10."

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Based on the "Overhead Calculation for Fiscal Year 2009-10," the City Council adopts a general governmental overhead rate of 46%.

SECTION 2. The Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED ON THE \_\_\_\_ DAY OF JUNE 2009.

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ROBERT B. RING, Mayor

ATTEST:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS   )

I, YOLIE TRIPPY, City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing **Resolution No. 09-XX** was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the \_\_\_\_ day of June 2009, by the following vote:

AYES:                    COUNCIL MEMBERS:  
NOES:                    COUNCIL MEMBERS:  
ABSENT:                 COUNCIL MEMBERS:

\_\_\_\_\_  
YOLIE TRIPPY, Deputy City Clerk

**City of Laguna Woods  
Overhead Calculation for Fiscal Year 2009-10**

| <b>Cost Category<br/>Description</b> | <b>Amount</b>    | <b>Subtotal</b>  |
|--------------------------------------|------------------|------------------|
| <b>Direct Costs:</b>                 |                  |                  |
| A. Total Direct Labor                | 83,802           |                  |
| B. Total Other Direct Costs          | <u>3,678,257</u> |                  |
| Total Direct Costs                   |                  | 3,762,059        |
| <b>Indirect Costs:</b>               |                  |                  |
| C. Total Fringe Benefits             | 317,939          |                  |
| D. Total Overhead                    |                  |                  |
| E. Total G & A                       | <u>194,515</u>   |                  |
| Total Indirect Costs                 |                  | <u>512,454</u>   |
| G. Total Costs                       |                  | <u>4,274,513</u> |

**Cost Element Description**

|                         |                |         |
|-------------------------|----------------|---------|
| A. Total Direct Labor   | 83,802         |         |
| H. Total Overhead Labor |                |         |
| I. Total G & A Labor    | <u>612,401</u> |         |
| J. Total Labor          |                | 696,203 |

|                      |            |
|----------------------|------------|
| <b>Overhead Rate</b> | <b>46%</b> |
|----------------------|------------|

Notes: FY 09 Estimated Actual minus Capital Projects & Equipment  
Reference OMB Circular A-87

**4.3**  
**FISCAL YEAR 2009-10 LAW ENFORCEMENT**  
**SERVICES**



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1 **A. TERM:**

2 The term of this Agreement shall commence July 1, 2009 and terminate June  
3 30, 2010

4 **B. OPTIONAL TERMINATION OR EXTENSION:**

5 1. COUNTY or CITY may terminate this Agreement, without cause, upon one  
6 hundred and eighty (180) days written notice to the other party.

7 2. If COUNTY and CITY have not entered into a written agreement by June  
8 30, 2010 for COUNTY to provide to CITY, during all or part of the period  
9 between July 1, 2010 and June 30, 2011, law enforcement services similar  
10 to those specified herein, then SHERIFF, on behalf of COUNTY, and CITY's  
11 Manager, on behalf of CITY, are authorized to execute a written amendment  
12 to this Agreement that provides as follows and does not materially alter  
13 other terms of the Agreement: SHERIFF shall continue to provide to CITY  
14 all or a designated part of the law enforcement services specified herein, for  
15 a specified time period between July 1, 2010 and August 31, 2010 and CITY  
16 shall pay COUNTY the full costs of providing such services. Such full costs  
17 may be greater than those listed herein for the period July 1, 2009 through  
18 June 30, 2010. SHERIFF and CITY Manager shall file copies of any such  
19 amendments to this Agreement with the Clerk of COUNTY's Board of  
20 Supervisors and CITY's Clerk.

21 **C. REGULAR SERVICES BY COUNTY:**

22 1. COUNTY, through its Sheriff-Coroner and deputies, officers and employees,  
23 hereinafter referred to as "SHERIFF", shall render to CITY law enforcement  
24 services as hereinafter provided. Such services shall include the  
25 enforcement of lawful State statutes and lawful municipal ordinances of  
26 CITY other than licensing ordinances.

27 //

28 //

1 **C. REGULAR SERVICES BY COUNTY: (Continued)**

2 2. The night, day and evening patrol and supervisory shifts will be established  
3 by SHERIFF. Personnel of each shift may work varying and different times  
4 and may be deployed to other shifts when, in the opinion of SHERIFF and  
5 CITY Manager, the need arises. Any long-term shift deployment change will  
6 be reported to CITY's Council.

7 3. The level of service, other than for licensing, to be provided by COUNTY for  
8 the period July 1, 2009 through June 30, 2010, shall be as follows:

9 **Patrol Services:**

- 10 • Two and four tenths (2.4) designated one-deputy units  
11 (Each one-deputy unit provides service for 56 hours per week)

- 12 • Six hundredths of one (.06) sergeant unit  
13 (4.8 hours per two-week pay period)

14 Deployment to be determined by SHERIFF in cooperation with CITY  
15 Manager.

16 **Traffic Services:**

- 17 • One (1) Deputy Sheriff II (80 hours per two-week pay period)

18 Deployment to be determined by SHERIFF in cooperation with CITY  
19 Manager.

20 **Investigation Services:**

- 21 • One (1) Investigator  
22 (80 hours per two-week pay period)

23 **South County Regional Support Services:**

- 24 • 1.90 percent of one half of one (.5) Sergeant – Traffic
- 25 • 1.90 percent of four (4) Deputy Sheriff IIs – Traffic
- 26 • 1.90 percent of one (1) Investigative Assistant – Traffic
- 27 • 1.90 percent of one (1) Office Specialist – Traffic
- 28 • 1.32 percent of one fourth of one (.25) Sergeant – Auto Theft

1 **C. REGULAR SERVICES BY COUNTY: (Continued)**

- 2 • 1.32 percent of two (2) Investigators – Auto Theft
- 3 • 1.32 percent of one (1) Investigative Assistant – Auto Theft
- 4 • 1.32 percent of one (1) Office Specialist – Auto Theft
- 5 • .64 percent of three (3) Investigative Assistants – Court

- 6 4. For any service listed in Subsection C-3 in this Agreement that is provided  
7 to CITY at less than 100% of a full-time SHERIFF position, COUNTY retains  
8 the option to terminate such service in the event the other city or cities that  
9 contract(s) for the balance of the time of the employee providing the service  
10 no longer pay(s) for such service and CITY does not request the Agreement  
11 be amended to provide for payment of 100% of the cost of the employee  
12 providing such service. The Maximum Obligation of CITY set forth in  
13 Subsection G-3 will be adjusted accordingly.
- 14 5. All services contracted for in this Agreement may not be operational on the  
15 precise date specified in this Agreement. In those instances, SHERIFF  
16 shall notify CITY Manager of the date or dates such service or services are  
17 to be implemented. COUNTY shall reduce the monthly charges to CITY,  
18 based on the actual date of implementation of the service or services.  
19 Charges shall be reduced on the next monthly billing tendered in  
20 accordance with Subsection G-4 of this Agreement.
- 21 6. With respect to the licensing ordinances of CITY listed in Attachment A  
22 hereto, which is incorporated herein by this reference, SHERIFF shall  
23 receive applications for CITY licenses pursuant to said ordinances and  
24 complete investigations relating to such applications. Such investigations  
25 shall be forwarded to CITY Manager. COUNTY shall not provide any  
26 advisory, administrative, hearing or litigation attorney support or services  
27 related to licensing. COUNTY shall not provide any administrative or  
28 investigatory services related to the licensing ordinances listed in

1 **C. REGULAR SERVICES BY COUNTY: (Continued)**

2 Attachment A hereto, except the investigations relating to initial applications  
3 for which this subsection provides.

- 4 7. With the limitations set forth below, SHERIFF, on behalf of COUNTY, and  
5 CITY Manager, on behalf of CITY, are authorized to execute written  
6 amendments to this Agreement to increase or decrease the level of service  
7 set forth in Subsection C-3, when SHERIFF and CITY Manager mutually  
8 agree that such increase or decrease in the level of service is appropriate.  
9 Any such amendment to the Agreement shall concomitantly increase or  
10 decrease the cost of services payable by CITY set forth in Subsection G-2  
11 and the Maximum Obligation of CITY set forth in Subsection G-3, in  
12 accordance with the current year's COUNTY law enforcement cost study.  
13 SHERIFF and CITY Manager shall file copies of any such amendments to  
14 this Agreement with the Clerk of COUNTY's Board of Supervisors and  
15 CITY's Clerk. Amendments to this Agreement executed by SHERIFF and  
16 CITY Manager may not, in the aggregate, increase or decrease the cost of  
17 services payable by CITY by more than one percent (1%) of the total cost  
18 originally set forth in Subsection G-2 and the Maximum Obligation originally  
19 set forth in Subsection G-3.

20 Prior approval by COUNTY's Board of Supervisors and CITY's Council is  
21 required before execution of any amendment that brings the aggregate total  
22 of changes in costs payable by CITY to more than one percent (1%) of the  
23 total costs originally set forth in Subsection G-2 and the Maximum  
24 Obligation originally set forth in Subsection G-3 of this Agreement.

25 **D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY:**

- 26 1. Enhanced services for events on CITY property. At the request of CITY,  
27 through its City Manager, SHERIFF may provide enhanced law enforcement  
28 services for functions, such as community events, conducted on property

1 **D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY: (Continued)**

2 that is owned, leased or operated by CITY. SHERIFF shall determine  
3 personnel and equipment needed for such enhanced services. To the  
4 extent the services provided at such events are at a level greater than that  
5 specified in Subsection C-3 of this Agreement, CITY shall reimburse  
6 COUNTY for such additional services, at an amount computed by  
7 SHERIFF, based on the current year's COUNTY law enforcement cost  
8 study. The cost of these enhanced services shall be in addition to the  
9 Maximum Obligation of CITY set forth in Subsection G-3 of this Agreement.  
10 SHERIFF shall bill CITY immediately after each such event.

- 11 2. Supplemental services for occasional events operated by private individuals  
12 and entities on non-CITY property. At the request of CITY, through its City  
13 Manager, and within the limitations set forth in this subsection D-2,  
14 SHERIFF may provide supplemental law enforcement services to preserve  
15 the peace at special events or occurrences that occur on an occasional  
16 basis and are operated by private individuals or private entities on non-CITY  
17 property. SHERIFF shall determine personnel and equipment needed for  
18 such supplemental services, and will provide such supplemental services  
19 only if SHERIFF is able to do so without reducing the normal and regular  
20 ongoing services that SHERIFF otherwise would provide to CITY pursuant  
21 to this Agreement. Such supplemental services shall be provided only by  
22 regularly appointed full-time peace officers, at rates of pay governed by a  
23 Memorandum of Understanding between COUNTY and the bargaining  
24 unit(s) representing the peace officers providing the services. Such  
25 supplemental services shall include only law enforcement duties and shall  
26 not include services authorized to be provided by a private patrol operator,  
27 as defined in Section 7582.1 of the Business and Professions Code. Law  
28 enforcement support functions, including, but not limited to, clerical

1 **D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY: (Continued)**

2 functions and forensic science services, may be performed by non-peace  
3 officer personnel if the services do not involve patrol or keeping the peace  
4 and are incidental to the provision of law enforcement services. CITY shall  
5 reimburse COUNTY its full, actual costs of providing such supplemental  
6 services at an amount computed by SHERIFF, based on the current year's  
7 COUNTY law enforcement cost study. The cost of these supplemental  
8 services shall be in addition to the Maximum Obligation of CITY set forth in  
9 Subsection G-3 of this Agreement. SHERIFF shall bill CITY immediately  
10 after each such event.

11 3. Supplemental services for events operated by public entities on non-CITY  
12 property. At the request of CITY, through its City Manager, and within the  
13 limitations set forth in this subsection D-3, SHERIFF may provide  
14 supplemental law enforcement services to preserve the peace at special  
15 events or occurrences that occur on an occasional basis and are operated  
16 by public entities on non-CITY property. SHERIFF shall determine  
17 personnel and equipment needed for such supplemental services, and will  
18 provide such supplemental services only if SHERIFF is able to do so without  
19 reducing services that SHERIFF otherwise would provide to CITY pursuant  
20 to this Agreement. CITY shall reimburse COUNTY its full, actual costs of  
21 providing such supplemental services at an amount computed by SHERIFF,  
22 based on the current year's COUNTY law enforcement cost study. The cost  
23 of these supplemental services shall be in addition to the Maximum  
24 Obligation of CITY set forth in Subsection G-3 of this Agreement. SHERIFF  
25 shall bill CITY immediately after each such event.

26 //  
27 //  
28 //

1 **D. ENHANCED AND SUPPLEMENTAL SERVICES BY COUNTY: (Continued)**

2 4. Notwithstanding the foregoing, CITY, through its permit process, may utilize  
3 the services of the Sheriff at events, for which CITY issues permits, that are  
4 operated by private individuals or entities or public entities. SHERIFF shall  
5 determine personnel and equipment needed for said events. If said events  
6 are in addition to the level of services listed in Subsection C-3 of this  
7 Agreement, CITY shall reimburse COUNTY for such additional services at  
8 an amount computed by SHERIFF, based upon the current year's COUNTY  
9 law enforcement cost study. The cost of these services shall be in addition  
10 to the Maximum Obligation of CITY set forth in Subsection G-3 of this  
11 Agreement. SHERIFF shall bill CITY immediately after said services are  
12 rendered.

13 **E. PATROL VIDEO SYSTEMS:**

- 14 1. As part of the law enforcement services to be provided to CITY, COUNTY  
15 has provided, or will provide, patrol video systems (hereinafter called "PVS")  
16 that are or will be mounted in patrol vehicles designated by COUNTY for  
17 use within CITY service area.
- 18 2. SHERIFF has the exclusive right to use said PVS for law enforcement  
19 services related to this Agreement.
- 20 3. CITY shall pay COUNTY the full costs to COUNTY of a) the acquisition and  
21 installation of Patrol Video Systems that are or will be mounted in patrol  
22 vehicles assigned to CITY, and b) recurring costs, as deemed necessary by  
23 COUNTY, including the costs of maintenance and contributions to a fund for  
24 replacement and upgrade of such PVS when they become functionally or  
25 technologically obsolete.

26 The costs to be paid by CITY for recurring costs, including maintenance and  
27 replacement/upgrade of PVS, are included in the costs set forth in  
28 Subsection G-2 and the Maximum Obligation of CITY set forth in

1 **E. PATROL VIDEO SYSTEMS: (Continued)**

2 Subsection G-3 of this Agreement unless CITY has already paid such costs.  
3 CITY shall not be charged additional amounts for maintenance or  
4 replacement/upgrade of said PVS during the period July 1, 2009 through  
5 June 30, 2010.

- 6 4. If, following the initial acquisition of PVS referenced above, CITY requires  
7 PVS for additional patrol cars designated for use in the CITY service area,  
8 COUNTY will purchase said additional PVS. Upon demand by COUNTY,  
9 CITY will pay to COUNTY a) the full costs of acquisition and installation of  
10 said additional PVS, and b) the full recurring costs for said PVS, as deemed  
11 necessary by COUNTY, including the costs of maintenance, and  
12 contributions to a fund for replacement and upgrade of such PVS when they  
13 become functionally or technologically obsolete. Said costs related to  
14 additional PVS are not included in, and are in addition to, the costs set forth  
15 in Subsection G-2 and the Maximum Obligation of CITY set forth in  
16 Subsection G-3 of this Agreement.
- 17 5. COUNTY will replace and/or upgrade PVS as needed. The costs of  
18 replacing/upgrading PVS shall be paid by COUNTY from the replacement/  
19 upgrade funds to be paid by CITY in accordance with the foregoing. CITY  
20 shall not be charged any additional charge to replace or upgrade PVS.

21 **F. LICENSING SERVICES BY CITY:**

22 Upon receipt from COUNTY of investigations of applications for licenses  
23 referred to in Subsection C-6 of this Agreement, CITY Manager shall determine  
24 whether to grant or deny the licenses and will issue the licenses or notify the  
25 applicants of denial. CITY shall provide all attorney services related to the  
26 granting, denial, revocation and administration of said licenses and the  
27 enforcement of CITY ordinances pertaining to said licenses.

28 //

1 **G. PAYMENT:**

2 1. Pursuant to Government Code Section 51350, CITY agrees to pay to  
 3 COUNTY the full costs of performing the services mutually agreed upon in  
 4 this Agreement. The costs of services include salaries, wages, benefits,  
 5 mileage, services, supplies, equipment, and divisional, departmental and  
 6 COUNTY General overhead.

7 2. Unless the level of service described in Subsection C-3 is increased or  
 8 decreased or CITY is required to pay for increases as set forth in  
 9 Subsection G-5: the Maximum Obligation of CITY for services, other than  
 10 Licensing Services, described in Subsection C-3 of this Agreement, to be  
 11 provided by COUNTY for the period July 1, 2009 through June 30, 2010  
 12 shall be as follows:

13 **Patrol Services:**

- 14 • Two and four tenths of one (2.4) Deputy Units  
 15 @ \$291,692/unit \$ 700,060  
 16 • Six hundredths of one (.06) Sergeant Unit  
 17 @ \$251,664/unit \$ 15,100

18 **Traffic Services:**

- 19 • One (1) Deputy Sheriff II  
 20 @ \$195,224/unit \$ 195,224

21 **Investigation Services:**

- 22 • One (1) Investigator  
 23 @ \$241,386/each \$ 241,386

24 **South County Regional Support:**

- 25 • 1.90% of one half of one (.5) Sergeant – Traffic  
 26 @ \$234,870/each \$ 2,232  
 27 • 1.90% of four (4) Deputy Sheriff IIs – Traffic  
 28 @ \$184,046/each \$ 13,987

## 1 G. PAYMENT: (Continued)

| <u>SERVICE</u>  | <u>COST OF SERVICE</u>    |
|---|---------------------------|
| • 1.90% of one (1) Investigative Assistant – Traffic<br>@ \$85,779/each   | \$ 1,629                  |
| • 1.90% of one (1) Office Specialist - Traffic<br>@ \$71,123/each   | \$ 1,351                  |
| • 1.32% of one fourth of one (.25) Sergeant – Auto Theft<br>@ \$234,870/each  | \$ 777                    |
| • 1.32% of two (2) Investigators – Auto Theft<br>@ \$205,296/each   | \$ 5,420                  |
| • 1.32% of one (1) Investigative Assistant – Auto Theft<br>@ \$87,604/each  | \$ 1,156                  |
| • 1.32% of one (1) Office Specialist - Auto Theft<br>@ \$72,603/each  | \$ 958                    |
| • .64% of three (3) Investigative Assistants – Court<br>@ \$88,306/each   | \$ 1,696                  |
| <b>Other Charges and Credits:</b>   | \$ 117,333                |
| <b><u>Charges:</u></b> Contract administration; direct services and supplies; holiday pay; comp and straight time; Integrated Law & Justice Agency of Orange County; Lieutenant supplemental pay; mileage interest for replacement vehicles; mobile data computer (MDC) recurring costs; on-call pay; patrol video system (PVS) recurring costs; training; transportation costs including vehicle fuel and maintenance. |                           |
| <b><u>Credits:</u></b> False alarm fees; reimbursement for training and miscellaneous programs.   |                           |
| <b>TOTAL COST OF SERVICES</b>   | <b><u>\$1,298,309</u></b> |

28 //

1 **G. PAYMENT: (Continued)**

2 3. Unless the level of service provided in Subsection C-3 is increased by  
3 mutual agreement of the parties, or CITY is required to pay increases as set  
4 forth in Subsection G-5, the Maximum Obligation of CITY for services, other  
5 than Licensing Services, described in Subsection C-3 of this Agreement, to  
6 be provided by the COUNTY for the period July 1, 2009 through June 30,  
7 2010, is \$1,298,309.

8 4. COUNTY shall invoice CITY monthly. During the period of July 1, 2009  
9 through June 30, 2010, said invoices will require payment by CITY of one-  
10 twelfth (1/12) of the Maximum Obligation of CITY set forth in Subsection G-3  
11 of this Agreement, as said Maximum Obligation may have been increased  
12 or decreased pursuant to mutual agreement of the parties. In addition, if a  
13 determination is made that increases described in Subsection G-5 must be  
14 paid, COUNTY thereafter shall include the pro-rata charges for such  
15 increases in its monthly invoices to CITY for the balance of the period July  
16 1, 2009 and June 30, 2010.

17 5.a. At the time this Agreement is executed, there are unresolved issues  
18 pertaining to potential increases in salaries and benefits for COUNTY  
19 employees. The cost of such potential increases are not included in the  
20 Fiscal Year 2009-10 costs set forth in Subsection G-2 nor in the Fiscal Year  
21 2009-10 Maximum Obligation of CITY set forth in Subsection G-3 of this  
22 Agreement. If COUNTY incurs or becomes obligated to pay for any such  
23 increases for or on account of personnel whose costs are included in the  
24 calculations of costs charged to CITY hereunder, CITY shall pay COUNTY,  
25 in addition to the Maximum Obligation set forth in Subsection G-3 of this  
26 Agreement, the full costs of said increases to the extent such increases are  
27 attributable to work performed by such personnel after July 1, 2009, and  
28 CITY's Maximum Obligation hereunder shall be deemed to have increased

1 **G. PAYMENT:** (Continued)

2 accordingly. CITY shall pay COUNTY in full for such increases on a pro-  
3 rata basis over the portion of the period between July 1, 2009 and June 30,  
4 2010 remaining after COUNTY notifies CITY that increases are payable.

5 5.b. If CITY is required to pay for cost increases as set forth in Subsection G-5a  
6 above, COUNTY, at the request of CITY, will thereafter reduce the level of  
7 service to be provided to CITY, pursuant to Subsection C-3 of this  
8 Agreement to a level that will make the Maximum Obligation of CITY  
9 hereunder for the period July 1, 2009 through June 30, 2010 an amount  
10 specified by CITY that is equivalent to or higher than the Maximum  
11 Obligation set forth in Subsection G-3 for said period at the time this  
12 Agreement originally was executed. The purpose of such adjustment of  
13 service levels will be to give CITY the option of keeping its Maximum  
14 Obligation hereunder at the pre-increase level or at any other higher level  
15 specified by CITY. In the event of such reduction in level of service and  
16 adjustment of costs, the parties shall execute an amendment to this  
17 Agreement so providing. Decisions about how to reduce the level of service  
18 provided to CITY shall be made by SHERIFF with the approval of CITY.

19 6. CITY shall pay COUNTY in accordance with COUNTY Board of  
20 Supervisors' approved County Billing Policy, which is attached hereto as  
21 Attachment B and incorporated herein by this reference.

22 7. COUNTY shall charge CITY late payment penalties in accordance with  
23 County Billing Policy.

24 8. As payment for the Licensing Services described in Subsection C-6 of this  
25 Agreement, COUNTY shall retain all fees paid by applicants for licenses  
26 pursuant to CITY ordinances listed in Attachment A hereto. Retention of  
27 said fees by COUNTY shall constitute payment in full to COUNTY for costs  
28 incurred by COUNTY in performing the functions related to licensing

1 **G. PAYMENT:** (Continued)

2 described in Subsection C-6; provided, however, that if any of said fees are  
 3 waived or reduced by CITY, CITY shall pay to COUNTY the difference  
 4 between the amount of fees retained by COUNTY and the fees that were  
 5 set forth in the ordinances listed in Attachment A at the time this Agreement  
 6 was executed. If CITY increases the fee schedule for the licensing  
 7 ordinances set forth in Attachment A, either party shall have the right to  
 8 seek amendment of this Agreement with respect to the division of the  
 9 increased fees between CITY and COUNTY.

- 10 9. Fees generated or collected by SHERIFF contract personnel for copying of  
 11 documents related to the services provided in this Agreement will be at  
 12 COUNTY-established rates and will be credited to CITY on an annual basis.  
 13 10. Narcotic asset forfeitures will be handled pursuant to Attachment C hereto,  
 14 which is incorporated herein by this reference.

15 **H. NOTICES:**

- 16 1. Except for the notices provided for in Subsection 2 of this Section, all  
 17 notices authorized or required by this Agreement shall be effective when  
 18 written and deposited in the United States mail, first class postage prepaid  
 19 and addressed as follows:

20 **CITY:** ATTN: CITY MANAGER  
 21 24264 EL TORO ROAD  
 22 LAGUNA WOODS, CA 92653

23 **COUNTY:** ATTN: LAW ENFORCEMENT CONTRACT MANAGER  
 24 SHERIFF-CORONER DEPARTMENT  
 320 NORTH FLOWER STREET, SUITE 108  
 SANTA ANA, CA 92703

- 25 2. Termination notices shall be effective when written and deposited in the  
 26 United States mail, certified, return receipt requested and addressed as  
 27 above.

28 //

1 **I. STATUS OF COUNTY:**

2 COUNTY is, and at all times shall be deemed to be, an independent contractor.  
3 Nothing herein contained shall be construed as creating the relationship of  
4 employer and employee, or principal and agent, between CITY and COUNTY  
5 or any of COUNTY's agents or employees. COUNTY and its SHERIFF shall  
6 retain all authority for rendition of services, standards of performance, control of  
7 personnel, and other matters incident to the performance of services by  
8 COUNTY pursuant to this Agreement. COUNTY, its agents and employees  
9 shall not be entitled to any rights or privileges of CITY employees and shall not  
10 be considered in any manner to be CITY employees.

11 **J. STATE AUDIT:**

12 Pursuant to Government Code Section 8546.7, CITY and COUNTY shall be  
13 subject to examination and audit by the State Auditor for a period of three (3)  
14 years after final payment by CITY to COUNTY under this Agreement. CITY  
15 and COUNTY shall retain all records relating to the performance of this  
16 Agreement for said three-year period, except that those records pertaining to  
17 any audit then in progress, or to any claims or litigation, shall be retained  
18 beyond said three-year period until final resolution of said audit, claim or  
19 litigation.

20 **K. ALTERATION OF TERMS:**

21 This Agreement fully expresses all understanding of CITY and COUNTY with  
22 respect to the subject matter of this Agreement and shall constitute the total  
23 Agreement between the parties for these purposes. No addition to, or  
24 alteration of, the terms of this Agreement shall be valid unless made in writing,  
25 formally approved and executed by duly authorized agents of both parties.

26 //  
27 //  
28 //

1 **L. INDEMNIFICATION:**

2 1. COUNTY, its officers, agents, employees, subcontractors and independent  
3 contractors shall not be deemed to have assumed any liability for the  
4 negligence or any other act or omission of CITY or any of its officers,  
5 agents, employees, subcontractors or independent contractors, or for any  
6 dangerous or defective condition of any public street or work or property of  
7 CITY, or for any illegality or unconstitutionality of CITY's municipal  
8 ordinances. CITY shall indemnify and hold harmless COUNTY and its  
9 elected and appointed officials, officers, agents, employees, subcontractors  
10 and independent contractors from any claim, demand or liability whatsoever  
11 based or asserted upon the condition of any public street or work or  
12 property of CITY, or upon the illegality or unconstitutionality of any municipal  
13 ordinance of CITY that SHERIFF has enforced, or upon any act or omission  
14 of CITY, or its elected and appointed officials, officers, agents, employees,  
15 subcontractors or independent contractors related to this Agreement,  
16 including, but not limited to, any act or omission related to the maintenance  
17 or condition of any vehicle or motorcycle that is owned or possessed by  
18 CITY and used by COUNTY personnel in the performance of this  
19 Agreement, for property damage, bodily injury or death or any other element  
20 of damage of any kind or nature, and CITY shall defend, at its expense  
21 including attorney fees, and with counsel approved in writing by COUNTY,  
22 COUNTY and its elected and appointed officials, officers, agents,  
23 employees, subcontractors and independent contractors in any legal action  
24 or claim of any kind based or asserted upon such condition of public street  
25 or work or property, or illegality or unconstitutionality of a municipal  
26 ordinance, or alleged acts or omissions. If judgment is entered against  
27 CITY and COUNTY by a court of competent jurisdiction because of the  
28 concurrent active negligence of either party, CITY and COUNTY agree that

1 **L. INDEMNIFICATION: (Continued)**

2 liability will be apportioned as determined by the court. Neither party shall  
3 request a jury apportionment.

- 4 2. COUNTY shall indemnify and hold harmless CITY and its elected and  
5 appointed officials, officers, agents, employees, subcontractors and  
6 independent contractors from any claim, demand or liability whatsoever  
7 based or asserted upon any act or omission of COUNTY or its elected and  
8 appointed officials, officers, agents, employees, subcontractors or  
9 independent contractors related to this Agreement, for property damage,  
10 bodily injury or death or any other element of damage of any kind or nature,  
11 and COUNTY shall defend, at its expense, including attorney fees, and with  
12 counsel approved in writing by CITY, CITY and its elected and appointed  
13 officials, officers, agents, employees, subcontractors and independent  
14 contractors in any legal action or claim of any kind based or asserted upon  
15 such alleged acts or omissions.

16 **M. TRAFFIC VIOLATOR APPREHENSION PROGRAM:**

- 17 1. COUNTY has established a Traffic Violator Apprehension Program ["the  
18 Program"], which is operated by SHERIFF, and is designed to reduce  
19 vehicle accidents caused by unlicensed drivers and drivers whose licenses  
20 are suspended and to educate the public about the requirements of the  
21 Vehicle Code and related safety issues with regard to driver licensing,  
22 vehicle registration, vehicle operation, and vehicle parking. The Program  
23 operates throughout the unincorporated areas of the COUNTY and in the  
24 cities that contract with COUNTY for SHERIFF's law enforcement services,  
25 without regard to jurisdictional boundaries, because an area-wide approach  
26 to reduction of traffic accidents and driver education is most effective in  
27 preventing traffic accidents. In order for CITY to participate in the Program,  
28 CITY has adopted a fee pursuant to Vehicle Code section 22850.5, in the

1 **M. TRAFFIC VIOLATOR APPREHENSION PROGRAM: (Continued)**

2 amount and under the terms and conditions set forth in the resolution that is  
 3 attached hereto as Attachment D and incorporated into this Agreement by  
 4 reference [hereinafter called a "TVAP resolution"], and has directed that the  
 5 revenue from such fee be used for the Program. CITY's participation in the  
 6 Program may be terminated at any time by rescission or amendment of the  
 7 TVAP resolution that is attached hereto as Attachment D. In the event CITY  
 8 1) amends said TVAP resolution, or rescinds said TVAP resolution and  
 9 adopts a new TVAP resolution pertaining to the above-referenced fee and  
 10 the Program, and 2) remains a participant in the Program thereafter, CITY's  
 11 Manager, on behalf of CITY, and SHERIFF, on behalf of COUNTY, have  
 12 authority to execute an amendment of this Agreement to substitute CITY's  
 13 amended or new TVAP resolution for Attachment D hereto, as long as said  
 14 amendment to this Agreement does not materially change any other  
 15 provision of this Agreement.

16 2. COUNTY will make available for review, at the request of CITY, all financial  
 17 data related to the Program as may be requested by CITY.

18 3. Fee revenue generated by COUNTY and participating cities will be used to  
 19 fund the following positions, which will be assigned to the Program:

- 20 • One fourth of one (.25) Sergeant  
 21 (20 hours per two-week pay period)
- 22 • One fourth of one (.25) Administrative Manager I  
 23 (20 hours per two-week pay period)
- 24 • One (1) Staff Specialist  
 25 (80 hours per two-week pay period)
- 26 • One (1) Information Processing Specialist  
 27 (80 hours per two-week pay period)

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1 **M. TRAFFIC VIOLATOR APPREHENSION PROGRAM: (Continued)**

- 2 • One (1) Administrative Manager I, Extra Help  
3 (960 hours per fiscal year)
- 4 • One (1) Investigative Assistant  
5 (80 hours per two-week pay period)
- 6 • One (1) Office Specialist  
7 (80 hours per two-week pay period)

8 4. Fee revenue generated by CITY may be used to reimburse CITY for  
9 expenditures for equipment and/or supplies directly in support of the  
10 Program. In order for an expenditure for equipment and/or supplies to be  
11 eligible for reimbursement, CITY shall submit a request for and obtain pre-  
12 approval of the expenditure by using the form as shown in Attachment E.  
13 The request shall be submitted within the budget schedule established by  
14 SHERIFF. SHERIFF shall approve the expenditure only if both of the  
15 following conditions are satisfied: 1) there are sufficient Program funds,  
16 attributable to revenue generated by CITY's fee, to pay for the requested  
17 purchase, and 2) CITY will use the equipment and/or supplies, during their  
18 entire useful life, only for purposes authorized by its TVAP resolution in  
19 effect at the time of purchase.

20 In the event that CITY terminates its participation in the Program, CITY  
21 agrees that the equipment purchased by CITY and reimbursed by Program  
22 funds will continue to be used, during the remainder of its useful life,  
23 exclusively for the purposes authorized by CITY's TVAP resolution in effect  
24 at the time of purchase.

25 5. In the event the fees adopted by COUNTY, CITY and other participating  
26 jurisdictions are not adequate to continue operation of the Program at the  
27 level at which it operated previously, COUNTY, at the option of CITY, will  
28 reduce the level of Program service to be provided to CITY or will continue

1 **M. TRAFFIC VIOLATOR APPREHENSION PROGRAM: (Continued)**

2 to provide the existing level of Program services. COUNTY will charge CITY  
3 the cost of any Program operations that exceed the revenue generated by  
4 fees. Such charges shall be in addition to the Maximum Obligation of CITY  
5 set forth in Subsection G-3 of this Agreement. The amount of any revenue  
6 shortfall charged to CITY will be determined, at the time the revenue  
7 shortfall is experienced, according to CITY's share of Program services  
8 rendered. In the event of a reduction in level of Program service,  
9 termination of Program service or adjustment of costs, the parties shall  
10 execute an amendment to this Agreement so providing. Decisions about  
11 how to reduce the level of Program service provided to CITY shall be made  
12 by SHERIFF with the approval of CITY.

13 **N. MOBILE DATA COMPUTERS:**

- 14 1. As part of the law enforcement services to be provided to CITY, COUNTY  
15 has provided, or will provide, mobile data computers (hereinafter called  
16 "MDCs") that are or will be mounted in patrol vehicles and motorcycles  
17 designated by COUNTY for use within CITY limits.
- 18 2. SHERIFF has the exclusive right to use said MDCs for law enforcement  
19 services related to this Agreement.
- 20 3. CITY shall pay COUNTY the full costs to COUNTY of a) the acquisition and  
21 installation of MDCs that are or will be mounted in patrol vehicles and  
22 motorcycles assigned to CITY, and b) recurring costs, as deemed  
23 necessary by COUNTY, including the costs of maintenance and  
24 contributions to a fund for replacement and upgrade of such MDCs when  
25 they become functionally or technologically obsolete.

26 The costs to be paid by CITY for recurring costs, including maintenance and  
27 replacement/upgrade of MDCs, are included in the costs set forth in  
28 Subsection G-2 and the Maximum Obligation of CITY set forth in

1 **N. MOBILE DATA COMPUTERS: (Continued)**

2 Subsection G-3 of this Agreement unless CITY has already paid such costs.  
3 CITY shall not be charged additional amounts for maintenance or  
4 replacement/upgrade of said MDCs during the period July 1, 2009 through  
5 June 30, 2010

6 4. If, following the initial acquisition of MDCs referenced above, CITY requires  
7 MDCs for additional patrol cars or motorcycles designated for use in the  
8 CITY, or for CITY's Emergency Operations Center, COUNTY will purchase  
9 said additional MDCs. Upon demand by COUNTY, CITY will pay to  
10 COUNTY a) the full costs of acquisition and installation of said additional  
11 MDC's, and b) the full recurring costs for said MDCs, as deemed necessary  
12 by COUNTY, including the costs of maintenance, and contributions to a  
13 fund for replacement and upgrade of such MDCs when they become  
14 functionally or technologically obsolete. Said costs related to additional  
15 MDCs are not included in, and are in addition to, the costs set forth in  
16 Subsection G-2 and the Maximum Obligation of CITY set forth in Subsection  
17 G-3 of this Agreement.

18 5. COUNTY will replace and/or upgrade MDCs as needed. The costs of  
19 replacing/upgrading MDCs shall be paid by COUNTY from the replacement/  
20 upgrade funds to be paid by CITY in accordance with the foregoing. CITY  
21 shall not be charged any additional charge to replace or upgrade MDCs.

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**IN WITNESS WHEREOF**, the parties have executed the AGREEMENT  
in the County of Orange, State of California.

DATED: \_\_\_\_\_

CITY OF LAGUNA WOODS

ATTEST: \_\_\_\_\_  
City Clerk

BY: \_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Attorney

-----  
DATED: \_\_\_\_\_

COUNTY OF ORANGE

BY: \_\_\_\_\_  
Chair of the Board of Supervisors

Signed and certified that a copy of this  
document has been delivered to the Chair  
of the Board per G.C. Sec. 25103, Reso 79-1535  
Attest:

\_\_\_\_\_  
Darlene J. Bloom  
Clerk of the Board of Supervisors  
Orange County, California

APPROVED AS TO FORM:  
Office of the County Counsel  
Orange County, California

BY: Michael A. Hanks  
Deputy

DATED: 5-28-09

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**CITY OF LAGUNA WOODS**  
**ORANGE COUNTY CODIFIED ORDINANCE TITLE 5**  
**LICENSING**

- BINGO GAME
- BINGO OFFICIAL
- CANVASSER/SOLICITOR
- COIN DEALER
- DANCE INSTRUCTOR (NUDE)
- DANCE STUDIO (NUDE)
- ESCORT
- ESCORT BUREAU
- FIGURE MODEL (NUDE)
- FIGURE MODEL STUDIO (NUDE)
- GUN DEALER
- INTERLOCUTRIX (NUDE)
- INTRODUCTORY SERVICE
- JUNK COLLECTOR
- JUNK DEALER
- MASSAGIST (includes FBI Fees)
- PEDDLER
- POOL ROOM
- PUBLIC DANCE
- RAP SESSION (NUDE)
- SECONDHAND DEALER (Pawnbroker)
- TAXICAB STAND

## ATTACHMENT B

**COUNTY BILLING POLICY  
APPROVED BY BOARD MINUTE ORDER DATED OCTOBER 27, 1992**

## I. POLICY

All County agencies/departments/districts (County) governed by the Board of Supervisors shall bill contracting entities for materials and/or services provided under contract in accordance with the following standardized billing and collection policy. Billing frequency is dependent on whether the contract is a fixed price or actual cost contract. Payment due date is designed to be both responsive to the County's cash flow needs and reasonable enough as to not require special processing by the contracting entity. If payments are not received by the required due dates, a late payment fee shall be computed and billed to the contracting entity in accordance with the requirements of this procedure.

Nothing herein shall affect the liability, including pre-judgment interest, of the contracting party for services or materials in as much as this is a policy to enact standard billing practices.

## II. DEFINITIONS

- A. Contract for the purposes of this policy - A contract is a formal written agreement, a purchase order from the contracting entity, or any other acceptable mutual understanding between the contracting parties.
- B. Received by the County - The phrase "received by the County", as used in Section VI of this policy, refers to the date a payment is received by the County. It is defined as the date the payment is in the County's possession. It is not the date the payment is posted or deposited by the County.

## III. FIXED PRICE CONTRACTS

- A. Fixed Price (One-Time/Non-Recurring Contracts) - Invoices that represent a billing for a one-time, non-recurring provision of materials and/or services shall be issued no later than five (5) working days after delivery by the County of the materials and/or services. Examples of such one-time, non-recurring provision of materials and/or services might be a city contracting with the Sheriff for security service at a parade or sporting event; or, a city purchasing a computer listing containing certain city-requested data. Payment due date shall be invoice date plus 30 days.
- B. Fixed Price (Ongoing/Recurring Contracts) - Invoices that represent a billing for an ongoing, recurring provision of materials and/or services shall be issued according to the following frequency:
1. Annual Billings that total \$10,000 or less per 12-month period shall be billed via one (1) annual invoice. Annual invoices will be issued for each 12-month period of the contract, or portions thereof. Invoices shall be issued no later than five working days after the beginning of each 12-month period. Payment due date shall be invoice date plus 30 days.

2. Quarterly Billings that are greater than \$10,000 but not more than \$200,000 per 12-month period, shall be billed in quarterly installments. Quarterly invoices will be issued representing the contract amount for each 12-month period of the contract, or portions thereof, prorated into four (4) installments. Invoices shall be issued no later than 30 days after the beginning of each quarter. Payment due date shall be 60 days after the beginning of each calendar quarter.
3. Monthly Billings that are greater than \$200,000 per 12-month period shall be billed in monthly installments. Monthly invoices will be issued representing the contract amount for each 12-month period of the contract, or portions thereof, prorated into 12 installments. Invoices shall be issued on or before the first day of each service month. Payment due date shall be 30 days after the beginning of each service month.

An example of a fixed price contract for ongoing, recurring provision of materials and/or services might be a city contracting with the Sheriff for law enforcement services.

#### IV. ACTUAL COST CONTRACTS

- A. Actual Cost (One-Time/Non-Recurring Contracts) - Invoices that represent a billing for a one-time, non-recurring provision of materials and/or services shall be issued after delivery by the County of the materials and/or services and no later than 15 days after actual cost data is available. Payment due date shall be invoice date plus 30 days.
- B. Actual Cost (Ongoing/Recurring Contracts) - Invoices that represent a billing for an ongoing, recurring provision of materials and/or services shall be issued on a monthly basis and shall represent the cost of materials and/or services provided to the contracting entity during the previous calendar month. Such invoices shall be issued no later than 15 days after the close of the monthly billing period. If the County agency/department/district does not utilize a monthly billing cycle, the invoice shall be issued no later than 15 days after actual cost data is available. Payment due date shall be invoice date plus 30 days.

Examples of actual cost contracts for the ongoing, recurring provision of materials and/or services might be a city contracting with the County for communications equipment repair or waste disposal at a County landfill.

#### V. PAYMENT DUE DATES

Notwithstanding the provisions of Sections II and III above, payment due date shall be at least invoice date plus 30 days. If the County is late in issuing an invoice, the contracting entity would always have at least invoice date plus 30 days to pay. If the County is early in issuing an invoice, the contracting entity would still have a payment due date of either 60 days after the beginning of the quarter (quarterly invoices) or 30 days after the beginning of the service month (monthly invoices).

(EXAMPLES: An invoice for October service, dated and issued October 8 (late) would have a payment due date of November 7. An invoice for August service, dated and issued July 20 (early) would have a payment due date of August 30.)

## VI. LATE CHARGES

The late payment of any invoiced amount by a contracting entity will cause the County to incur costs not contemplated by the County/contracting entity agreement, the exact amount of such cost will be extremely difficult to ascertain. Such costs include, but are not limited to, costs such as administrative follow-up and processing of delinquent notices, increased accounting costs, etc.

Late charges will be assessed in the following situations:

- Over-the-counter payments will be assessed a late charge if any payment is not received by the County by the payment due date.
- Payments transmitted to the County via the U.S. Mail that have the payer's postage meter mark will be assessed a late charge if any payment is not received by the County by the payment due date plus one day.
- Payments transmitted to the County via the U.S. Mail that have a U.S. Post Office postmark dated after the payment due date will be assessed a late charge.

The late charge assessed in each of these situations shall be three-quarters of one percent (0.75%) of the payment due and unpaid plus \$100.00 for late payments made within 30 days of the payment due date. An additional charge of three-quarters of one percent (0.75%) of said payment shall be added for each additional 30-day period that the payment remains unpaid. Late charges shall be added to the payment and invoiced to the contracting entity in accordance with this policy.

## VII. COLLECTIONS

Any invoice remaining unpaid 90 days after the invoice date shall be referred to the Auditor-Controller for subsequent collection action, such as deduction from contracting entity moneys on deposit with the County Treasurer in accordance with Government Code Section 907 and any other applicable provision of law. Non-payment of invoices and applicable late charges will constitute a breach of contract for which the County retains all legal remedies including termination of the contract.

## VIII. DISCOUNT FOR EARLY PAYMENT

Any payment received by the County from a contracting entity 20 days or more before the payment due date shall be entitled to a discount of one-quarter of one percent (0.25%). If the contracting entity takes a discount, and the payment is received by the County less than 20 days before the payment due date, County staff shall immediately notify the contracting entity by telephone that the discount should not have been taken and that the balance is due by the original payment due date.

If the balance is not received by the County in accordance with the dates as specified in Section VII, applicable late charges shall be calculated on the balance due.

## IX. DEFERRED REVENUE

At fiscal year end, any portion of revenue invoiced (not necessarily received) during the fiscal year being closed out that represents charges or prepayment for materials and/or services for the upcoming fiscal year shall be reclassified from a revenue account to a deferred revenue account (liability). In the new fiscal year the deferred revenue shall be reclassified to a revenue account. (EXAMPLE: On June 1, 19X1, a city is invoiced \$48,000 which represents charges for the 12-month period June 1, 19X1 to May 31, 19X2. The amount to be reclassified to deferred revenue would be \$44,000, representing 11/12ths of the total amount. In July 19X1, the \$44,000 would be reclassified to revenue.) Reclassification entries shall be made by Auditor-Controller Agency Accounting units, or for those agencies/departments/districts without such a unit, the agency/department/district shall notify the Auditor-Controller of the amounts to be reclassified.

## X. COST RECOVERY

All County agencies/department/districts shall include all costs of providing contracted services in contract rates. Including all direct costs, allocated indirect costs such as departmental and County (CWCAP) overhead, and cost of capital financing.

## XI. EXISTING CONTRACTS

Billing terms and provisions contained in existing contracting entity agreements (existing as of the date this policy is approved by the Board of Supervisors) shall remain in effect for the life of the contract. However, when these existing contracts are renegotiated, they shall contain the billing provisions as set forth in this policy.

## XII. DEVIATIONS FROM POLICY

Deviations from this policy shall be approved by the Board of Supervisors. Proposed deviations by agencies/departments/districts shall be submitted to the CEO for concurrence in advance of filing an Agenda Item Transmittal (AIT) with the Clerk of the Board. The CEO, or his/her designee, shall advise the agency/department/district of approval or disapproval of the proposed deviations. If a County agency/department/district submits a contract to the Board of Supervisors for approval, and the billing provisions in the contract deviate from this policy, the agency/department/district shall specifically advise the Board of Supervisors in the AIT of the deviation, the reason for the deviation, and of the CEO's recommendation relative thereto.

**ATTACHMENT C****POLICY FOR DISTRIBUTION OF FORFEITED AND SEIZED ASSETS****BACKGROUND**

The Orange County Sheriff's Department provides contract law enforcement services to cities in Orange County. Because of the increased likelihood that contracted patrol or investigation personnel may become involved in significant narcotic seizures, which could affect law enforcement services provided by the Sheriff's Department to contract cities, the following policy is in effect.

**1. NON-RNSP CONTRACTED PATROL AND INVESTIGATION OFFICERS**

When assets (cash or property) are seized in CITY by contracted patrol or investigation personnel other than RNSP personnel, and subsequently forfeited to COUNTY, the forfeited assets shall be shared with CITY as set forth below, for the purpose of augmenting law enforcement services in CITY, subject to approval by the forfeiting agency (U.S. Attorney or State) of such sharing and use of forfeited assets. A portion of forfeited assets may be retained by COUNTY's Sheriff Department, hereinafter referred to as "SHERIFF", to pay for departmental expenses not recovered through law enforcement contracts.

In such cases, SHERIFF shall apply to the forfeiting agency for the return of a share of the assets to COUNTY. In his application, SHERIFF shall specify the percentage of shared assets returned to COUNTY that will be used to augment law enforcement services in CITY and the use of said assets by CITY.

In those cases in which assets are seized within CITY by non-RNSP personnel assigned to CITY pursuant to this Agreement, without the involvement of other law enforcement personnel, and in which the seizure is a result solely of activities self-initiated by non-RNSP SHERIFF personnel assigned to CITY or initiated by said personnel in response to calls for service within CITY, SHERIFF shall apply to have all of the assets used to augment CITY law enforcement services.

In those cases in which non-RNSP SHERIFF personnel assigned to CITY pursuant to this Agreement play an ancillary role in a seizure or in which other law enforcement personnel are involved in a seizure, SHERIFF shall determine the percentage of the total forfeited assets for which he will apply to augment CITY's law enforcement services. This determination will be based on the circumstances of the seizure, including the pro-rata involvement of all personnel, including those assigned to CITY.

Each seizure will be evaluated on an individual and independent basis, and said evaluations will be available for review to CITY's manager. Examples of those incidents which would be evaluated as set forth in this section include situations in which a contract patrol deputy provides uniformed backup at a SHERIFF's Narcotic Bureau search warrant location or in which contract investigators participate in the service of a search warrant that was initiated by non-contract law enforcement personnel.

## NON-RNSP CONTRACTED PATROL AND INVESTIGATION OFFICERS (Continued)

Assets (cash or property) that are returned to COUNTY by the forfeiting agency with the understanding that they will be used to augment CITY law enforcement services shall be used by CITY and COUNTY only for such purposes. If the forfeiting agency attaches additional or more specific conditions to the use of said assets, CITY and COUNTY shall also abide by those conditions. SHERIFF and CITY's manager shall determine the specific use of said assets within the conditions imposed by the forfeiting agency.

Subject to conditions imposed by the forfeiting agency and to the requirement that forfeited assets be used to augment law enforcement services, COUNTY shall place forfeited cash, or cash from the sale of forfeited assets in the interest-bearing account (Agency 139) for use in CITY in compliance with the forfeiting agency's regulations.

## 2. CONTRACTED REGIONAL NARCOTICS SUPPRESSION PROGRAM (RNSP) OFFICERS

Assets forfeited as a result of activities conducted by contracted RNSP officers will be used to augment CITY's law enforcement services. Because activities of this type result from the efforts of both contracted officers and other RNSP officers, the percentage of sharing will be determined pursuant to the RNSP Memorandum of Understanding in effect at the time of the seizure. Said Memorandum of Understanding provides that assets are distributed according to percentage amounts based on the number of sworn personnel participating in the RNSP at the time of the seizure. The number of personnel in RNSP, as well as the number of participating agencies in RNSP, may fluctuate during the course of a contract year, thereby affecting the percentage amounts distributed to participating agencies. The percentage amounts distributed to participating agencies may also be affected by action taken by the RNSP Executive Board.

CITY will use RNSP forfeited assets only to augment CITY's law enforcement services. If the forfeiting agency or applicable RNSP Memorandum of Understanding attaches any additional or more specific conditions on the use of said assets, CITY shall abide by those conditions. SHERIFF and CITY's manager shall determine the specific use of said assets within the conditions imposed by the forfeiting agency and the RNSP Memorandum of Understanding.

Subject to conditions imposed by the forfeiting agency and the RNSP Memorandum of Understanding and to the requirement that RNSP forfeited assets be used to augment law enforcement services, COUNTY shall place forfeited cash or cash from the sale of forfeited assets in the interest-bearing account (Agency 139) for use in CITY in compliance with the forfeiting agency's regulations and the RNSP Memorandum of Understanding.

## RESOLUTION NO.01-11

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ESTABLISHING A TRAFFIC VIOLATOR APPREHENSION PROGRAM AND SETTING FEES FOR THE IMPOUND OF VEHICLES

WHEREAS, the Orange County Sheriff-Coroner (hereinafter "the Sheriff") has instituted a Traffic Violator Apprehension Program designed to reduce vehicle accidents caused by unlicensed drivers and drivers whose licenses are suspended and to educate the public about the requirements of the Vehicle Code and related safety issues with regard to driver licensing, vehicle registration, vehicle operation, and vehicle parking; and

WHEREAS, the Sheriff operates said Traffic Violator Apprehension Program in the unincorporated areas of Orange County and in the cities in Orange County that contract for the Sheriff's law enforcement services, including this city; and

WHEREAS, the operation of the Traffic Violator Apprehension Program in the unincorporated areas of Orange County and in the cities in Orange County that contract for the Sheriff's law enforcement services, including this city; and

WHEREAS, the operation of the Traffic Violator Apprehension Program on an area-wide basis, without regard to jurisdictional boundaries between the County and the cities, serves the public purposes of the City of Laguna Woods because drivers routinely cross jurisdictional boundaries, making an area-wide approach to reduction of traffic accidents and driver education most effective in preventing traffic accidents in all participating jurisdictions; and

WHEREAS, the Orange County Board of Supervisors already has adopted fees for the unincorporated areas of the County that are identical to those described therein; and

WHEREAS, the Orange County Board of Supervisors has directed the establishment in the County Treasury of an interest-earning, budgeted special revenue fund, called "the Traffic Violator Fund" and designated as Fund No. 13B, to be controlled by the Sheriff; and

WHEREAS, the Orange County Board of Supervisors has directed that the proceeds of the County fees that are identical to the fees described herein be deposited in the Traffic Violator Fund; and

WHEREAS, the Orange County Board of Supervisors has directed that the Traffic Violator Fund be used exclusively for the Traffic Violator Apprehension Program operated by the Sheriff in the unincorporated areas of Orange County and the cities that contract for the Sheriff's law enforcement services; and

WHEREAS, the Orange County Board of Supervisors has directed that permissible expenditures from the Traffic Violator Fund include, but are not limited to, the costs of personnel

who perform duties for the Traffic Violator Apprehension Program, and the purchase and maintenance of equipment, materials and supplies utilized in the Traffic Violator Apprehension Program; and

WHEREAS, the Orange County Board of Supervisors has directed that until further order of that Board, the balance remaining in the Traffic Violator Fund at the close of any fiscal year shall be carried forward and accumulated in said Fund for the above-described purposes; and

WHEREAS, the Sheriff has advised this Council of his plans to seek adoption, by the city councils of each of the other cities that contract for the Sheriff's law enforcement services, of fees identical to those described herein, to be used for the Traffic Violator Apprehension Program; and

WHEREAS, the Sheriff impounds numerous and various vehicles removed from highways, public property, or private property in this city during the normal course of duty; and

WHEREAS, the Sheriff impounds said vehicles pursuant to his authority under the California Vehicle Code as follows:

Vehicle Code Section and Impound Ground

|               |   |
|---------------|---|
| 14602.6       | Suspended, revoked or unlicensed driver/30-day hold                             |
| 22651 (a)     | Unattended vehicle on bridge  |
| 22651 (d)     | Vehicle blocking driveway   |
| 22651 (e)     | Vehicle blocking fire hydrant   |
| 22651 (f)     | Vehicle blocking freeway  |
| 22651 (h) (1) | Driver arrested   |
| 22651 (h) (2) | Order of suspension or revocation pursuant to section 13388                     |
| 22651 (i) (1) | Multiple parking citations  |
| 22651 (j)     | Lack of vehicle registration  |
| 22651 (k)     | Parking over seventy-two hours  |
| 22651 (l)     | Parking in a construction zone  |
| 22651 (m)     | Violation of special events restrictions  |
| 22651 (n)     | No parking zone   |
| 22651 (o) (1) | Delinquent vehicle registration   |
| 22651 (p)     | Drive unlicensed or license suspended   |
| 22651 (r)     | Vehicle blocking another vehicle  |
| 22651 (t)     | Notice to appear/illegal amber lights   |
| 22655.3       | Removal for investigation<br>(fleeing in violation of Section 2800.1 or 2800.2) |
| 22655.5 (b)   | Vehicle is evidence of crime  |
| 22669         | Abandoned vehicle;  |

WHEREAS, Vehicle Code section 22850.5 authorizes this Council, by resolution, to establish a fee equal to the administrative costs relating to the removal, impound, storage or release of properly impounded vehicles; and

WHEREAS, the Sheriff is proposing adoption of the following fees pursuant to Vehicle Code section 22850.5:

- (a) \$152.00 when a vehicle is impounded pursuant to or on account of violation of Vehicle Code section 14602.6, which relates to the licensing status of the driver, and
- (b) \$50.00 when a vehicle is impounded pursuant to or on account of violation of any of the other Vehicle Code provisions listed above;

WHEREAS, a cost study conducted by the Sheriff shows that the administrative costs relating to removal, impound, storage or release of vehicles properly impounded pursuant to or on account of violation of Vehicle Code section 14602.6 exceed \$152.00 per impound; and

WHEREAS, a cost study conducted by the Sheriff shows that the administrative costs relating to the removal, impound, storage or release of vehicles properly impounded pursuant to or on account of violation of the other Vehicle Code provisions listed above exceed \$50.00 per impound; and

WHEREAS, the above-described difference in costs is attributable to the additional costs of ascertaining the licensing status of the driver and complying with the complex requirements of Vehicle Code section 14602.6; and

WHEREAS, persons whose vehicles are impounded, rather than the public as a whole, should bear the administrative costs of processing such impounds; and

WHEREAS, Vehicle Code section 22850.5 imposes the following restrictions on the imposition of an administrative fee:

- (a) The fee may only be imposed on the registered owner or the agents of that owner and may not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lien holder's total charges and proper administrative costs; and
- (b) The fee may not be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner of the vehicle or an agent of that registered or legal owner, and the fee may be imposed only upon the person requesting that hearing or appeal; and

WHEREAS, it also is unfair to impose the administrative fee authorized by Vehicle Code section 22850.5 in the following circumstances: (1) when the vehicle was left because it became inoperable while being driven, if the owner makes good faith attempts promptly to remove the vehicle from a location where it is not permitted, (2) when the vehicle was stolen, (3) when the

vehicle was left by an ill or injured driver, and (4) when it is demonstrated to the satisfaction of the Sheriff or his designee that neither the registered owner of the vehicle nor his agent, if any, was at fault in creating the circumstances leading to the impounding of the vehicle; and

WHEREAS, a notice of public hearing with respect to the proposed new fees was given according to law; and

WHEREAS, a public hearing pertaining to said proposed new fees was held on April 18, 2001;

NOW, THEREFORE, BE IT RESOLVED that this Council finds, in accordance with California Public Resources Code section 21080 (b) (8), that the charges listed herein below are only for the purposes of meeting operating expenses and are, therefore, exempt from compliance with the Californian Environmental Quality Act.

BE IT FURTHER RESOLVED that on July 1, 2000, the administrative fees indicated below shall become effective for the removal, impound, storage or release of vehicles properly impounded after removal from locations in this city in accordance with or on account of violation of the provisions of the Vehicle Code listed below.

- (a) A fee of \$152.00 for each impound of a vehicle in accordance with or on account of violation of Vehicle Code section 14602.6, and
- (b) A fee of \$50.00 for each impound of a vehicle in accordance with or on account of violation of Vehicle Code section

22651 (a),  
 22651 (d),  
 22651 (e),  
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 22651 (h) (2),  
 22651 (i) (1),  
 22651 (j),  
 22651 (k),  
 22651 (l),  
 22651 (m),  
 22651 (n),  
 22651 (o) (1),  
 22651 (p),  
 22651 (r),  
 22651 (t),  
 22655.3,  
 22655.5 (b), or  
 22669.

BE IT FURTHER RESOLVED that the Sheriff is authorized to collect said fees, on behalf of this city, at the time of release of vehicles that are subject to the fees.

BE IT FURTHER RESOLVED that said fees shall be imposed on the registered owner or the agent of the owner of the impounded vehicle and shall not include any vehicle towed under an abatement program or sold at a lien sale pursuant to Sections 3068.1 to 3074, inclusive, of, and Section 22851 of, the Civil Code unless the sale is sufficient in amount to pay the lien holder's total charges and proper administrative costs.

BE IT FURTHER RESOLVED that said fees shall not be imposed for any hearing or appeal relating to the removal, impound, storage, or release of a vehicle unless that hearing or appeal was requested in writing by the registered or legal owner of the vehicle or an agent of that registered or legal owner, and such fees, if otherwise applicable, shall be imposed only upon the person requesting that hearing or appeal.

BE IT FURTHER RESOLVED that said fees shall not be imposed in any of the following circumstances: (a) when the vehicle was left because it became inoperable while being driven, if the owner made good faith attempts promptly to remove the vehicle from a location where it was not permitted; (b) when the vehicle was stolen; (c) when the vehicle was left by an ill or injured driver; or (d) when it is demonstrated to the satisfaction of the Sheriff or his designee that neither the registered owner of the vehicle nor his agent, if any, was at fault in creating the circumstances leading to the impounding of the vehicle.

BE IT FURTHER RESOLVED that at Sheriff headquarters or at any Sheriff substation, a registered owner or an agent of a registered owner who believes he/she/it is exempt from either of said fees in accordance with any of the above-listed criteria may apply in writing for a waiver of the fee and shall present such supporting information or documentation as the Sheriff may request.

BE IT FURTHER RESOLVED that upon presentation of a written application for waiver of either of said fees, together with such supporting documentation as the Sheriff may request, the Sheriff shall determine promptly whether the applicant meets the above-listed criteria for waiver of the fee, and if so, shall waive the fee.

BE IT FURTHER RESOLVED that until further order of this Council, the Sheriff is directed to deposit the proceeds of the fees established by this Resolution in the above-described Traffic Violator Fund in the county Treasury, to be used exclusively for the Traffic Violator Apprehension operated by the Sheriff in the unincorporated areas of Orange County and the cities in Orange County that contract for the Sheriff's law enforcement services.

BE IT FURTHER RESOLVED that expenditure of said fee proceeds from the Traffic Violator Fund may include, but are not limited to, the costs of personnel who perform duties for the Traffic Violator Apprehension Program, and the purchase and maintenance of equipment, materials and supplies utilized in the Traffic Violator Apprehension Program.

BE IT FURTHER RESOLVED that until further order of this Council, the Orange County Board of Supervisors is authorized to carry forward in the Traffic Violator Fund and accumulate ay

balance of proceeds of fees imposed by this Resolution that is remaining at the end of a fiscal year, as long as such fee proceeds will be used for the purposes recited herein.

Robert Bouer  
ROBERT BOUER, Mayor

ATTEST:

Margaret R. Monahan  
MARGARET R. MONAHAN, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS   )

I, MARGARET R. MONAHAN, City Clerk of the City of Laguna Woods, do HEREBY CERTIFY that the foregoing Resolution No. 01-11 was duly adopted by the City Council of the City of Laguna Woods at a regular meeting thereof, held on the 18th day of April 2001, by the following vote:

AYES:           COUNCIL MEMBERS:     Thorpe, Ross, Hack, McLaughlin, Bouer  
NOES:           COUNCIL MEMBERS:     None  
ABSENT:         COUNCIL MEMBERS:     None

Margaret R. Monahan  
MARGARET R. MONAHAN, City Clerk

The foregoing instrument is a correct copy of the original on file in this office:  
Attest this 24th day of April, 2001  
City Clerk of the City Laguna Woods, County of Orange, State of California.

By: Margaret R. Monahan

**ORANGE COUNTY SHERIFF-CORONER  
TRAFFIC VIOLATOR APPREHENSION PROGRAM**

|                |   |   |
|----------------|---|---|
| <b>REQUEST</b> | <b>CONTRACT CITY</b>  |   |
|                | Participating City Request to Purchase From the TVA in FY _____   | Date _____                              |
|                | <u>QUANTITY</u>   | <u>APPLICABILITY<br/>TO TVA PROGRAM</u> |
|                | <u>ITEM DESCRIPTION</u>   | <u>ESTIMATED COST</u>                   |
|                |   |   |
|                |   |   |
|                |   |   |
|                | <p align="center">THE CITY CERTIFIES THAT THE EQUIPMENT PURCHASED BY CITY AND TO BE REIMBURSED BY PROGRAM FUNDS<br/>WILL BE USED FOR ITS ENTIRE USEFUL LIFE EXCLUSIVELY FOR THE PURPOSES OF THE TRAFFIC VIOLATOR<br/>APPREHENSION PROGRAM</p> <p>CITY MANAGER REQUEST: _____</p> <p>Printed Name _____ DATE _____</p> <p>Signature: _____</p> |   |
|                | <b>ORANGE COUNTY SHERIFF-CORONER DEPARTMENT</b>   |   |
|                | <b>Recommended For Approval</b>   | MANAGER – TVA PROGRAM                   |
|                | CITY POLICE SERVICES CHIEF  |   |
|                | <b>APPROVALS</b>  |   |

OCSD  
BUDGET  
USE ONLY

**4.4**  
**FISCAL YEAR 2009-10 PROPOSITION 1B**  
**FUNDING**

**RESOLUTION NO. 09-xx**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, APPROVING THE APPLICATION TO THE STATE OF CALIFORNIA FOR PROPOSITION 1B FUNDS FOR THE EL TORO ROAD/AVENIDA SEVILLA STORM DRAIN PROJECT

WHEREAS, the City of Laguna Woods desires to implement the El Toro Road/Avenida Sevilla Storm Drain Project; and

WHEREAS, the State of California has adopted the 2009 Budget Act appropriating Proposition 1B funds in fiscal year 2009-2010; and

WHEREAS, the City of Laguna Woods meets the eligibility requirements to receive \$176,627 in Proposition 1B funds from the State of California; and

WHEREAS, the City of Laguna Woods will utilize these funds with three years as required by Proposition 1B;

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Laguna Woods hereby requests that the State of California award \$176,627 in Proposition 1B funds to the City of Laguna Woods for the El Toro Road/Avenida Sevilla Storm Drain Project.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of June 2009.

---

ROBERT B. RING, Mayor

ATTEST:

---

YOLIE TRIPPY, Deputy City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) ss.  
CITY OF LAGUNA WOODS   )

I, YOLIE TRIPPY, Deputy City Clerk of the City of Laguna Woods, do  
HEREBY CERTIFY that the foregoing **Resolution No. 09-XX** was duly adopted  
by the City Council of the City of Laguna Woods at a regular meeting thereof, held  
on the \_\_\_\_\_ day of June 2009, by the following vote:


AYES:       COUNCIL MEMBERS:  
NOES:       COUNCIL MEMBERS:  
ABSENT:     COUNCIL MEMBERS:

---

YOLIE TRIPPY, Deputy City Clerk

**5.1**  
**PUBLIC HEARING - MOULTON PARKWAY**  
**CONSTRUCTION SCHEDULE**

**City of Laguna Woods  
Agenda Report**

**FOR:** June 24, 2009 City Council Meeting  
**TO:** Honorable Mayor and Councilmembers  
**FROM:** Douglas C. Reilly, Assistant City Manager   
**Agenda Item:** Moulton Parkway Construction Schedule

---

**Recommendation:**

- A. Receive Staff Report
  - B. Open Public Hearing
  - C. Receive Public Comment
  - D. Close Public Hearing
  - E. Approve either:
    - 1. Work on the roadway during the day, with traffic limited to one lane in each direction
- OR
- 2. **Staff and Public Safety Committee recommendation:** A noise variance authorizing construction work on the roadway in the late evening/early morning hours.

**Background**

The County of Orange, through a cooperative agreement with the City of Laguna Woods, has prepared plans and specifications for the construction of the Moulton Smart Street Project, Phase 1, at the intersection of Moulton Parkway and El Toro Road. These improvements include the widening of both streets, the addition of left turn lanes on El Toro Road, the addition of

right turn lanes on three legs of the intersection, the addition of a bus turnout just north of the entrance to the Moulton Auto Spa, and pavement resurfacing. The County is also preparing to go to bid on the segment of Moulton Parkway from the intersection with Santa Maria Avenue up to El Pacifico, in Laguna Hills. Due to the extent of the planned work and the likelihood of disruptions to traffic flow, the County investigated performing the required work at night. The project areas are bordered by commercial properties, however, homes in Laguna Woods are located just behind the Willow Tree Center and southwest of Santa Maria Avenue.

### **Discussion**

In order to evaluate the impacts of the nighttime construction, the County had a consultant conduct a noise study. Attached is the Moulton Parkway Street Widening Project Construction Noise Study Report, dated May 11, 2009. The report identifies that there would be noise impacts to homes in Laguna Woods to the east of the Moulton/El Toro intersection, behind the Willow Tree Center, during the course of certain construction activities. It also identified noise impacts on homes west of the Moulton/Santa Maria intersection.

The County has determined that this noise can be mitigated by performing the loudest noise-generating work before 10:00 p.m. Accordingly, the County proposes to establish the beginning of the working hours at 6:00 p.m., in lieu of the typical 8:00 p.m., as a mitigation program for these noise impacts. The noise study does identify “noise blankets” (high, temporary walls placed around the work zone) which may aid in the reduction of noise impacts but this has been determined to be impractical for the scope and length of this project.

The County is requesting a noise variance from the City Council, acting as the Noise Variance Board, as provided for in the City’s municipal code. County staff believes that the benefits of maintaining open traffic flow during daylight hours on Moulton Parkway outweigh the impact of the construction noise. The noise impacts from the nighttime work will be partially mitigated and will be of short duration affecting a limited number of properties. This project is planned to be under construction in spring 2010.

## ITEM 5.1

The Laguna Hills City Council approved work at night and in early morning hours on May 26, 2009 for the segment north of Santa Maria Avenue to El Pacifico.

The County of Orange, as lead agency, environmentally cleared this project via Final EIR No. 542 and Addendum IP 04-233. The County is currently preparing a new addendum to the EIR to acknowledge the Construction Noise Study Report and other unrelated environmental updates to the project.

City staff recommends approval of a noise variance subject to the following conditions:

1. Work may be performed between the hours of 6 p.m. – 5 a.m.
2. Equipment shall be fitted with efficient, well-maintained mufflers that reduce equipment noise emissions.
3. Equipment and work that generates a 70 dBA or greater noise level within 50 feet of the noise source shall be performed by 10:00 p.m.
4. Equipment staging and crew break areas shall be located a minimum of 500 feet away from residences.
5. Vehicles equipped with audible back-up signals shall set the signals to the lowest allowable audible setting.
6. If significant numbers of complaints are received, at the City's direction, the County agrees to require the work activities causing the complaints to be rescheduled to 6 p.m. – 10 p.m. or to daytime hours.
7. The County of Orange and the City of Laguna Woods shall implement a noise mitigation and community outreach plan prior to the start of construction work. At a minimum, the plan will identify the noise mitigation measures described above to be implemented, and notification to residents of the hours, duration, and length of construction activity when exterior noise levels may approach or exceed 50 dBA as measured at residences.

### **Public Safety Committee**

The Public Safety Committee discussed this item at their June 10, 2009 meeting and unanimously recommended that the City Council approve work on the Moulton Smart Street project in the late evening/early morning hours.

**Fiscal Impact**

This project is funded by the County through various road fee programs and by the City through Measure M grants.

**Conclusion**

The County of Orange is finalizing plans to bid the Moulton Smart Street Project, Phase 1, for work at the intersection of Moulton Parkway and El Toro Road. The County is also about to bid the segment of Moulton Smart Street project from Santa Maria Avenue to El Pacifico. The County had a noise study conducted to determine the impacts from performing work on the projects at night. Staff and the Laguna Woods Public Safety Committee agree with the County request for a noise variance from the City Council to maintain open traffic flow along this highly trafficked road and at this busy intersection during the day, and proposing that work begin earlier in the evening to partially mitigate noise impacts.

Attachment: Construction Noise Study Report

Approved:



\_\_\_\_\_  
Leslie A. Keane  
City Manager

# CONSTRUCTION NOISE STUDY REPORT

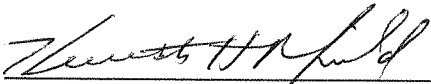
## MOULTON PARKWAY STREET WIDENING PROJECT

LAGUNA HILLS, CA AND LAGUNA WOODS, CA

### FINAL REPORT

Prepared for

Orange County Public Works  
300 N. Flower Street  
Santa Ana, CA 92703



Kenneth H. Rosenfield, P.E.  
Director of Public Services  
City of Laguna Hills



Dennis D. Nelson, P.E.  
City Engineer  
City of Laguna Woods

5/11/2009

Prepared by

**URS**

URS Corporation  
2020 East First Street, Suite 400  
Santa Ana, CA 92705  
(714) 835-6886 Fax: (714) 433-7701

## Moulton Parkway Street Widening Project – Noise Study Report

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## Moulton Parkway Street Widening Project – Noise Study Report

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### ***1.1 Introduction and Project Description***

The County of Orange is proposing improvements along a 1.5 mile section of Moulton Parkway in the cities of Laguna Hills and Laguna Woods. The project extends from 300 feet south of Via Campo Verde to the southern end of the intersection of Moulton Parkway and El Pacifico Drive on the north. Refer to Figures 4, 5, and 6. Changes in operational noise exposure resulting from the proposed improvements have been analyzed<sup>1</sup>. Previous analyses assumed that construction activities would occur during daytime hours. The purpose of this study is to evaluate potential impacts from construction activity during nighttime hours.

Construction associated with the proposed improvements will consist of removal of existing facilities and vegetation, site clearance, addition of a continuous bike lane, continuous sidewalk and curbs, ADA compliant driveways and curb ramps, bus pads, road pavement rehabilitation, retaining walls, soil nail walls, concrete soundwall, drainage improvements, box culvert extension, signing and striping, traffic signal modification, landscape and irrigation improvements, relocating utilities and amenities in and around the project site and construction of additional turn lanes along the intersections of Moulton Parkway from Via Campo Verde to Ridge Route Drive. Median work, as well as some of the other construction work listed previously, will take place along Moulton Parkway between Ridge Route Drive and El Pacifico Drive.

Construction work has been proposed to take place during nighttime hours in order to avoid adverse effects on traffic. This report addresses the potential impacts of nighttime construction activities on surrounding land uses and is organized into the following subsections: fundamentals of acoustics, local noise ordinances, source noise levels from construction equipment, field noise measurement results, potentially impacted receptors, and potential mitigation measures.

### ***1.2 Fundamentals of Acoustics***

Noise is generally defined as loud, unpleasant, unexpected, or undesired sound that is typically associated with human activity and interferes with or disrupts normal activities. Although exposure to high noise levels has been demonstrated to cause hearing loss, the principal human responses to typical environmental noise exposure levels are annoyance, communication interference, and sleep disturbance. The responses of individuals to similar noise events are diverse and influenced by many factors including the type of noise, the perceived importance of the noise, its appropriateness to the setting, the time of day and the type of activity during which the noise occurs, and noise sensitivity of the individual.

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air, and are sensed by the human ear. Sound is generally characterized by several variables, including frequency and amplitude. Frequency describes the sound's pitch (tone) and is measured in cycles per second (Hertz [Hz]), while amplitude describes the sound's pressure

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<sup>1</sup> Moulton Parkway Widening, Addendum IP 04-233 to Final Environmental Impact Report 542, BonTerra Consulting, January 4, 2005.

## Moulton Parkway Street Widening Project – Noise Study Report

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(loudness). Because the range of sound pressures that occur in the environment is extremely large, it is convenient to express these pressures on a logarithmic scale that compresses the wide range of pressures into a more useful range of numbers. The standard unit of sound measurement is the decibel (dB).

Hz is a measure of how many times each second the crest of a sound pressure wave passes a fixed point. For example, when a drummer beats a drum, the skin of the drum vibrates a number of times per second. When the drum skin vibrates 100 times per second it generates a sound pressure wave that is oscillating at 100 Hz, and this pressure oscillation is perceived by the ear/brain as a tonal pitch of 100 Hz. Sound frequencies between 20 and 20,000 Hz are within the range of sensitivity of the healthy human ear.

As mentioned above, sound level is expressed by reference to a specified national/international standard. The Sound Pressure Level (SPL) is used to describe sound at a specified distance or specific receptor location. In expressing sound pressure level on a logarithmic scale, sound pressure is compared to a reference value of 20 micropascals ( $\mu\text{Pa}$ ). SPL depends not only on the power of the source, but also on the distance from the source and on the acoustical characteristics of the space surrounding the source (absorption, reflection, etc.).

Outdoor sound levels decrease logarithmically as the distance from the source increases. This is due to wave divergence, atmospheric absorption, and ground attenuation. Sound radiating from a source in a homogeneous and undisturbed manner travels in spherical waves. As the sound waves travel away from the source, the sound energy is dispersed over a greater area decreasing the sound pressure of the wave. Spherical spreading of the sound wave from a point source reduces the noise level at a rate of 6 dB per doubling of distance.

Atmospheric absorption also influences the sound levels received by an observer. The greater the distance traveled, the greater the influence of the atmosphere and the resultant fluctuations. Atmospheric absorption becomes important at distances greater than 1,000 feet. The degree of absorption varies depending on the frequency of the sound as well as the humidity and temperature of the air. For example, atmospheric absorption is lowest (i.e., sound carries further) at high humidity and high temperatures and lower frequencies are less readily absorbed (i.e., sound carries further) than higher frequencies. Over long distances, lower frequencies become dominant as the higher frequencies are more rapidly attenuated. Turbulence, gradients of wind and other atmospheric phenomena also play a significant role in determining the degree of attenuation. For example, certain conditions, such as temperature inversions can channel or focus the sound waves resulting in higher noise levels than would result from simple spherical spreading.

Sound from a tuning fork contains a single frequency (a pure tone), but most sounds one hears in the environment do not consist of a single frequency but rather a broad band of many frequencies differing in sound level. Because of the broad range of audible frequencies, methods have been developed to quantify these values into a single number. The most common method used to quantify environmental sounds consists of evaluating all frequencies of a sound according to a weighting system that is reflective of human hearing characteristics. Human hearing is less sensitive at low frequencies and extremely high frequencies than at the mid-range frequencies. This process is termed "A weighting", and the resulting dB level is termed the "A weighted" decibel (dBA). "A weighting" is widely used in local noise ordinances and state and federal guidelines. In practice, the level of a noise source is conveniently measured using a sound level meter that includes a filter corresponding to the dBA curve. Unless specifically noted, the use of

## Moulton Parkway Street Widening Project – Noise Study Report

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A weighting is always assumed with respect to environmental sound and community noise even if the notation does not show the “A”.

In terms of human perception, a sound level of 0 dBA is approximately the threshold of human hearing and is barely audible by a healthy ear under extremely quiet listening conditions. This threshold is the reference level against which the amplitude of other sounds is compared. Normal speech has a sound level of approximately 60 dBA. Sound levels above about 120 dBA begin to be felt inside the human ear as discomfort progressing to pain at still higher levels. Humans are much better at discerning relative sound levels than absolute sound levels. The minimum change in the sound level of individual events that an average human ear can detect is about 1 to 3 dBA. A 3 to 5 dBA change is readily perceived. An increase (or decrease) in sound level of about 10 dBA is usually perceived by the average person as a doubling (or halving) of the sound’s loudness.

Because of the logarithmic nature of the dB unit, sound levels cannot be added or subtracted directly and are somewhat cumbersome to handle mathematically. However, some simple rules are useful in dealing with sound levels. First, if a sound’s intensity is doubled, the sound level increases by 3 dB, regardless of the initial sound level. Thus, for example:  $60 \text{ dB} + 60 \text{ dB} = 63 \text{ dB}$ , and  $80 \text{ dB} + 80 \text{ dB} = 83 \text{ dB}$ . Remember however, that it requires about a ten decibel increase to double the perceived intensity of a sound and it is interesting to note that a doubling of the acoustical energy (a 3 dB increase) is at the lower limit of readily perceived change.

Although dBA may adequately indicate the level of environmental noise at any instant in time, community noise levels vary continuously. Most ambient environmental noise includes a mixture of noise from nearby and distant sources that creates an ebb and flow of sound including some identifiable sources plus a relatively steady background noise in which no particular source is identifiable. A single descriptor called the equivalent sound level ( $L_{eq}$ ) is used to describe sound that is constant or changing in level.  $L_{eq}$  is the energy-mean dBA during a measured time interval. It is the “equivalent” constant sound level that would have to be produced by a given constant source to equal the acoustic energy contained in the fluctuating sound level measured during the interval. In addition to the energy-average level, it is often desirable to know the acoustic range of the noise source being measured. This is accomplished through the maximum  $L_{eq}$  ( $L_{max}$ ) and minimum  $L_{eq}$  ( $L_{min}$ ) indicators that represent the root-mean-square (RMS) maximum and minimum noise levels measured during the monitoring interval. The  $L_{min}$  value obtained for a particular monitoring location is often called the acoustic floor for that location.

To describe the time-varying character of environmental noise, the statistical or percentile noise descriptors  $L_{10}$ ,  $L_{50}$ , and  $L_{90}$  may be used. These are the noise levels equaled or exceeded during 10 percent, 50 percent, and 90 percent of the measured time interval. Sound levels associated with  $L_{10}$  typically describe transient or short-term events,  $L_{50}$  represents the median sound level during the measurement interval, while  $L_{90}$  levels are typically used to describe background noise conditions.

The Day-Night Average Sound Level ( $L_{dn}$  or DNL) represents the average sound level for a 24-hour day and is calculated by adding a 10 dB penalty only to sound levels during the night period (10:00 p.m. to 7:00 a.m.). The  $L_{dn}$  is the descriptor of choice used by nearly all federal, state, and local agencies throughout the United States to define acceptable land use compatibility with respect to noise. Within the State of California, the Community Noise Equivalent Level (CNEL) is sometimes used. CNEL is very similar to  $L_{dn}$ , except that an additional 5 dB penalty is applied to the evening hours (7:00 p.m. to 10:00 p.m.) Because of the time-of-day penalties associated with the  $L_{dn}$  and CNEL descriptors, the  $L_{dn}$  or CNEL dBA value for a continuously

## Moulton Parkway Street Widening Project – Noise Study Report

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operating sound source during a 24-hour period will be numerically greater than the dBA value of the 24-hour  $L_{eq}$ . Thus, for a continuously operating noise source producing a constant noise level operating for periods of 24 hours or more, the  $L_{dn}$  will be 6 dB higher than the 24-hour  $L_{eq}$  value. To provide a frame of reference, common sound levels are presented in Table 1, "Sound Levels of Typical Noise Sources and Noise Environments".

## Moulton Parkway Street Widening Project – Noise Study Report

**TABLE 1**  
**Sound Levels of Typical Noise Sources and Noise Environments**  
**(A-Weighted Sound Levels)**

| Noise Source (at Given Distance)   | Scale of A-Weighted Sound Level in Decibels | Noise Environment                          | Human Judgment of Noise Loudness (Relative to a Reference Loudness of 70 Decibels*) |
|--|---|--|---|
| Military Jet Take-off with After-burner (50 ft)  | 140   | Carrier Flight Deck                        | –   |
| Civil Defense Siren (100 ft)   | 130   | –  | –   |
| Commercial Jet Take-off (200 ft)   | 120   | –  | <b>Threshold of Pain</b><br>*32 times as loud                                       |
| Pile Driver (50 ft)  | 110   | Rock Music Concert                         | *16 times as loud   |
| Ambulance Siren (100 ft)<br>Newspaper Press (5 ft)<br>Power Lawn Mower (3 ft)            | 100   |  | <b>Very Loud</b><br>*8 times as loud  |
| Propeller Plane Flyover (1,000 ft)<br>Diesel Truck, 40 mph (50 ft)<br>Motorcycle (25 ft) | 90  | Boiler Room<br>Printing Press Plant        | *4 times as loud  |
| Garbage Disposal (3 ft)  | 80  | High Urban Ambient Sound                   | *2 times as loud  |
| Passenger Car, 65 mph (25 ft)<br>Living Room Stereo (15 ft)<br>Vacuum Cleaner (3 ft)     | 70  | –  | <b>Moderately Loud</b><br>*70 decibels<br>(Reference Loudness)                      |
| Air Conditioning Unit (100 ft)<br>Normal Conversation (5 ft)                             | 60  | Data Processing Center<br>Department Store | *1/2 as loud  |
| Light Traffic (100 ft)   | 50  | Private Business Office                    | *1/4 as loud  |
| Bird Calls (distant)   | 40  | Lower Limit of Urban Ambient Sound         | <b>Quiet</b><br>*1/8 as loud  |
| Soft Whisper (5 ft)  | 30  | Quiet Bedroom                              | <b>Very Quiet</b>   |
|  | 20  | Recording Studio                           |   |
|  | 10  | –  | <b>Extremely Quiet</b>  |
|  | 0   | –  | <b>Threshold of Hearing</b>   |

Source: Compiled by URS Corporation from various published sources and widely-used references such as The Handbook of Acoustical Measurements and Noise Control, Third Edition, edited by C.M. Harris, 1991; Federal Agency Review of Selected Airport Noise Analysis Issues, 1992, Modified by The Louis Berger Group, Inc, 2004. and Noise and Vibration Control, Second Edition, edited by L.L. Beranek, 1988 Institute of Noise Control Engineering.

## Moulton Parkway Street Widening Project – Noise Study Report

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### 1.3 Local Noise Ordinances

The proposed project is located in the cities of Laguna Woods, California and Laguna Hills, California within Orange County. The project consists of widening Moulton Parkway and adding lanes at intersections along Moulton Parkway. The south end of the project starts at the Via Campo Verde intersection and proceeds north to the south end of the intersection of Moulton Parkway and El Pacifico Drive. Lanes will be added along Moulton Parkway as well as the adjacent streets depending on the intersection.

Federal and state governments do not have specific guidelines for construction noise, other than OSHA, which sets standards to protect construction workers from hearing loss. Since construction will occur within three jurisdictions that have their own local noise ordinances, all three ordinances were reviewed.

The cities of Laguna Woods and Laguna Hills have adopted identical noise ordinances based on the Orange County Code. All decibel levels are A-weighted (dBA). The Orange County Code (Ordinance 2003-11 § 2: OCC § 4-6-5) uses the  $L_{50}$  as the baseline criterion level. The  $L_{50}$  is the noise level that can not be exceeded more than 50 percent of the time, for example, more than 30 minutes per hour. Table 2 presents the noise metrics and the levels that cannot be exceeded during the given time periods in Orange County.

$L_{50}$  is the baseline and it is used to determine the parameters and standards for the noise created during non-exempt construction times. For construction within Orange County, there are times when noise is exempt from these standards. These times include 7:00 AM to 8:00 PM on weekdays and 8:00 AM to 5:00 PM on weekends and federal holidays. During periods when construction noise is not exempted, there are two periods of concern. 55 dBA is the level that can not be exceeded from 8:00 PM to 10:00 PM on weekdays and 50 dBA can not be exceeded from 10:00 PM to 7:00 AM on weekends and federal holidays. If the noise is from an impact noise source, a 5 dBA reduction (penalty) is applied to each level. Interior noise standards are also listed in Table 2 per the Orange County Code. Interior noise measurements can be made with the windows open. If the ambient noise level exceeds the level listed in Table 2, then the ambient noise level is used to define the standard.

All measurements must be taken from a spot on the property that is closest to the potential or present noise source. According to Orange County Code, “it is unlawful for any person to create any noise which causes the noise level at any school, hospital, or church while the same is in use to exceed the noise limits...or which noise level unreasonably interferes with the use of such institutions or which unreasonably disturbs or annoys patients in the hospital” (Ordinance 2003-11 § 2: OCC § 4-6-8). There are several churches and one preschool (associated with a church) in the area that may be impacted. These areas are addressed in subsequent sections.

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### TABLE 2

#### Noise Ordinance Standards (Orange County)\*

|  |                          |                  | Noise Levels Not To Be Exceeded In Residential Zones** |                               |
|--|--------------------------|------------------|--|-------------------------------|
| EXTERIOR NOISE STANDARDS   | Maximum Time of Exposure | Noise Metric     | 7 a.m. to 10 p.m. (daytime)                            | 10 p.m. to 7 a.m. (nighttime) |
|  | 30 Minutes/Hour          | L <sub>50</sub>  | 55 dBA   | 50 dBA                        |
|  | 15 Minutes/Hour          | L <sub>25</sub>  | 60 dBA   | 55 dBA                        |
|  | 5 Minutes/Hour           | L <sub>8.3</sub> | 65 dBA   | 60 dBA                        |
|  | 1 Minute/Hour            | L <sub>1.7</sub> | 70 dBA   | 65 dBA                        |
|  | Any period of time       | L <sub>max</sub> | 75 dBA   | 70 dBA                        |
| INTERIOR NOISE STANDARDS   |                          |                  |  |                               |
|  | 5 Minutes/Hour           | L <sub>8.3</sub> | 55 dBA   | 45 dBA                        |
|  | 1 Minute/Hour            | L <sub>1.7</sub> | 60 dBA   | 50 dBA                        |
|  | Any period of time       | L <sub>max</sub> | 65 dBA   | 55 dBA                        |
| *Construction Noise Exemption Periods: 7:00 a.m. - 8:00 p.m. Weekdays<br>8:00 a.m. - 5:00 p.m. Weekends/Holidays |                          |                  |  |                               |
| **5 dBA reduction for impact noise during non-exempt times   |                          |                  |  |                               |
| SOURCE: Orange County, Ordinance 2003-11 § 2: OCC § 4-6-5.   |                          |                  |  |                               |

### 1.4 Source Noise Levels From Construction Equipment

Construction noise from the proposed project could affect nearby sensitive receptors. The noise limit criterion for each of the jurisdictions is 55 dBA for the period from 8:00 p.m. to 10:00 p.m. and 50 dBA for the period from 10 p.m. to 7:00 A.M. Construction activities are expected to occur during these periods. Precise equipment types, utilization rates, and hours of expected use are not currently known. The equipment types and usage factors presented in this section are based on data obtained from representative transportation construction projects.

Table 3 shows construction noise data included in the Federal Highway Administration's (FHWA) Roadway Construction Noise Model (RCNM). These data contain both predicted and empirical data. Table 3 is a variation of a chart found in the RCNM User's Guide. The original table has been modified based on the requirement to meet 50 dBA during nighttime hours. Calculations were performed to determine the distance at which noise levels will decrease to 50 dBA for each equipment type. For impact equipment, a 5 dBA reduction is applied. The acoustical usage factor (column three) represents the percentage of time that a given equipment type is typically used. The "Distance at Which Level = 50 dBA" column (column four) is based on attenuation due to wave divergence only. This represents a worst case scenario as it does not account for the attenuation of sound levels due to terrain, air absorption, etc. The sound levels presented in Table 3 assume no acoustical mitigation.

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## Moulton Parkway Street Widening Project – Noise Study Report

**TABLE 3**

**RCNM Default Noise Emission Reference Levels**

| Equipment Description            | Impact Device? | Source Noise Level<br>L <sub>max</sub> @ 50ft (dBA,<br>slow) | Distance At<br>Which Level = 50<br>dBA/45 dBA for<br>Impact Noise*<br>(feet) |
|----------------------------------|----------------|--|--|
| Sand Blasting (single nozzle)    | No             | 96   | 9,976  |
| Sheers (on backhoe)              | No             | 96   | 9,976  |
| Hydra Break Ram                  | Yes            | 90   | 8,891  |
| Mounted Impact Hammer (hoe ram)  | Yes            | 90   | 8,891  |
| Jackhammer                       | Yes            | 89   | 7,924  |
| Clam Shovel (dropping)           | Yes            | 87   | 6,294  |
| Concrete Saw                     | No             | 90   | 5,000  |
| Pavement Scarifier               | No             | 90   | 5,000  |
| Vibrating Hopper                 | No             | 87   | 3,539  |
| All Other Equipment > 5 HP       | No             | 85   | 2,811  |
| Compressor (air)                 | No             | 85   | 2,811  |
| Generator(<25KVA, VMS Signs)     | No             | 85   | 2,811  |
| Grader                           | No             | 85   | 2,811  |
| Horizontal Boring Hydraulic Jack | No             | 85   | 2,811  |
| Pneumatic Tools                  | No             | 85   | 2,811  |
| Vacuum Excavator (Vac-Truck)     | No             | 85   | 2,811  |
| Auger Drill Rig                  | No             | 84   | 2,505  |
| Chain Saw                        | No             | 84   | 2,505  |
| Flat Bed Truck                   | No             | 84   | 2,505  |
| Rivet Buster/Chipping Gun        | Yes            | 79   | 2,505  |
| Scraper                          | No             | 84   | 2,505  |
| Tractor                          | No             | 84   | 2,505  |
| Boring Jack Power Unit           | No             | 83   | 2,233  |
| Concrete Batch Plant             | No             | 83   | 2,233  |
| Gradall                          | No             | 83   | 2,233  |
| Warning Horn                     | No             | 83   | 2,233  |
| Dozer                            | No             | 82   | 1,990  |
| Grapple (on backhoe)             | No             | 82   | 1,990  |
| Vacuum Street Sweeper            | No             | 82   | 1,990  |
| Concrete Pump Truck              | No             | 81   | 1,774  |
| Crane                            | No             | 81   | 1,774  |
| Excavator                        | No             | 81   | 1,774  |
| Generator                        | No             | 81   | 1,774  |
| Pumps                            | No             | 81   | 1,774  |
| Rock Drill                       | No             | 81   | 1,774  |
| Bar Bender                       | No             | 80   | 1,581  |
| Drum Mixer                       | No             | 80   | 1,581  |
| Roller                           | No             | 80   | 1,581  |
| Slurry Trenching Machine         | No             | 80   | 1,581  |

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|                          |    |    |       |
|--------------------------|----|----|-------|
| Soil Mix Drill Rig       | No | 80 | 1,581 |
| Vibratory Concrete Mixer | No | 80 | 1,581 |
| Concrete Mixer Truck     | No | 79 | 1,409 |
| Drill Rig Truck          | No | 79 | 1,409 |
| Front End Loader         | No | 79 | 1,409 |
| Ventilation Fan          | No | 79 | 1,409 |
| Backhoe                  | No | 78 | 1,255 |
| Compactor (ground)       | No | 78 | 1,255 |
| Slurry Plant             | No | 78 | 1,255 |
| Paver                    | No | 77 | 1,119 |
| Dump Truck               | No | 76 | 997   |
| Man Lift                 | No | 75 | 889   |
| Pickup Truck             | No | 75 | 889   |
| Welder/Torch             | No | 74 | 792   |
| Refrigerator Unit        | No | 73 | 706   |

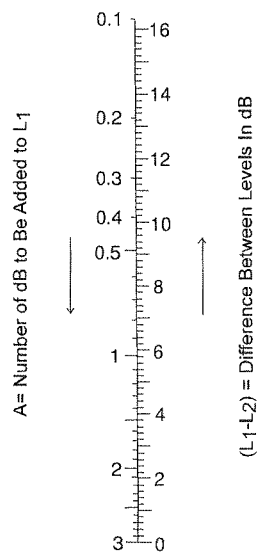
\*5 dB reduction for impact noise levels per Laguna Woods/Laguna Hills Noise Ordinance  
 Source: Adapted From Roadway Construction Noise Model User's Guide (FHWA, 2006)

The data shown in Table 3 considers only the decrease in noise due to wave divergence and does not consider topographical effects specific to the project area. These levels are representative of worst case conditions. The data indicates that noise from many of the impact devices can travel very far distances before falling to 45 dBA (50 dBA – 5 dBA penalty for impact noise). Sheers from a backhoe and sand blasting also create high levels of noise. Noise levels from jackhammers, which will definitely be used for the proposed project, reach up to almost 8,000 feet before falling to 45 dBA and concrete saws travel up to 5,000 feet before falling to 50 dBA.

Some equipment may be used at the same time and will cause more noise than what is being created by a single piece of equipment. Figure 1 shows the effect of adding two levels together.. This is essential to understanding that some equipment may not be used at the same time as other equipment. For example, if a crane and a rock drill, both having a level of 81 dBA at 50 feet, are used at the same time, the sound coming from the area of construction will be 84 dBA.

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**Figure 1 – Difference Between Levels in dB**



Source: The Handbook of Acoustical Measurements and Noise Control, Third Edition, edited by C.M. Harris, 1991.

### 1.5 Moulton Parkway Field Measurement Results

Noise monitoring was completed in order to gain an understanding of the sound propagation characteristics of the project area, the distances and the topography specific to the project. This data was required as predictions from existing noise modeling software were not sufficient given the complex topographic characteristics of the project area. The RCNM does not account for noise mitigation due to topography, therefore, the source noise levels from the RCNM were supplemented with filed measurement data in order to accurately model potential noise impacts.

Noise monitoring along, and near the vicinity of, Moulton Parkway was conducted on December 10 and December 11, 2008. The measurements consisted of both long-term and short-term data collection. Long-term measurements were conducted at locations considered to be the most critical locations due to potential impacts from the proposed project. Short-term measurements were conducted at additional locations to supplement the long-term data.

Figure 4 through Figure 6 depict the locations of both long-term and short-term measurements. Long-term measurements (LT) were 24-hour measurements obtained by placing sound level meters set to record one-second  $L_{eqs}$  for the entire long-term measurement period. This data was later retrieved and analyzed. Short-term (ST) measurements were conducted for 20-minute periods. The short-term measurements were attended by field personnel and the data summary for each measurement was manually recorded on Field Measurement Data Sheets (FMDS).

A total of four long-term measurements at two specific areas of concern were conducted. These two areas are the intersection of El Toro Road and Moulton Parkway and the intersection of Santa Maria Avenue and Moulton Parkway. Long-term measurements were conducted in pairs in order

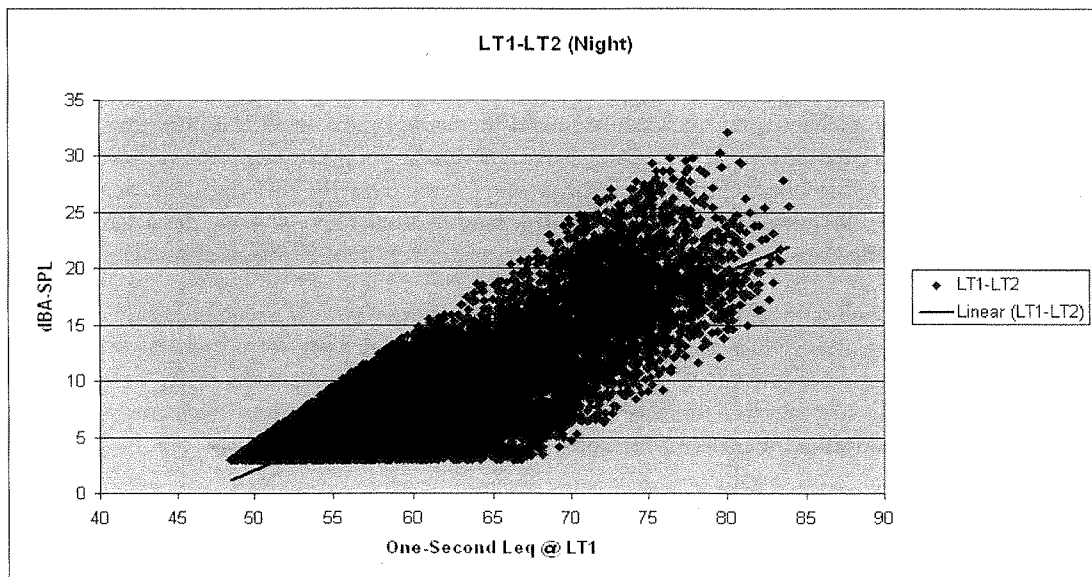
## Moulton Parkway Street Widening Project – Noise Study Report

to assess the noise levels and sound propagation effects specific to the critical areas. LT-1 was positioned at the intersection of Santa Maria Avenue and Moulton Parkway while LT-2 was placed 480 feet away from LT-1 on the edge of the nearest residential property (at 3108 Via Serena) on the southwest side of this intersection along Santa Maria Avenue. The difference in sound levels between LT-1 and LT-2 enables the evaluation of sound propagation characteristics specific to these areas. Since construction is being completed at night, data from 10:00 PM to 7:00 AM was used in the analysis.

Using the one-second  $L_{eq}$  measurements taken from both LT-1 and LT-2, the 90<sup>th</sup> percentile ( $L_{90}$ ) of the measurements was used to filter out background noise. The  $L_{90}$  at night for LT-1 is 45.9 dBA and the nighttime  $L_{90}$  at LT-2 is 45.3 dBA. The measured noise values below these levels at the specific sites were filtered from the data. Additional filtering including deleting every one-second  $L_{eq}$  from the LT-2 data that has less than a 3 dBA drop from the matching one-second  $L_{eq}$  at LT-1. Since LT-2 is 430 feet from the middle of the intersection, it is conservative to say that more than 3 dBA attenuation will occur.

Regression analysis was used in order to evaluate the relationship between the noise created at the intersection and the noise reaching the sensitive receptor location. Figure 2 provides a graphical representation of this analysis. From the analysis, if a sound level originating from the intersection is 80 dBA, the sound level at receptor location LT-2 is expected to be approximately 60 dBA. If there is a sound level of 75 dBA at the intersection, the sound level at LT-2 is predicted to be approximately 58 dBA. These data indicate that the louder the noise level, the greater the attenuation.

**FIGURE 2 – Regression Relationship Between Receptor Locations LT1 & LT2**



Source: URS Corporation

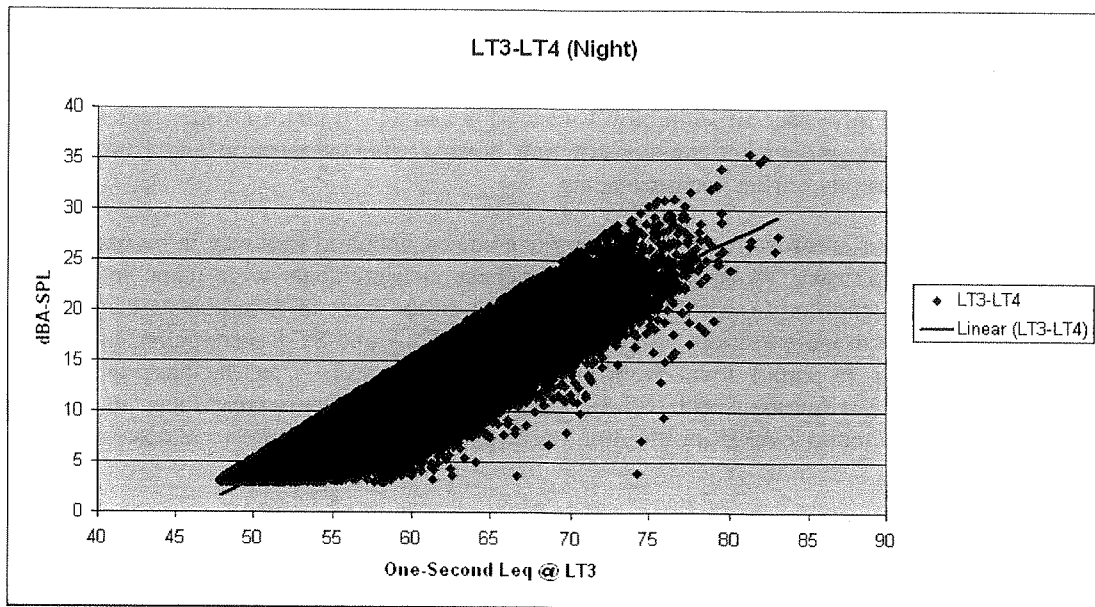
Similar analysis was conducted at the intersection at El Toro Road and Moulton Parkway to the residential area represented by 948 Calle Aragon. LT-3 and LT-4 were used in order to measure the change in sound levels from the intersection at El Toro Road and Moulton Parkway to 948 Calle Aragon. LT-3 is located near the corner of El Toro Road and Moulton Parkway. The closest sensitive receptor is located at 948 Calle Aragon, in a neighborhood behind Vons grocery store,

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located near the corner of Moulton Parkway and El Toro Road. LT-4 was placed behind this house, in the backyard, facing Moulton Parkway. The distance from LT-3 to LT-4 is 600 feet.

The nighttime  $L_{90}$  at LT-3 is 47.8 dBA and the nighttime  $L_{90}$  at LT-4 is 44.5 dBA. The background noise data was once again filtered out. Every one-second  $L_{eq}$  from the LT-4 data that has less than a 3 dBA drop from LT-3 is filtered out. Regression analysis was used on the remaining data and the resulting relationship is presented in Figure 3.

**FIGURE 3 - Regression Relationship Between Receptor Locations LT3 & LT4**



Source: URS Corporation

According to Figure 3, if the sound level coming from the intersection of Moulton Parkway and El Toro Road is 75 dBA, the sound level reaching the resident's backyard at 948 Calle Aragon is 53 dBA. The data shown in Figure 3 are similar to the data shown in Figure 2. Again, these data indicate that the louder the noise level, the greater the attenuation.

A series of short-term measurements were also completed in pairs in order to corroborate and supplement data collected from the long-term measurement sites as well as clarify the change in level from one area to another. Day, evening and nighttime noise measurements were carried out for a majority of the short-term measurement sites. A total of 10 short-term measurement sites were selected.

Table 4 displays the  $L_{eq}$  and  $L_{50}$  for all of the short-term measurement sites. Figures, 4, 5 and 6 show the various locations of these sites. ST-1 and ST-2 were used to assess the change in noise level from the intersection of Moulton Parkway and El Toro Road to the nearby United Methodist Church. This data proved to be insignificant because the data collected at ST-1 was contaminated by the same traffic noise that reached the measurement site at ST-2. Also, there will be construction at Via Campo Verde, which is a much closer street.

ST-3 and ST-4 measurements accompany the long-term measurements (LT-1 and LT-2) done at the corner of Moulton Parkway and Santa Maria Avenue. These data are shown in Table 4. These data were contaminated by the volume of heavy traffic along Santa Maria Avenue. The traffic

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noise levels along Santa Maria Avenue did not allow the sound levels near ST-3 to be an independent factor when attempting to determine the change in level from the intersection to the residence at LT-2.

A series of short-term measurements were also conducted at the intersection of Moulton Parkway and Ridge Route Drive. There were two pairs of short-term measurements conducted in this area. ST-5 was placed on the southwest corner of the intersection and ST-6 was placed on the sidewalk, near the street, along Ridge Route Drive. The sound level meter was not on the resident's property and, like ST-1 and ST-3, ST-5 was contaminated by heavy traffic along Ridge Route Drive. Thus, the change in sound level from ST-5 to ST-6 was not solely from the intersection itself. Subsequently, another pair of measurements was completed. ST-9 was at the same location as ST-5 and ST-10 was approximately 600 feet away from ST-9 and placed on residential property. With this measurement configuration, the traffic along Ridge Route Drive is less of a factor. The difference in sound level from ST-9 and ST-10 yields a better representation of noise levels at the property from construction noise at the intersection and contains less background noise than the earlier measurements.

A series of short-term measurements were completed along Moulton Parkway in between Santa Maria Avenue and Leisure World Gate No. 12. These measurements were taken in order to determine if construction noise would impact residents to the west of Moulton Parkway. Once again, these short-term measurements were done in pairs. ST-7 and ST-8 were paired in order to measure the change in sound level from Moulton Parkway (ST-7) to the backyard of the resident(s) at 3046 Via Serena South. ST-11 and ST-12 measurements were taken in order to assess the change in sound level from Moulton Parkway to the backyard of the resident(s) at 3031 Calle Sonora.

The short-term measurement data are summarized in Table 4. The noise levels shown are the  $L_{eq}$  and the criterion  $L_{50}$ .

**TABLE 4**  
**Short-Term Measurements**

| ST Site | Location  | $L_{eq}$<br>(dBA) | $L_{50}$<br>(dBA) |
|---------|---|-------------------|-------------------|
| ST-1    | Moulton Parkway and El Toro Road (Distant)      | 66.2              | 63.5              |
| ST-2    | Moulton Parkway and El Toro Road (Near)         | 67.6              | 66.5              |
| ST-3    | Moulton Parkway and Santa Maria Ave. (Near)     | 68.9              | 65.5              |
| ST-4    | Moulton Parkway and Santa Maria Ave. (Distant)  | 66.2              | 62.5              |
| ST-5    | Moulton Parkway and Ridge Route Drive (Near)    | 66.6              | 65.0              |
| ST-6    | Moulton Parkway and Ridge Route Drive (Distant) | 62.8              | N/A               |
| ST-7    | Moulton Parkway and Gate No. 12 (Near)          | 72.7              | 69.0              |
| ST-8    | Moulton Parkway and Gate No. 12 (Distant)       | 53.7              | 53.0              |
| ST-9    | Moulton Parkway and Ridge Route Drive (Near)    | 73.5              | 71.1              |
| ST-10   | Moulton Parkway and Ridge Route Drive (Distant) | 62.3              | 60.0              |
| ST-11   | Moulton Parkway and Gate No. 12 (Near)          | 76.8              | 75.2              |
| ST-12   | Moulton Parkway and Gate No. 12 (Distant)       | 50.6              | 48.5              |

Source: URS Corporation

The data shown in Table 4 were used to calculate the change in noise levels between Moulton Parkway and sensitive receptor locations. Table 4 indicates the change in sound levels for the  $L_{eq}$

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and  $L_{50}$  of each “near” and accompanying “distant” pair of short-term measurements. The changes in sound level from “near” the critical source of noise, which are the intersections of the locations listed, to the “distant” sound level meter are used to determine the sound propagation characteristics specific to the project site.

Since ST-1, ST-4 and ST-6 were all contaminated by nearby heavy traffic noise, the change in sound levels from their accompanying pairs is insignificant. The change in the sounds levels for ST-7 to ST-8 are 19 dBA and 16 dBA for the  $L_{eq}$  and  $L_{50}$  respectively. ST-7 was positioned near Moulton Parkway and ST-8 was placed in the backyard of a distant resident’s home. The change in sound levels for the  $L_{eq}$  and  $L_{50}$  from ST-9 to ST-10 are approximately 11 dBA each. The change in sound levels for the  $L_{eq}$  and  $L_{50}$  for ST-11 and ST-12, near Moulton Parkway and Gate No. 12, shows a difference of 26.2 dBA and 26.7 dBA respectively.

**TABLE 5**

**ST Changes in Sound Level**

| ST Sites          | Location                              | Change in $L_{eq}$ | Change in $L_{50}$ |
|-------------------|---------------------------------------|--------------------|--------------------|
| (ST-2) - (ST-1)   | Moulton Parkway and El Toro Road      | N/A*               | N/A*               |
| (ST-3) - (ST-4)   | Moulton Parkway and Santa Maria Ave.  | N/A*               | N/A*               |
| (ST-5) - (ST-6)   | Moulton Parkway and Ridge Route Drive | N/A*               | N/A*               |
| (ST-7) - (ST-8)   | Moulton Parkway and Gate No. 12       | 19.0               | 16.0               |
| (ST-9) - (ST-10)  | Moulton Parkway and Ridge Route Drive | 11.2               | 11.1               |
| (ST-11) - (ST-12) | Moulton Parkway and Gate No. 12       | 26.2               | 26.7               |

\*Irrelevant data due to heavy traffic noise away from intersection

Source: URS Corporation

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**FIGURE 4. Noise Measurement Locations at Moulton Parkway and Ridge Route Drive**



Source: URS Corporation

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**FIGURE 5. Noise Measurement Locations at Moulton Parkway and Santa Maria Avenue**



Source: URS Corporation

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**FIGURE 6. Noise Measurement Locations at Moulton Parkway and El Toro Road**



Source: URS Corporation

### ***1.6 Potentially Impacted Areas***

The purpose of this report is to assess potential impacts from nighttime construction activities at sensitive receptor locations. Sensitive receptor locations include residential areas, churches, schools, and hospitals in the vicinity of the proposed project. The nighttime exterior noise standard stated in the Orange County Code is 50 dBA.

Construction will take place along Moulton Parkway and adjacent streets. The construction equipment source noise levels and noise attenuation characteristics obtained from the noise measurement survey were used to predict noise levels from construction activities at the noise sensitive receptor locations. These data are shown in Table 6. The data shown in Table 6 are representative of worst case conditions (i.e. construction activity occurring at the closest point to the sensitive receptor location.)

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### TABLE 6

#### RCNM Default Noise Emission Reference Levels and Predicted Noise Levels

| Equipment Description            | Impact Device? | Source Noise Level Lmax @ 50ft (dBA, slow) | Distance At Which Level = 50 dBA/45 dBA for Impact Noise* (in Feet) | Predicted Noise Level (dBA): Resident at LT-2 (3108 Via Serena) | Predicted Noise Level (dBA): Resident at LT-4 (948 Calle Aragon) | Predicted Noise Level (dBA): Resident at ST-10 (Along Ridge Route Drive) |
|----------------------------------|----------------|--|---|---|--|--|
| Sand Blasting (single nozzle)    | No             | 96   | 9,976   | 67  | 56   | 80   |
| Sheers (on backhoe)              | No             | 96   | 9,976   | 67  | 56   | 80   |
| Hydra Break Ram                  | Yes            | 90   | 8,891   | 64  | 55   | 74   |
| Mounted Impact Hammer (hoe ram)  | Yes            | 90   | 8,891   | 64  | 55   | 74   |
| Jackhammer                       | Yes            | 89   | 7,924   | 64  | 55   | 73   |
| Clam Shovel (dropping)           | Yes            | 87   | 6,294   | 63  | 55   | 71   |
| Concrete Saw                     | No             | 90   | 5,000   | 64  | 55   | 74   |
| Pavement Scarifier               | No             | 90   | 5,000   | 64  | 55   | 74   |
| Vibrating Hopper                 | No             | 87   | 3,539   | 63  | 55   | 71   |
| All Other Equipment > 5 HP       | No             | 85   | 2,811   | 62  | 54   | 69   |
| Compressor (air)                 | No             | 85   | 2,811   | 62  | 54   | 69   |
| Generator(<25KVA, VMS Signs)     | No             | 85   | 2,811   | 62  | 54   | 69   |
| Grader                           | No             | 85   | 2,811   | 62  | 54   | 69   |
| Horizontal Boring Hydraulic Jack | No             | 85   | 2,811   | 62  | 54   | 69   |
| Pneumatic Tools                  | No             | 85   | 2,811   | 62  | 54   | 69   |
| Vacuum Excavator (Vac-Truck)     | No             | 85   | 2,811   | 62  | 54   | 69   |
| Auger Drill Rig                  | No             | 84   | 2,505   | 62  | 54   | 68   |
| Chain Saw                        | No             | 84   | 2,505   | 62  | 54   | 68   |
| Flat Bed Truck                   | No             | 84   | 2,505   | 62  | 54   | 68   |
| Rivet Buster/Chipping Gun        | Yes            | 79   | 2,505   | 60  | 53   | 63   |
| Scraper                          | No             | 84   | 2,505   | 62  | 54   | 68   |
| Tractor                          | No             | 84   | 2,505   | 62  | 54   | 68   |
| Boring Jack Power Unit           | No             | 83   | 2,233   | 62  | 54   | 67   |
| Concrete Batch Plant             | No             | 83   | 2,233   | 62  | 54   | 67   |
| Gradall                          | No             | 83   | 2,233   | 62  | 54   | 67   |
| Warning Horn                     | No             | 83   | 2,233   | 62  | 54   | 67   |
| Dozer                            | No             | 82   | 1,990   | 61  | 54   | 66   |
| Grapple (on backhoe)             | No             | 82   | 1,990   | 61  | 54   | 66   |
| Vacuum Street Sweeper            | No             | 82   | 1,990   | 61  | 54   | 66   |
| Concrete Pump Truck              | No             | 81   | 1,774   | 61  | 53   | 65   |
| Crane                            | No             | 81   | 1,774   | 61  | 53   | 65   |
| Excavator                        | No             | 81   | 1,774   | 61  | 53   | 65   |
| Generator                        | No             | 81   | 1,774   | 61  | 53   | 65   |
| Pumps                            | No             | 81   | 1,774   | 61  | 53   | 65   |

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|                          |    |    |       |    |    |    |
|--------------------------|----|----|-------|----|----|----|
| Rock Drill               | No | 81 | 1,774 | 61 | 53 | 65 |
| Bar Bender               | No | 80 | 1,581 | 60 | 53 | 64 |
| Drum Mixer               | No | 80 | 1,581 | 60 | 53 | 64 |
| Roller                   | No | 80 | 1,581 | 60 | 53 | 64 |
| Slurry Trenching Machine | No | 80 | 1,581 | 60 | 53 | 64 |
| Soil Mix Drill Rig       | No | 80 | 1,581 | 60 | 53 | 64 |
| Vibratory Concrete Mixer | No | 80 | 1,581 | 60 | 53 | 64 |
| Concrete Mixer Truck     | No | 79 | 1,409 | 60 | 53 | 63 |
| Drill Rig Truck          | No | 79 | 1,409 | 60 | 53 | 63 |
| Front End Loader         | No | 79 | 1,409 | 60 | 53 | 63 |
| Ventilation Fan          | No | 79 | 1,409 | 60 | 53 | 63 |
| Backhoe                  | No | 78 | 1,255 | 60 | 53 | 62 |
| Compactor (ground)       | No | 78 | 1,255 | 60 | 53 | 62 |
| Slurry Plant             | No | 78 | 1,255 | 60 | 53 | 62 |
| Paver                    | No | 77 | 1,119 | 59 | 52 | 61 |
| Dump Truck               | No | 76 | 997   | 59 | 52 | 60 |
| Man Lift                 | No | 75 | 889   | 58 | 52 | 59 |
| Pickup Truck             | No | 75 | 889   | 58 | 52 | 59 |
| Welder/Torch             | No | 74 | 792   | 58 | 52 | 58 |
| Refrigerator Unit        | No | 73 | 706   | 57 | 52 | 57 |

\*5 dB reduction for impact noise levels per Laguna Woods/Laguna Hills Noise Ordinance

Source: Adapted From Roadway Construction Noise Model User's Guide (FHWA, 2006), URS Corporation

The data shown in Table 6 indicates that noise levels from construction activities along Moulton Parkway exceed the nighttime criterion noise level of 50 dBA at all sensitive receptor locations and mitigation measures are required.

### 1.7 Potential Mitigation Measures

The three main sensitive receptor locations in the vicinity of the proposed project are the residential area along the south side of Santa Maria Avenue just west of Moulton Parkway (LT-2), the residential area along the south side of Ridge Route Drive just west of Moulton Parkway (ST-10), and the residential area on the southeast side of El Toro Road and Moulton Parkway behind Vons grocery store (LT-4).

Source mitigation can be an important component of reducing the noise that reaches sensitive receivers in these critical areas. Each piece of construction equipment should be fitted with efficient, well-maintained mufflers that reduce equipment noise emissions. Sound path mitigation, in the form of acoustic blankets located near the source should also be used. Acoustic blankets have the ability to reduce the sound levels by 10 dBA at the site of the piece of construction equipment if line-of-sight is blocked from the receiver. Figures 7 and 8 are photographs of example projects where acoustic blankets/panels have been used. Additional information is available at the Environmental Noise Control website ([www.environmental-noise-control.com](http://www.environmental-noise-control.com)).

## Moulton Parkway Street Widening Project – Noise Study Report

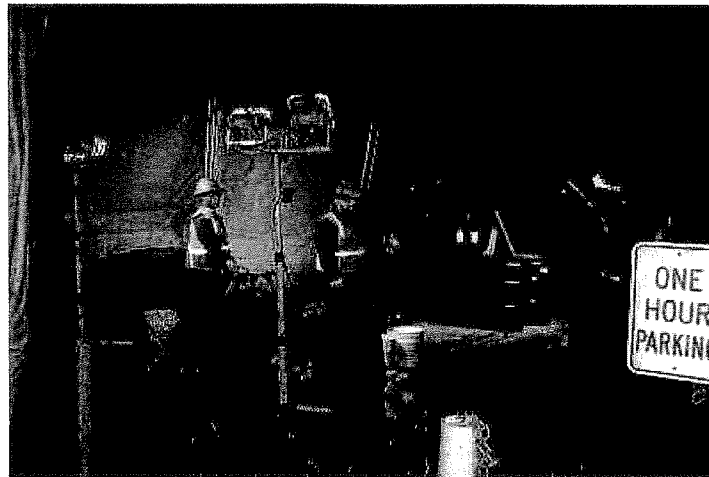
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**FIGURE 7. Noise Blanket as Barrier Wall**



Source: Environmental Noise Control Inc.

**FIGURE 8. Noise Blanket at Noise Source**



Source: Environmental Noise Control Inc.

Table 7 provides the sound levels of construction equipment at a distance of 50 feet if acoustic blankets are used as well as the distances at which the levels would equal 50 dBA (45 dBA for impact noise equipment). Table 7 also lists each piece of equipment and the predicted noise levels for all three critical areas if the acoustic blankets are used to mitigate noise at the site of construction. The predicted noise levels are derived from data collected at each critical area with the 10 dBA acoustic blanket sound level attenuation applied.

## Moulton Parkway Street Widening Project – Noise Study Report

### TABLE 7

**RCNM Default Noise Emission Reference Levels and Predicted Noise Levels  
(with Acoustic Blankets at Construction Site)**

| Equipment Description            | Impact Device? | Attenuated Source Noise Level L <sub>max</sub> @ 50ft (dBA, slow) | Distance At Which Level = 50 dBA/45 dBA for Impact Noise* (in Feet) | Predicted Noise Level (in dBA): Resident at LT-2 (3108 Via Serena) | Predicted Noise Level (in dBA): Resident at LT-4 (948 Calle Aragon) | Predicted Noise Level (in dBA): Resident at ST-10 (Along Ridge Route Drive) |
|----------------------------------|----------------|---|---|--|---|---|
| Sand Blasting (single nozzle)    | No             | 86  | 3,154   | 63   | 54  | 70  |
| Sheers (on backhoe)              | No             | 86  | 3,154   | 63   | 54  | 70  |
| Hydra Break Ram                  | Yes            | 80  | 2,811   | 60   | 53  | 64  |
| Mounted Impact Hammer (hoe ram)  | Yes            | 80  | 2,811   | 60   | 53  | 64  |
| Jackhammer                       | Yes            | 79  | 2,505   | 60   | 52  | 63  |
| Clam Shovel (dropping)           | Yes            | 77  | 1,990   | 59   | 52  | 61  |
| Concrete Saw                     | No             | 80  | 1,581   | 60   | 53  | 64  |
| Pavement Scarifier               | No             | 80  | 1,581   | 60   | 53  | 64  |
| Vibrating Hopper                 | No             | 77  | 1,119   | 59   | 52  | 61  |
| All Other Equipment > 5 HP       | No             | 75  | 889   | 58   | 52  | 59  |
| Compressor (air)                 | No             | 75  | 889   | 58   | 52  | 59  |
| Generator(<25KVA, VMS Signs)     | No             | 75  | 889   | 58   | 52  | 59  |
| Grader                           | No             | 75  | 889   | 58   | 52  | 59  |
| Horizontal Boring Hydraulic Jack | No             | 75  | 889   | 58   | 52  | 59  |
| Pneumatic Tools                  | No             | 75  | 889   | 58   | 52  | 59  |
| Vacuum Excavator (Vac-Truck)     | No             | 75  | 889   | 58   | 52  | 59  |
| Auger Drill Rig                  | No             | 74  | 792   | 58   | 52  | 58  |
| Chain Saw                        | No             | 74  | 792   | 58   | 52  | 58  |
| Flat Bed Truck                   | No             | 74  | 792   | 58   | 52  | 58  |
| Rivet Buster/Chipping Gun        | Yes            | 69  | 792   | 56   | 51  | 58  |
| Scraper                          | No             | 74  | 792   | 58   | 52  | 58  |
| Tractor                          | No             | 74  | 792   | 58   | 52  | 58  |
| Boring Jack Power Unit           | No             | 73  | 706   | 57   | 52  | 57  |
| Concrete Batch Plant             | No             | 73  | 706   | 57   | 52  | 57  |
| Gradall                          | No             | 73  | 706   | 57   | 52  | 57  |
| Warning Horn                     | No             | 73  | 706   | 57   | 52  | 57  |
| Dozer                            | No             | 72  | 629   | 57   | 51  | 56  |
| Grapple (on backhoe)             | No             | 72  | 629   | 57   | 51  | 56  |
| Vacuum Street Sweeper            | No             | 72  | 629   | 57   | 51  | 56  |
| Concrete Pump Truck              | No             | 71  | 561   | 57   | 51  | 55  |
| Crane                            | No             | 71  | 561   | 57   | 51  | 55  |
| Excavator                        | No             | 71  | 561   | 57   | 51  | 55  |

## Moulton Parkway Street Widening Project – Noise Study Report

|                          |    |    |     |    |    |    |
|--------------------------|----|----|-----|----|----|----|
| Generator                | No | 71 | 561 | 57 | 51 | 55 |
| Pumps                    | No | 71 | 561 | 57 | 51 | 55 |
| Rock Drill               | No | 71 | 561 | 57 | 51 | 55 |
| Bar Bender               | No | 70 | 500 | 56 | 51 | 54 |
| Drum Mixer               | No | 70 | 500 | 56 | 51 | 54 |
| Roller                   | No | 70 | 500 | 56 | 51 | 54 |
| Slurry Trenching Machine | No | 70 | 500 | 56 | 51 | 54 |
| Soil Mix Drill Rig       | No | 70 | 500 | 56 | 51 | 54 |
| Vibratory Concrete Mixer | No | 70 | 500 | 56 | 51 | 54 |
| Concrete Mixer Truck     | No | 69 | 445 | 56 | 51 | 53 |
| Drill Rig Truck          | No | 69 | 445 | 56 | 51 | 53 |
| Front End Loader         | No | 69 | 445 | 56 | 51 | 53 |
| Ventilation Fan          | No | 69 | 445 | 56 | 51 | 53 |
| Backhoe                  | No | 68 | 397 | 55 | 51 | 52 |
| Compactor (ground)       | No | 68 | 397 | 55 | 51 | 52 |
| Slurry Plant             | No | 68 | 397 | 55 | 51 | 52 |
| Paver                    | No | 67 | 354 | 55 | 50 | 51 |
| Dump Truck               | No | 66 | 315 | 55 | 50 | 50 |
| Man Lift                 | No | 65 | 281 | 54 | 50 | 49 |
| Pickup Truck             | No | 65 | 281 | 54 | 50 | 49 |
| Welder/Torch             | No | 64 | 250 | 54 | 50 | 48 |
| Refrigerator Unit        | No | 63 | 223 | 53 | 50 | 47 |

\*5 dB reduction for impact noise levels per Laguna Woods/Laguna Hills Noise Ordinance  
Sourpted From Roadway Construction Noise Model User's Guide (FHWA, 2006), URS Corporation

The data shown in Table 7 indicate that mitigated exterior noise levels will exceed 50 dBA at the sensitive receptor locations. Column four of Table 7 indicates the source to receiver distances required for noise levels to meet 50 dBA. If the respective construction activities are conducted beyond these distances from critical receiver locations, exterior noise levels will not exceed 50 dBA at the sensitive receivers. Construction activities conducted closer to sensitive receptor locations than the distances specified in Table 7 should be conducted after 7:00 a.m. and prior to 10:00 p.m.

The levels shown in Table 7 reflect exterior noise levels. The most critical criterion for nighttime noise is the propensity for noise to interfere with human activities such as communication interference (watching television) or sleep disturbance. Orange County, Laguna Hills, Laguna Woods, as well as many federal and international agencies, such as the World Health Organization, have specified a nighttime interior standard of 45 dBA. It is reasonable to assume, based on the construction type of the nearby residential dwellings, that an outdoor to indoor sound attenuation of 20 dBA can be achieved at these residences when the windows are closed. This indicates that although the exterior noise standards may be exceeded during periods when construction occurs at distances closer than those shown in Table 7, the noise from construction activities are not expected to interfere with interior activities such communication or sleep.

It is important to note that construction activities at a given location result in a short-term temporary increase in noise levels. Based on the noise levels and short-term nature of the construction activities, noise impacts from nighttime construction activity are less than significant.

## Moulton Parkway Street Widening Project – Noise Study Report

Although noise impacts from nighttime construction activities associated with the proposed project are less than significant, it is advisable to implement a noise mitigation and community outreach plan. The purposes of these plans are to ensure that recommended noise mitigation measures are implemented and residents are notified of the hours, duration, and of length of construction activity when exterior noise levels may approach or exceed 50 dBA. A mechanism for community feedback, such as a noise complaint hotline should be incorporated. If significant complaints are received, the activities causing the complaints should be rescheduled to daytime hours if possible. If rescheduling these activities is not possible, short-term noise monitoring and supplemental mitigation measures such as acoustical blankets at the receiver should be considered.

Given that the construction activity is limited to nighttime periods, another potential mitigation measure is for the local jurisdictions to temporarily waive the nighttime exterior noise standard of 50 dBA in recognition that few, if any, exterior activities, occur during this time. The interior noise standard of 45 dBA would be used in lieu of the exterior standard. Typical residential construction conservatively attenuates noise by approximately 20 dBA with windows closed and by 12-15 dBA with windows open. This indicates that a maximum exterior noise level of 65 dBA would yield an interior noise level of 45 dBA with windows closed and 50-53 dBA with windows open. The distances required to achieve 65 dBA exterior noise level are shown in Table 8.

**TABLE 8**

**RCNM Default Noise Emission Reference Levels and Predicted Noise Levels  
(65 dBA Exterior Standard)**

| Equipment Description           | Impact Device? | Actual Measured L <sub>max</sub> at 50ft (dBA, slow) | Distance At Which Level = 65 dBA* | Predicted Noise Level (in dBA): Resident at LT-2 (Along Santa Maria Avenue) | Predicted Noise Level (in dBA): Resident at LT-4 (948 Calle Aragon) | Predicted Noise Level (in dBA): Resident at ST-10 (Along Ridge Route Drive) |
|---------------------------------|----------------|--|-----------------------------------|---|---|---|
| Sand Blasting (single nozzle)   | No             | 96   | 1,774.1                           | 67  | 56.4  | 80 dBA  |
| Sheers (on backhoe)             | No             | 96   | 1,774.1                           | 67  | 56.4  | 80 dBA  |
| Hydra Break Ram                 | Yes            | 90   | 1,581.1                           | 64  | 55.1  | 74 dBA  |
| Mounted Impact Hammer (hoe ram) | Yes            | 90   | 1,581.1                           | 64  | 55.1  | 74 dBA  |
| Jackhammer                      | Yes            | 89   | 1,409.2                           | 64  | 54.9  | 73 dBA  |
| Clam Shovel (dropping)          | Yes            | 87   | 1,119.4                           | 63  | 54.5  | 71 dBA  |
| Concrete Saw                    | No             | 90   | 889.1                             | 64  | 55.1  | 74 dBA  |
| Pavement Scarifier              | No             | 90   | 889.1                             | 64  | 55.1  | 74 dBA  |
| Vibrating Hopper                | No             | 87   | 629.5                             | 63  | 54.5  | 71 dBA  |
| All Other Equipment > 5 HP      | No             | 85   | 500.0                             | 62  | 54.1  | 69 dBA  |
| Compressor (air)                | No             | 85   | 500.0                             | 62  | 54.1  | 69 dBA  |
| Generator (<25KVA, VMS Signs)   | No             | 85   | 500.0                             | 62  | 54.1  | 69 dBA  |

## Moulton Parkway Street Widening Project – Noise Study Report

|                                  |     |    |       |    |      |        |
|----------------------------------|-----|----|-------|----|------|--------|
| Grader                           | No  | 85 | 500.0 | 62 | 54.1 | 69 dBA |
| Horizontal Boring Hydraulic Jack | No  | 85 | 500.0 | 62 | 54.1 | 69 dBA |
| Pneumatic Tools                  | No  | 85 | 500.0 | 62 | 54.1 | 69 dBA |
| Vacuum Excavator (Vac-Truck)     | No  | 85 | 500.0 | 62 | 54.1 | 69 dBA |
| Auger Drill Rig                  | No  | 84 | 445.6 | 62 | 53.9 | 68 dBA |
| Chain Saw                        | No  | 84 | 445.6 | 62 | 53.9 | 68 dBA |
| Flat Bed Truck                   | No  | 84 | 445.6 | 62 | 53.9 | 68 dBA |
| Rivet Buster/Chipping Gun        | Yes | 79 | 445.6 | 60 | 52.8 | 63 dBA |
| Scraper                          | No  | 84 | 445.6 | 62 | 53.9 | 68 dBA |
| Tractor                          | No  | 84 | 445.6 | 62 | 53.9 | 68 dBA |
| Boring Jack Power Unit           | No  | 83 | 397.2 | 62 | 53.7 | 67 dBA |
| Concrete Batch Plant             | No  | 83 | 397.2 | 62 | 53.7 | 67 dBA |
| Gradall                          | No  | 83 | 397.2 | 62 | 53.7 | 67 dBA |
| Warning Horn                     | No  | 83 | 397.2 | 62 | 53.7 | 67 dBA |
| Dozer                            | No  | 82 | 354.0 | 61 | 53.5 | 66 dBA |
| Grapple (on backhoe)             | No  | 82 | 354.0 | 61 | 53.5 | 66 dBA |
| Vacuum Street Sweeper            | No  | 82 | 354.0 | 61 | 53.5 | 66 dBA |
| Concrete Pump Truck              | No  | 81 | 315.5 | 61 | 53.2 | 65 dBA |
| Crane                            | No  | 81 | 315.5 | 61 | 53.2 | 65 dBA |
| Excavator                        | No  | 81 | 315.5 | 61 | 53.2 | 65 dBA |
| Generator                        | No  | 81 | 315.5 | 61 | 53.2 | 65 dBA |
| Pumps                            | No  | 81 | 315.5 | 61 | 53.2 | 65 dBA |
| Rock Drill                       | No  | 81 | 315.5 | 61 | 53.2 | 65 dBA |
| Bar Bender                       | No  | 80 | 281.2 | 60 | 53.0 | 64 dBA |
| Drum Mixer                       | No  | 80 | 281.2 | 60 | 53.0 | 64 dBA |
| Roller                           | No  | 80 | 281.2 | 60 | 53.0 | 64 dBA |
| Slurry Trenching Machine         | No  | 80 | 281.2 | 60 | 53.0 | 64 dBA |
| Soil Mix Drill Rig               | No  | 80 | 281.2 | 60 | 53.0 | 64 dBA |
| Vibratory Concrete Mixer         | No  | 80 | 281.2 | 60 | 53.0 | 64 dBA |
| Concrete Mixer Truck             | No  | 79 | 250.6 | 60 | 52.8 | 63 dBA |
| Drill Rig Truck                  | No  | 79 | 250.6 | 60 | 52.8 | 63 dBA |
| Front End Loader                 | No  | 79 | 250.6 | 60 | 52.8 | 63 dBA |
| Ventilation Fan                  | No  | 79 | 250.6 | 60 | 52.8 | 63 dBA |
| Backhoe                          | No  | 78 | 223.3 | 60 | 52.6 | 62 dBA |
| Compactor (ground)               | No  | 78 | 223.3 | 60 | 52.6 | 62 dBA |
| Slurry Plant                     | No  | 78 | 223.3 | 60 | 52.6 | 62 dBA |
| Paver                            | No  | 77 | 199.1 | 59 | 52.4 | 61 dBA |
| Dump Truck                       | No  | 76 | 177.4 | 59 | 52.2 | 60 dBA |
| Man Lift                         | No  | 75 | 158.1 | 58 | 52.0 | 59 dBA |

## Moulton Parkway Street Widening Project – Noise Study Report

|                   |    |    |       |    |      |        |
|-------------------|----|----|-------|----|------|--------|
| Pickup Truck      | No | 75 | 158.1 | 58 | 52.0 | 59 dBA |
| Welder/Torch      | No | 74 | 140.9 | 58 | 51.8 | 58 dBA |
| Refrigerator Unit | No | 73 | 125.6 | 57 | 51.6 | 57 dBA |

\*5 dB reduction for impact noise levels per Laguna Woods/Laguna Hills Noise Ordinance

The data shown in Table 8 indicates that all but the loudest construction activities would meet the 65 dBA exterior noise standard (45 dBA interior with windows closed) for Sites LT-2 and LT-4. The exceptions are the residences located along Ridge Route Drive in the vicinity of ST-10. Noise levels as high as 80 dBA may be experienced in this area. Site specific mitigation in the form of acoustic barriers are needed at this location in order to meet the exterior standard of 65 dBA. Barriers 13.5 feet high and approximately 110 feet in length, sufficient to block the line-of-sight from the northeast corner of the community to the intersection of Ridge Route Drive and Moulton Parkway, are required. These barriers should be of plywood construction, 1.25 inches thick, and would provide 15 dBA of attenuation and ensure compliance with the interior noise standard at these locations.

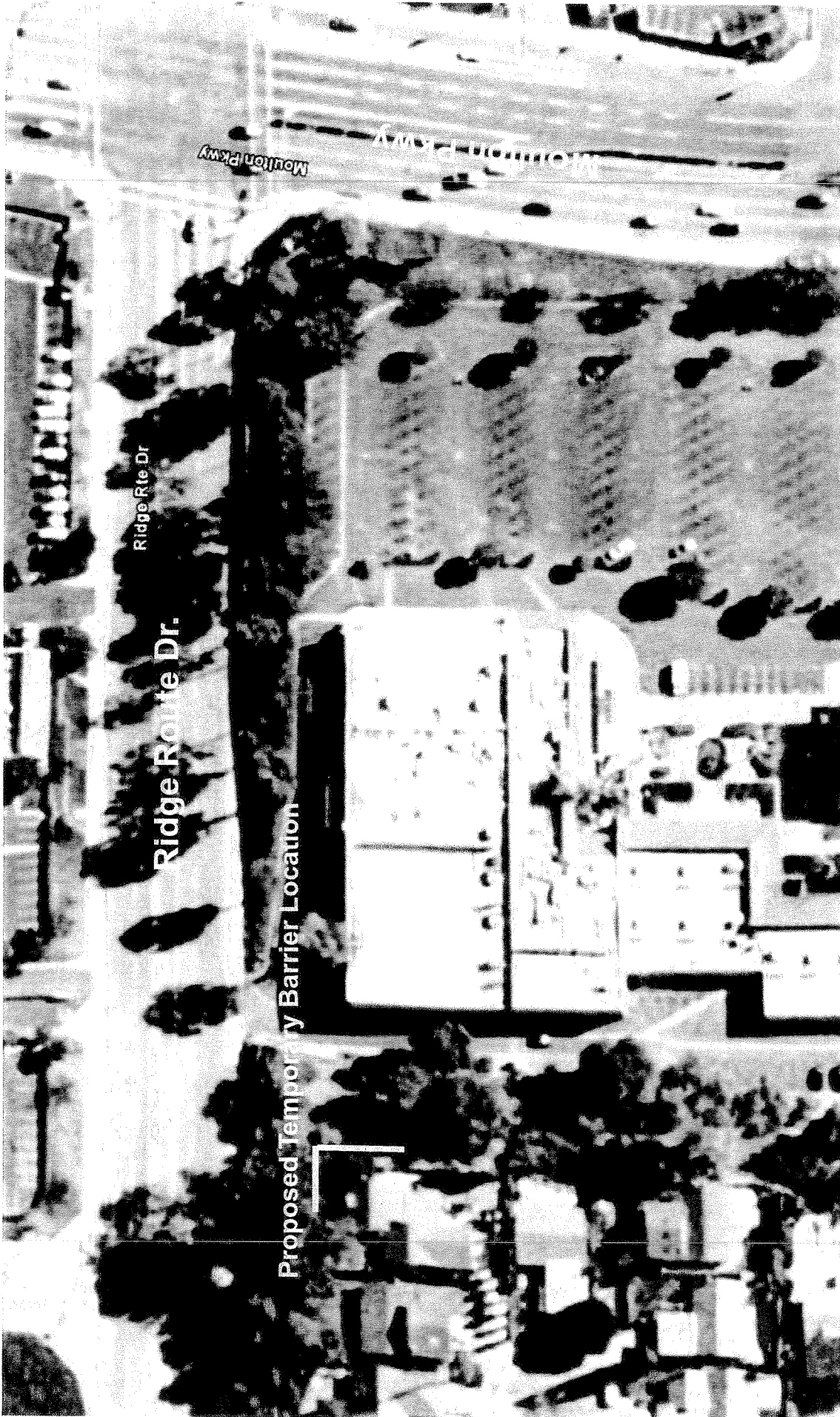
Other mitigation measures incorporated into the project should include that equipment staging and crew break areas should be located away from residences and vehicles equipped with audible back-up signals should set the signals to the lowest allowable audible setting.

## Moulton Parkway Street Widening Project – Noise Study Report

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### References

- Bolt, Beranek, and Newman, Inc. 1973. Fundamentals and Abatement of Highway Traffic Noise. U.S. Department of Transportation Contract Number DOT-FH-11-7976, Office of Environmental Policy, Federal Highway Administration.
- Harris, Cyril M., ed. 1991. Handbook of Acoustical Measurements and Noise Control. Third Edition. McGraw-Hill, Inc. New York, NY.
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**6.1**  
**LANDFILL DISPOSAL OF MUNICIPAL**  
**SOLID WASTE**

**City of Laguna Woods  
Agenda Report**

**FOR:** June 24, 2009 City Council Meeting  
**TO:** Mayor and City Council Members  
**FROM:** Leslie Keane, City Manager   
**AGENDA ITEM:** Landfill Disposal of Municipal Solid Waste

---

**Recommendation**

Approve an agreement with the County of Orange for the disposal of municipal solid waste; and authorize the City Manager to execute the agreement subject to approval as to form by the City Attorney.

**Background**

In 1997, the County and cities of Orange County entered into disposal agreements for a fixed rate per-ton for the disposal of solid waste in the County's landfill system. The City of Laguna Woods entered into such an agreement shortly after incorporation. These agreements will expire on June 30, 2010.

**Discussion**

The proposed new agreement is substantially the same as the current waste disposal agreement, including the County's commitment to provide solid waste disposal service and County indemnification of City liability for closed landfill sites through June 30, 2020. The primary difference in the new agreement is the disposal rate.

Rates for self-haul to the landfill have changed several times over the last 10 years. The current municipal disposal rate of \$22.00 per ton of material disposed in the landfill system has not changed since 1997. The proposed agreement incorporates a rate of \$29.95 per ton that would be effective on July 1, 2020, and then adjusted annually in accordance with increases to the consumer price index (CPI).

The agreement requires the city to deliver, or cause to be delivered all "controllable" solid waste to the County landfill system. Controllable waste does not include

## ITEM 6.1

hazardous or e-waste or material self-hauled by individuals or businesses, nor does it include material pulled out of the waste stream through the City's recycling programs.

For this agreement to take effect, it requires that cities representing 85% of the County's population execute the agreement by July 23, 2009. If this condition is not met, none of the agreements will be valid and the Board of Supervisors will consider other options. If this condition is met, cities not executing the agreement prior to July 23<sup>rd</sup> will be required to pay a disposal rate higher than the proposed fixed rate.

### **Fiscal Impact**

The proposed new rate is 35% higher than the current rate. In 2008, the City sent 13,000 tons to the landfill each year. The increased fee on this tonnage would be \$103,350. With the exception of solid waste from municipal facilities, all charges associated with solid waste pick-up, hauling and disposal are passed directly through to customers. The direct cost to the City will be minimal.

### **Conclusion**

Approval of the proposed agreement will allow the City to take advantage of the lowest rate for disposal of waste in County landfills. The City continues to pursue opportunities to increase recycling efforts that will reduce tonnage disposed at the landfills.

Attachment: Orange County Landfill Disposal Agreement

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WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and  
the

CITY OF LAGUNA WOODS

Dated \_\_\_\_\_, 2009

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County Authorization Date:

March 24, 2009

County Notice Address:

Director  
OC Waste & Recycling  
300 N. Flower Street, Suite 400  
Santa Ana, CA 92703

City Authorization Date:

City Notice Address:

CITY OF LAGUNA WOODS  
24264 EL TORO ROAD  
LAGUNA WOODS, CA 92637

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APPENDIX 1

ESTIMATED ANNUAL TONNAGE

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CUMULATIVE TONNAGE TARGETS

APPENDIX 3

CUMULATIVE CAPITAL COSTS

APPENDIX 4

FORM OF HAULER ACKNOWLEDGEMENT

## WASTE DISPOSAL AGREEMENT

THIS WASTE DISPOSAL AGREEMENT is made and dated as of the date indicated on the cover page hereof between the County of Orange, a political subdivision of the State of California (the "County"), and the City designated on the cover page of this Agreement, a general law or charter city and political subdivision of the State of California (the "City").

### RECITALS

The County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the County (the "Disposal System"). The Disposal System includes three active landfills and four regional household hazardous waste collection centers.

The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

The City, in the exercise of its police power and its powers under the Act, has entered into a franchise or other agreement with or issued permits or licenses to one or more private haulers for the collection and disposal of municipal solid waste generated within the City.

A significant portion of municipal solid waste generated within the City historically has been and currently is delivered by such hauler or haulers to the County for disposal in the Disposal System.

In 1997, the City and the County entered in a waste disposal agreement (the "Original WDA"), pursuant to which the County agreed to provide disposal capacity for waste generated in the City, and the City agreed to deliver or cause the delivery of waste generated in the City to the Disposal System, as more specifically set forth in, and subject to the terms and conditions of, the Original WDA.

The Original WDA, as amended, will expire by its terms on June 30, 2010, unless the City and the County agree to renew the Original WDA.

The City and the County desire to enter into this agreement to extend, amend and restate the Original WDA, on the terms and conditions set forth herein. The County and City acknowledge that the Original WDA shall remain in full force and effect until the Commencement Date.

The City has determined that the execution of this Agreement by the City will serve the public health, safety and welfare of the City by providing greater disposal rate stability, more predictable and reliable long-term disposal service, and the continuation of sound environmental management.

The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis consistent with its obligations to the State and the holders of obligations secured by its Disposal System.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County on the County authorization date indicated on the cover page hereof.

Official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on the City authorization date indicated on the cover page hereof.

It is, therefore, agreed as follows:

Execution Copy

ARTICLE I  
DEFINITIONS AND INTERPRETATION

SECTION 1.1 DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below.

“Acceptable Waste” means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments and which are acceptable at Class III landfills under Applicable Law.

“Act” means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

“Agreement” means this Waste Disposal Agreement between the County and the City as the same may be amended or modified from time to time in accordance herewith.

“Appendix” means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof

“Applicable Law” means the Act, the Orange County Code, CERCLA, RCRA, CEQA, any Legal Entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System, the transfer, handling, transportation and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

“Board” means the California Integrated Waste Management Board.

“Capital Costs” means all costs of the Disposal System that are classified as capital costs for purposes of the budget of the Department in accordance with procedures established by the County of Orange Auditor-Controller in compliance with the California State Controller’s Manual, including but not limited to all of the categories of costs of the Disposal System reported as “Buildings and Improvements, and Infrastructure” (Object Code 4200) or “Equipment” (Object Code 4000) in the County of Orange – Chart of Accounts, or any successor accounting or reporting system utilized by the County.

“CEQA” means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Section 21000 *et seq.* as amended or superseded, and the regulations promulgated thereunder.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder.

“Change in Law” means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System or other matters to which Applicable Law applies:

(1) the enactment, adoption, promulgation, issuance, material modification or written change in administrative or judicial interpretation on or after the Commencement Date of any Applicable Law (other than Applicable Law enacted by the County);

(2) the order or judgment of any Governmental Body (other than the County), on or after the Commencement Date, to the extent such order or judgment is not the result of willful or negligent action, error or

omission or lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Commencement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the failure in good faith to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

A "Change in Law" shall include but not be limited to any new or revised requirements relating to the funding or provision of disposal services, including but not limited to any regulations for disposal operations or activities associated with the remediation, closure, funding or monitoring of closed sites with respect to facilities comprising the Disposal System, or facilities which the County previously utilized to provide waste disposal, transfer, recycling, processing or other waste related activities.

"City" means, as applicable, the city or Sanitary District designated on the cover page of this Agreement and party to this Agreement.

"City Acceptable Waste" means all Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the City, and Residue from the foregoing wherever produced, whether within, or outside the City (or Tonnage equivalencies of such Residues, as and to the extent provided in subsection 3.1(C) hereof).

"Commencement Date" means the date on which the obligations of the parties hereto commence, established as provided in Section 6.2(B) hereof.

"Contract Date" means the first date on which this Agreement has been executed by both parties hereto.

"Contract Rate" has the meaning specified in Section 4.2 hereof.

"Contract Year" means the fiscal year commencing on July 1 in any year and ending on June 30 of the following year.

"Controllable Waste" means all City Acceptable Waste with respect to which the City has the legal or contractual ability to determine the disposal location therefor and which is:

- (1) Non-Recycled City Acceptable Waste;
- (2) not generated from the operations of the Governmental Bodies which, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate; and
- (3) collected and hauled by Franchise Haulers.

"County" means the County of Orange, a political subdivision of the State of California and party to this Agreement.

"County Plan" means the integrated waste management plan of the County approved by the Board pursuant to the Act as in effect from time to time.

“County Acceptable Waste” means Acceptable Waste generated in the County.

“County OC Waste & Recycling Enterprise Fund” means the waste management enterprise fund established and managed by the County pursuant to Section 25261 of the Government Code separate from its other funds and accounts for receipts and disbursements in connection with the Disposal System.

“County-wide Recycling Services” has the meaning set forth in subsection 3.7(A) hereof.

“Cumulative Tonnage Target” for any given Contract Year means the amount specified in Appendix 2 hereto with respect to such Contract Year.

“Department” means OC Waste & Recycling, and any agency, department or other Governmental Body which succeeds to the duties and powers thereof.

“Disposal Agreements” means each of the waste disposal agreements entered into between the County and any city within the County, Sanitary District or operator of any Transfer Station located in the County in accordance herewith.

“Disposal Services” means the solid waste disposal services to be provided by the County pursuant to the Service Covenant and otherwise hereunder.

“Disposal System” means the Orange County Waste Disposal System which includes solid waste disposal operations at three active landfills (Olinda Alpha, Frank R. Bowerman and Prima Deshecha); four regional Household Hazardous Waste Collection Centers; as well as services, such as monitoring and other activities, at closed refuse stations formerly operated by the County, as appropriate under Applicable Law.

“Environmental Fund” means the fund or funds held by the County to pay unanticipated costs of environmental mitigation, remediation or liability.

“Franchise Hauler” means any hauler or collector who provides Acceptable Waste collection services within the City pursuant to, or under authority granted by, a permit, contract, franchise or other agreement with the City. The term Franchise Hauler includes the City itself if Acceptable Waste collection and transportation services are provided directly by City operated municipal collection service.

“Governmental Body” means any federal, State, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

“Hazardous Substance” has the meaning given such term in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq.*), and Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder.

“Hazardous Waste” means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in 10 CFR Part 40.

“Imported Acceptable Waste” means Acceptable Waste that is generated outside of the geographical boundaries of the County and delivered to the Disposal System.

“Independent Haulers” means those waste collection/hauler companies primarily engaged as a principal business in the collection and transportation of municipal solid waste generated in the County of Orange which are not obligated to deliver County Acceptable Waste to the Disposal System pursuant to a franchise, contract, permit or other authorization with a city in the County.

“Initial Term” has the meaning specified in Section 6.1(A) hereof.

“Legal Entitlement” means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Disposal System or the performance of any obligation under this Agreement or the matters covered hereby.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

“Loss-and-Expense” means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, expense, claim, demand, charge, tax, or expense, including all fees and costs.

“Net Import Revenues” has the meaning ascribed thereto in Section 3.6(E).

“Non-Recycled City Acceptable Waste” means all City Acceptable Waste other than Recycled City Acceptable Waste.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or the prime rate established from time to time by the Bank of America, N.A. or its successors and assigns, plus 2%, whichever is lower.

“Participating City” means any city or Sanitary District executing a Disposal Agreement in accordance with Section 3.6(A) hereof and meeting all requisite conditions to the Commencement Date thereof.

“Plan of Adjustment” means the County’s Modified Second Amended Plan of Adjustment, confirmed by the United States Bankruptcy Court Central District of California in that Conformed Order Confirming Modified Second Amended Plan of Adjustment, filed May 17, 1996.

“Posted Disposal Rate” means the per ton tipping fee charged by the County for the disposal of solid waste at the Disposal System by parties which are not entitled to disposal service at the Contract Rate pursuant to this Agreement.

“Prohibited Medical Waste” means any medical or infectious waste prohibited or restricted under Applicable Law from being received by or disposed at the Disposal System.

“Qualified Household Hazardous Waste” means waste materials determined by the Board, the Department of Health Services, the State Water Resources Control Board, or the Air Resources Board to be:

- (1) Of a nature that they must be listed as hazardous in State statutes and regulations;
- (2) Toxic/ignitable/corrosive/reactive; and
- (3) Carcinogenic/mutagenic/teratogenic;

which are discarded from households as opposed to businesses. Qualified Household Hazardous Waste shall not include Unacceptable Waste.

“Recycled City Acceptable Waste” means any otherwise Controllable Waste which is separated from Acceptable Waste by the generator thereof or by processing and which is “recycled” within the meaning of Section 40180 of the Public Resources Code.

“Renewal Term” has the meaning specified in Subsection 6.1(B) hereof.

“Residue” means any material remaining from the processing, by any means and to any extent, of City Acceptable Waste or Recycled City Acceptable Waste; provided, however, that Residue shall not include minimal amounts of material remaining after such processing (which minimal amounts shall in no event exceed 10% of the amount of such City Acceptable Waste or Recycled City Acceptable Waste prior to processing).

“Resource Conservation and Recovery Act” or “RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 *et seq.*, as amended and superseded.

“Restricted Reserves” has the meaning specified in Section 4.5.

“Sanitary Districts” means the sanitary districts in the County formed pursuant to the Sanitary District Act of 1923, codified at Cal. Ann. Health & Safety Code Section 6400 *et seq.*, as amended, supplemented, superseded and replaced from time to time.

“Self-Hauled Waste” means City Acceptable Waste collected and hauled by Self-Haulers.

“Self-Hauler” means any person not engaged commercially in waste haulage who collects and hauls Acceptable Waste generated from residential or business activities conducted by such person.

“Service Coordinator” means the service coordinator for either party designated pursuant to subsection 3.5(C) hereof.

“Service Covenant” means the covenants and agreements of the County set forth in Sections 3.2 and 3.3 hereof.

“Source-Separated Household Hazardous Waste” means Qualified Household Hazardous Waste which has been segregated from Acceptable Waste originating or generated within the geographical jurisdiction of the City at the source or location of generation.

“Source-Separated Household Hazardous Waste Disposal System” means the collection centers, facilities, contracts and other arrangements owned or administered by the County for the receipt, handling and disposal of Source-Separated Household Hazardous Waste.

“State” means the State of California.

“Term” shall mean the Term of this Agreement.

“Ton” means a “short ton” of 2,000 pounds.

“Transfer Station” means any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility to which solid waste collected for the City is delivered for processing before disposal in the Disposal System.

“Unacceptable Waste” means Hazardous Waste; Hazardous Substances; Prohibited Medical Waste; Qualified Household Hazardous Waste separated from Acceptable Waste; explosives, ordnance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine

vessels and steel cable; hot loads; and any waste which the Disposal System is prohibited from receiving under Applicable Law.

“Uncontrollable Circumstance” means any act, event or condition affecting the Disposal System, the County, the City, or any of their Franchise Haulers, contractors or suppliers to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control of and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. Examples of Uncontrollable Circumstances are:

(1) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and

(2) a Change in Law.

“Unincorporated Area” means those portions of the County which are not contained within the jurisdictional boundaries of incorporated cities.

“Unincorporated Area Acceptable Waste” means Acceptable Waste originating from or generated within the Unincorporated Area.

“Unrestricted Reserves” means cash and other reserves of the Disposal System which are not Restricted Reserves.

“Waste Disposal Covenant” means the covenants and agreements of the City set forth in Section 3.1 hereof.

SECTION 1.2 INTERPRETATION. In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the Contract Date.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) No Third Party Beneficiaries. Nothing in this Agreement is intended to confer on haulers or any other person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(F) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(G) Applicable Law. This Agreement shall be governed by and construed in accordance with the Applicable Laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist, unless such invalidity frustrates the underlying primary purpose of the Agreement.

(I) Integration; Preservation of Certain Agreements. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions; provided, however, that this Agreement shall not supersede the following agreements:

1) MOU, dated March 10, 1992, between the City of Brea and the County of Orange regarding the Olinda Alpha Landfill as amended on April 6, 1993 and November 29, 1994;

2) MOU, dated May 11, 1995, between the City of Brea and the County of Orange regarding importation of out-of-County waste to the Olinda Alpha Landfill;

3) Settlement Agreement, dated August 1, 1984, between the City of Irvine and the County of Orange regarding the Bee Canyon Landfill (currently called Frank R. Bowerman Landfill);

4) MOU, dated May 16, 1995, between the City of Irvine and the County of Orange regarding importation of out-of-County waste to the Frank R. Bowerman Landfill;

5) MOU, dated September 12, 1995, and amended November 21, 1995, between the City of San Juan Capistrano and the County of Orange regarding importation of out-of-County waste to the Prima Deshecha Landfill;

6) MOU, dated July 1, 1997, between the City of San Clemente[, the Orange County Flood Control District] and the County of Orange regarding the Prima Deshecha Landfill; and

7) Cooperative Agreement, dated August 15, 2006, between the County and the City of Irvine.

(J) Recitals. The recitals to this Agreement are not intended to bind the parties hereto. In the event of a conflict between the recitals and the operative provisions of this Agreement, the operative provisions shall prevail. The recitals shall not be used to interpret the provisions of the Agreement.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.1 REPRESENTATIONS AND WARRANTIES OF THE CITY. The City represents and warrants that:

(A) Existence. The City is a general law or charter city validly existing under the Constitution and laws of the State.

(B) Due Authorization. The City has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the City.

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE COUNTY. The County represents and warrants that:

(A) Existence. The County is a political subdivision of the State of California validly existing under the Constitution and laws of the State.

(B) Due Authorization. The County has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the County.

ARTICLE III  
DELIVERY AND ACCEPTANCE OF WASTE  
AND PROVISION OF DISPOSAL SERVICE

SECTION 3.1 DELIVERY OF WASTE.

(A) Waste Disposal Covenant. Subject to the occurrence of the Commencement Date and throughout the Term of this Agreement, the City shall exercise all legal and contractual power and authority which it may possess from time to time to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance herewith.

(B) Recycled City Acceptable Waste. The parties hereto acknowledge the responsibility of the City to meet the recycling and landfill diversion goals contained in the Act. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet such responsibilities, or to restrict the right of the residents, businesses or organizations in the City to practice source separation, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Controllable Waste generated in the City and delivered to the Disposal System by or on behalf of the City which may result from any such source separation or recycling program shall cause the City any liability hereunder (other than potential adjustment to the Contract Rate to the extent provided in Article IV hereof) and shall not constitute a breach of this Agreement.

(C) Waste Delivered to Transfer Station. All Residue from any processing of Controllable Waste by materials recovery, composting, recycling or other means, wherever performed, shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Where City Acceptable Waste is processed at a facility which concurrently processes other Acceptable Waste in a manner which produces commingled residue which cannot be traced to a geographic source, generic residues from such facility in Tonnage equal to the residues that would have been produced had City Acceptable Waste only been processed at the facility shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. Any City Acceptable Waste or material derived or segregated therefrom which is held in storage and asserted by the possessor thereof to constitute Recycled City Acceptable Waste awaiting sale or distribution to the secondary materials markets shall constitute Controllable Waste if, when and to the extent that the storage or diversion thereof can be reasonably deemed to constitute an evasion of the Waste Disposal Covenant rather than generally recognized, accepted and prevailing practice in the Southern California materials recovery and recycling industry conducted in accordance with Applicable Law. In order for the owner and/or operator of a transfer station to be entitled to deliver Acceptable Waste from a Participating City to the Disposal System for the Contract Rate as provided in Article IV, such owner and/or operator must execute a direct agreement with the County, acknowledging and agreeing to comply with the obligation of the Participating City to cause the delivery of all Controllable Waste to the Disposal System pursuant to this Agreement. In addition, the County shall be authorized to implement procedures to determine if Acceptable Waste delivered by the owners or operators of Transfer Stations is entitled to utilize the Disposal System for the Contract Rate. Such procedures may include requiring Transfer Stations to certify, under penalty of perjury, the source of any such Acceptable Waste. If necessary, the County may require that, in order to qualify for use of the Disposal System for the Contract Rate, Transfer Stations must deliver Controllable Waste in loads containing only Controllable Waste, and not commingled with Acceptable Waste from entities which are not Participating Cities or Participating Independent Haulers.

(D) Power to Obligate Waste Disposal and Comply with this Agreement. On or before the Commencement Date, (i) any City franchise, contract, lease, or other agreement which is lawfully in effect relating to or affecting Controllable Waste shall provide, or shall have been amended to provide, that the City shall have the right without material restriction on and after the Commencement Date to direct the delivery of all Controllable Waste to a disposal location selected by the City (whether or not such Controllable Waste is delivered to a transfer station as an intermediate step prior to landfill disposal) and otherwise to comply with its obligations under this Agreement with respect to Controllable Waste and Franchise Haulers, and (ii) the City shall designate the Disposal System as the disposal location pursuant to such franchise, contract, lease or other agreement. On and after the Commencement Date and throughout the Term of this Agreement the City (a) shall not enter into any franchise, contract, lease, agreement or obligation, issue any permit, license or approval, or adopt any ordinance, resolution or law which is materially inconsistent with the requirements of the Waste Disposal Covenant, and (b) shall maintain non-exclusive or exclusive franchises or other contractual arrangements over any City Acceptable Waste which, as of the Contract Date, is subject to non-exclusive or exclusive franchise or other contractual arrangements. The City agrees that the County shall be a third party beneficiary of the obligation of Franchise Haulers to deliver Controllable Waste to the Disposal System, and may directly enforce such obligation through any legal means available. The City shall notify in writing each Franchise Hauler of the County's third party beneficiary rights.

(E) Waste Flow Enforcement. (1) The City, in cooperation with the Department, shall establish, implement, carry out and enforce a waste flow enforcement program which is sufficient to assure the delivery of all Controllable Waste to the Disposal System pursuant to and in accordance with the Waste Disposal Covenant for disposal at the times and in the manner provided herein. The waste flow enforcement program shall consist of amending City franchises, permits or authorizations with all Franchise Haulers, to the extent required by this Section and to the extent allowed by law, and shall include in addition, to the extent necessary and appropriate in the circumstances to assure compliance with the Waste Disposal Covenant, but shall not be limited to: (i) licensing or permitting Franchise Haulers, upon the condition of compliance with the Waste Disposal Covenant, (ii) providing for and taking appropriate enforcement action under any such franchise, license, or permit, such as but not limited to the suspension, revocation and termination of collection rights and privileges, the imposition of fines or collection of damages, and the exercise of injunctive relief against non-complying Franchise Haulers and (iii) causing any Transfer Station to which Controllable Waste is delivered for processing to deliver certification, under the penalty of perjury, of the amounts of Controllable Waste received and Residue remaining from processing at such Transfer Station.

(2) The City acknowledges and agrees that in the event of a breach of the Waste Disposal Covenant by the City, the City shall pay the County an amount equal to the amount that the City would have been required to pay to the County had the Waste Disposal Covenant not been breached, which shall be calculated by (x) subtracting the number of tons actually delivered during the month(s) of the breach from the number of tons that were delivered during the same month(s) closest in time when there was no such breach, even if such month(s) closest in time was prior to the Term, and (y) multiplying such amount by the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2). In the event that the County terminates the Waste Disposal Agreement as a result of such breach, the damages due as a result of such termination shall be equal to (aa) the average monthly deliveries by the City for the twelve months prior to the commencement of the breach multiplied by (bb) the Contract Rate in effect at the time of such breach (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2), multiplied by (cc) the number of months that would have remained in the Term of the Agreement had the termination not occurred. The parties recognize that if the City fails to meet its obligations hereunder, the County will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the parties agree that the damages specified above represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

(F) Legal Challenges to Franchise System. The City shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant against any challenge thereto, legal or otherwise (including any lawsuits against the City or the County, whether as plaintiff or defendant), by a

Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The City shall bear the cost and expense of any such Legal Proceeding or other challenge. In the event any such Legal Proceeding relating to the Waste Disposal Covenant or the City's exercise thereof establishes in a final determination that such covenant or exercise thereof is void, unlawful or unenforceable, or if any Franchise Hauler fails to deliver Controllable Waste to the Disposal System in breach of its franchise with the City on the grounds that a judicial determination made by any court or other Applicable Law has rendered its obligation to deliver Controllable Waste to the Disposal System void, unlawful or unenforceable on any legal grounds, with the result that actual waste deliveries to the Disposal System fall below the Cumulative Tonnage Targets, the County shall be entitled to avail itself of the remedies described in Section 4.2(B) hereof.

(G) Franchise Haulers. The City shall compile and provide the Department with the following information concerning all Franchise Haulers: name, address and phone number; identification number; area of collection and transportation; and franchise and permit terms.

(H) Waste Information System. The City shall cooperate with the Department in collecting information and otherwise monitoring Franchise Haulers in order to assure compliance with this Agreement. Such information may include, to the extent practicable, data pertaining to Controllable Waste collected, transported, stored, processed and disposed of, Recycled City Acceptable Waste collected, transported, stored, processed and marketed or disposed of, Franchise Haulers' franchise, permit or license terms, collection areas, transportation routes and compliance with Applicable Law; and all other information which may reasonably be required by the Department in connection with this Agreement. The City agrees to include in any revised franchise, contract, license or permit or other authorization granted to Franchise Haulers an obligation of the Franchise Hauler to provide to the County information relating to the Controllable Waste collected by such Franchise Hauler, including origins from which such Controllable Waste was collected, tonnage by type of load (residential, commercial, roll-off box), customer service levels, tonnage delivered by transfer station or material recovery facility utilized, and other related information.

(I) City Actions Affecting County. The City agrees to carry out and fulfill its responsibilities under this Agreement and Applicable Law so as to permit full and timely compliance by the County with its covenants and agreements with the State. In particular, the City agrees not to conduct, authorize or permit any disposal services for Controllable Waste to be provided in competition with the Disposal Services provided by the County hereunder, and not to take or omit to take any action with respect to Controllable Waste or its collection, transportation, transfer, storage, treatment or disposal that may materially and adversely affect the County's ability to achieve such timely compliance. Notwithstanding the foregoing, the City shall not be required to deny any permit or license or refuse to grant any approval while exercising its police powers.

(J) No Right of Waste Substitution. Nothing in this Agreement shall authorize or entitle the City to deliver or cause the delivery to the Disposal System of Acceptable Waste originating from or generated outside the jurisdiction of the City, nor obligate the County to receive or dispose of any such Acceptable Waste. The City shall not assign in whole or in part its right to deliver or cause to be delivered Controllable Waste to the County hereunder, and shall not permit any Acceptable Waste originating from or generated outside the jurisdiction of the City to be substituted for Controllable Waste for any purpose hereunder.

(K) Annexations and Restructuring. It is the intention of the parties that this Agreement and the obligations and rights of the City hereunder, including particularly the Waste Disposal Covenant and the Contract Rate, shall, to the extent permitted by Applicable Law, extend to any territory annexed by the City (or any territory with respect to which the City assumes, after March 30, 2008, solid waste management responsibility from a Sanitary District or other public entity) and shall bind any successor or restructured Governmental Body which shall assume or succeed to the rights of the City under Applicable Law.

### SECTION 3.2 PROVISION OF DISPOSAL SERVICES BY THE COUNTY

(A) Service Covenant. Commencing on the Commencement Date, the County shall provide or cause the provision of the service of (1) receiving and disposing of all Controllable Waste at the Disposal System (or such other facilities, including transfer stations, as the County may determine to use), (2) disposing in accordance with subsection 3.2(C) hereof of Controllable Waste which, at any time and for any reason, is in excess

of the disposal capacity of the Disposal System, and (3) in accordance with subsection 3.3(C) hereof, disposing of Unacceptable Waste inadvertently accepted at the Disposal System. The County, to the maximum extent permitted under Applicable Law, shall use its best efforts to keep the Olinda Alpha, Prima Deshecha and Frank R. Bowerman Landfills open for the receipt of waste for disposal or transfer of Controllable Waste pursuant to this Agreement. The County shall do and perform all acts and things which may be necessary or desirable in connection with its covenants in this subsection, including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management, financing and contract work related thereto or undertaken in connection therewith. The County shall exercise all reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under this Agreement, Applicable Law and prudent solid waste management practice and environmental considerations.

(B) Particular Facilities. The Department and the City shall consult and cooperate in determining whether and to what extent from time to time other landfills other than that primarily used by the City shall be utilized to receive Controllable Waste. The Department shall immediately advise the City by telephone of any situation, event or circumstance which results in the partial or complete inability of the County to receive Controllable Waste at any particular landfill within the Disposal System, its effect on the County's ability to perform its obligations hereunder, and the County's best estimate of the probable duration. The Department shall confirm such advice in writing within 24 hours of the occurrence of any such inability. The County shall use its best efforts to resume normal operation of the landfill primarily used by the City as soon as possible. In the event of a temporary material increase in average daily deliveries of Controllable Waste from the City which the County reasonably believes could result in the permitted daily disposal capacity limit to be exceeded with respect to a particular landfill within the Disposal System, the County shall have the right to redirect the increased Controllable Waste to another landfill within the Disposal System for the duration of the increase in average daily deliveries; provided, however, that in such circumstances the County shall utilize reasonable efforts to first redirect waste which is not Controllable Waste.

(C) Compliance with Service Covenant Not Excused for any Reason. Commencing on the Commencement Date, the obligations of the County to duly observe and comply with the Service Covenant shall apply continuously and without interruption for the Term of this Agreement. In the event that any Change in Law or other Uncontrollable Circumstance impairs or precludes compliance with the Service Covenant by the means or methods then being employed by the County, the County shall implement alternative or substitute means and methods to enable it to satisfy the terms and conditions of the Service Covenant. In the event that a Change in Law precludes the County from complying with such covenants with the means or methods then being employed and from utilizing any alternate or substitute means or methods of compliance, the County shall continuously use all reasonable efforts to effectuate executive, legislative or judicial change in or relief from the applicability of such law so as to enable the County lawfully to resume compliance with such covenants as soon as possible following the Change in Law.

### SECTION 3.3 COUNTY RIGHT TO REFUSE WASTE.

(A) Right of Refusal. Notwithstanding any other provision hereof, the County may refuse delivery of:

- (1) Hazardous Waste;
- (2) Controllable Waste delivered at hours other than those provided in Section 3.5 hereof;
- (3) Waste that does not constitute Acceptable Waste;
- (4) Waste that is delivered by any party which has not executed a Waste Disposal Agreement; and
- (5) Controllable Waste consisting primarily of construction and demolition debris or inerts which may cause a particular facility's daily tonnage limit to be exceeded.

(B) Identification of Unacceptable Waste. The Department shall have the right (but not the duty or the obligation) to inspect the vehicles of all Franchise Haulers delivering material to the Disposal System, and may require that the Franchise Hauler remove any Unacceptable Waste from such vehicle before it is unloaded. If the Department determines that it is impractical to separate Controllable Waste from Unacceptable Waste in any vehicle, or if the Franchise Hauler delivering such waste is unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the Department may reject the entire vehicle, and the City shall forthwith remove or cause the removal of the entire delivery from the Disposal System. The Department may take all reasonable measures to prevent waste from being blown or scattered before and during unloading. The City shall cause the Franchise Haulers to observe and comply with Applicable Law, the operating rules and regulations of the Department, and the provisions of this Agreement prohibiting the delivery of Unacceptable Waste to the Disposal System.

(C) Hazardous Waste and Hazardous Substances. The parties acknowledge that the Disposal System has not been designed or permitted, and is not intended to be used in any manner or to any extent, for the handling, transportation, storage or disposal of Hazardous Waste or Hazardous Substances. Neither the County nor the City shall countenance or knowingly permit the delivery of Hazardous Waste or Hazardous Substances to the Disposal System.

(D) Disposal of Unacceptable Waste and Hazardous Waste. If Unacceptable Waste or Hazardous Waste is discovered in a vehicle at any landfill within the Disposal System, the driver of the vehicle will not be permitted to discharge the load. If a vehicle is observed unloading Unacceptable Waste or Hazardous Waste in the tipping area of a landfill within the Disposal System Department personnel will use reasonable efforts to assure that such material has been characterized, properly secured and its disposition resolved. The return or reloading onto the delivery vehicle of any Hazardous Waste, Prohibited Medical Waste or other waste requiring handling or transportation shall be conducted in accordance with Applicable Law. Whenever Hazardous Waste is detected at any landfill within the Disposal System, the Department shall take immediate action in accordance with Applicable Law.

(E) Source-Separated Household Hazardous Waste. The County shall maintain, as part of the Disposal System, a Source-Separated Household Hazardous Waste Disposal System for the disposal of Source-Separated Household Hazardous Waste. The disposal service provided by such system shall constitute part of the Disposal Services, and shall be available to Participating Cities as part of the Contract Rate. The County may impose additional fees and charges for services relating to Source-Separated Household Hazardous Waste with respect to cities which are not parties to a Disposal Agreement. The County may provide for the expansion, contraction or modification of the Source-Separated Household Hazardous Waste Disposal System and its services to the extent necessary to ensure the Disposal System's viability; provided, however, if the County chooses to reduce services, the County shall nonetheless continue to expend funds for the Source-Separated Household Hazardous Waste Disposal System each year during the term of this Agreement in an amount at least equal to the amount of funds expended for the Source-Separated Household Hazardous Waste Disposal System during fiscal year 2006-07 as adjusted by changes in the Producer Price Index.

SECTION 3.4 UNINCORPORATED AREA ACCEPTABLE WASTE. Commencing on the Commencement Date, the County in accordance with Applicable Law shall provide or cause to be provided the service of disposing of non-recycled Acceptable Waste originating or generated within the Unincorporated Area and, with respect to such waste, shall comply with the Waste Disposal Covenant as if the County constituted a City subject to the Waste Disposal Covenant hereunder. Rates charged by the County for the disposal of each class of non-recycled Acceptable Waste generated in the Unincorporated Area shall be the same as the Contract Fee charged for the disposal of each class of Controllable Waste. The County shall use its best efforts to preserve, protect and defend its right to exercise and comply with the Waste Disposal Covenant (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area) against any challenge thereto, legal or otherwise, by a Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The County shall bear the cost and expense of any such Legal Proceeding or other challenge (with respect to non-recycled Acceptable Waste generated in the Unincorporated Area).

SECTION 3.5 MISCELLANEOUS OPERATIONAL MATTERS.

(A) Operating Hours. The County shall keep the Disposal System open for the receiving of Controllable Waste during such regular operating hours as may be established by the Department in the operating rules and regulations applicable to the Disposal System. The County shall utilize best efforts to maintain substantially similar hours, as were in effect on January 2, 2009, for the receipt of waste through the term of this Agreement (subject to Applicable Law).

(B) Scales and Weighing. The Department shall operate and maintain permanent scales at the Disposal System. The Department shall weigh all vehicles delivering waste by or on behalf of the City (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery.

(C) Service Coordinator. The County and the City each shall designate in writing thirty days prior to the expected Commencement Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (each a "Service Coordinator"). Either party may designate a successor or substitute Service Coordinator at any time by notice to the other party.

(D) Review of Records. Each party may review the other party's books and records with respect to matters relevant to the performance by either party under this Agreement or otherwise related to the operation of the Disposal System to the extent allowed under the California Public Records Act (interpreted as if the parties to this Agreement were natural persons for purposes of the Public Records Act).

SECTION 3.6 OTHER USERS OF THE DISPOSAL SYSTEM.

(A) On or Before [\_\_\_\_\_, 2009]. On or before [120 DAYS AFTER BOARD APPROVAL], the County shall have the right to enter into waste disposal agreements with Orange County entities with respect to Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the County, including other cities in the County, Sanitary Districts, Transfer Stations and Independent Haulers, which waste disposal agreements shall have terms and provisions substantially identical to the terms and provisions of this Agreement; provided, however, that in no event shall such agreements have terms and provisions more favorable than the terms and provisions of this Agreement (including but not limited to the Contract Rate and availability of disposal capacity).

(B) After [\_\_\_\_\_, 2009]. After [120 DAYS AFTER BOARD APPROVAL], the County shall have the right to enter into waste disposal agreements with Orange County entities, including any city, Sanitary District, Transfer Station and Independent Hauler, or otherwise accept Acceptable Waste from such parties, but only within the limitations contained in this Section. Any such agreement or waste acceptance agreement must provide that the party delivering waste shall pay a Posted Disposal Rate at least 10% higher than the Contract Rate unless the County determines it is in the best interest of the Disposal System to establish a Posted Disposal Rate less than 10% higher than the Contract Rate. In no event shall the Posted Disposal Rate be equal to or less than the Contract Rate. In addition, the County shall reserve the right in any such waste disposal agreement at any time, to the extent permitted by Applicable Law, to refuse to receive and dispose of Acceptable Waste from any city, County Sanitary District, Transfer Station and Independent Hauler if and to the extent that such receipt and disposal may materially and adversely affect the ability of the County to comply with its obligations to the Participating Cities under the Disposal Agreements to which each is a party.

(C) Receipt of Imported Acceptable Waste on a Contract Basis. The County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the Participating Cities and to generate Net Import Revenues. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable Disposal Agreements throughout the Term thereof. The term of any such agreement for the disposal of Imported Acceptable Waste shall end by the later to occur of (i) December 31, 2015 or (ii) the date on which County general purpose revenues are no longer expended to pay debt service on the Orange County Public

Financing Authority Lease Revenue Refunding Bonds Series 2005, but in no event later than the last day of the fiscal year commencing July 1, 2015.

(D) Self Haulers. The City and the County acknowledge that Self-Haulers shall be entitled to deliver Self-Hauled Waste to the Disposal System, on a non-contract basis, at the Posted Disposal Rate. Such Self-Haulers shall not be entitled to dispose of Acceptable Waste for the Contract Rate.

(E) Application and Use of Revenues From Other Users. All revenues received by the County from the disposal of County Acceptable Waste by the Disposal System, and all revenues received by the County from the disposal of Imported Acceptable Waste by the Disposal System, shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Disposal System. Pursuant to the County's Plan of Adjustment, the County is entitled to receive net revenues (after payment of all costs attributable to the acceptance of such Imported Acceptable Waste at the Disposal System) ("Net Import Revenues") from the disposal of Imported Acceptable Waste by the Disposal System, and such Net Import Revenues may be used for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment. Costs attributable to the disposal of Imported Acceptable Waste include deposits to the Environmental Fund, deposits to closure and postclosure reserves, City host fees (if applicable), incremental operating costs (such as manpower expenditures, equipment, services and supplies expenditures), state surcharges, and a pro rata share of capital project costs. The parties acknowledge that their intention in determining to allow the importation of Imported Acceptable Waste for disposal by the Disposal System is to stabilize the Contract Rate at rates below those which would otherwise prevail in the absence of such importation.

#### SECTION 3.7 COUNTY PROVISION OF WASTE DIVERSION SERVICES.

(A) County-Wide Recycling Services. This Agreement does not require the County to provide for any source reduction, materials recovery, recycling, composting, or other waste diversion services by the County nor any payment therefor by the City, by Franchise Haulers or by ratepayers; provided, however, any County-Wide Recycling Services may be funded through the County OC Waste & Recycling Enterprise Fund. Any such recycling services may be expanded, contracted or modified by the County at any time in its sole discretion.

(B) Separate City-County Diversion Service Agreements. Nothing in this Agreement is intended to limit the right of the County to enter into a separate agreement with the City or any other person to provide source reduction, materials recovery, recycling, composting or other waste diversion services. Any such program conducted by the County, whether in participation with the City, any other of the Participating Cities, other Cities, Sanitary Districts, Transfer Stations, Independent Haulers, Unincorporated Area or non-County entity, shall be operated, managed and accounted for as a program separate and distinct from the Disposal Services program contemplated by the Disposal Agreements and shall not be funded through the general revenues of the Disposal System.

### ARTICLE IV CONTRACT RATE

SECTION 4.1 CHARGING AND SECURING PAYMENT OF CONTRACT RATE. The City acknowledges that the County shall have the right to charge and collect a Contract Rate for the acceptance and disposal of Controllable Waste delivered to the System by any Franchise Hauler. The Contract Rate shall be calculated and established, and may be modified, as provided in Section 4.2 hereof. In addition, the City acknowledges that the County shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Contract Rates.

#### SECTION 4.2 CONTRACT RATE.

(A) Establishment of Contract Rate. The Contract Rate payable by each Franchise Hauler shall be (x) \$22.00 per ton from the Commencement Date through June 30, 2010, and (y) \$29.95 per ton on and after July 1, 2010, in both cases contingent on the delivery to the Disposal System of an amount of Acceptable Waste at

least equal to the Cumulative Tonnage Targets identified in Appendix 2, and subject to adjustment necessary to reflect the circumstances set forth in this Section 4.2:

(i) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Uncontrollable Circumstances, other than Changes in Law;

(ii) costs incurred by the County (in excess of available insurance proceeds and amounts available in the Environmental Fund for such purposes) remediating environmental conditions at the Disposal System or inactive or closed disposal sites in the County, which, if uncorrected, could give rise to potential claims under CERCLA or related federal or state statutes, including costs incurred providing indemnification to any Participating City pursuant to subsection 7.3; or

(iii) tonnage shortfalls to the extent permitted by Sections 4.2(B);

(iv) average annual inflation prior to July 1, 2010 in excess of the levels set forth in Section 4.2(H) and escalation pursuant to Section 4.2(F) ;

(v) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Changes in Law; or

(vi) Capital Costs in excess of the Capital Costs at any point in time during the term hereof exceeding the Cumulative Capital Costs set forth in Appendix 3.

Prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (i), (ii) or (iii) above, the County shall utilize the following remedies in the following order of priority:

(x) reduce the costs of operating the Disposal System to the extent practicable; and

(y) utilize Unrestricted Reserves to pay costs of the Disposal System.

The County will not be required to utilize such remedies prior to adjusting the Contract Rate as a result of any of the circumstances described in clauses (iv), (v) or (vi) above.

Any adjustments to the Contract Rate permitted by this Section shall be calculated by the County to reflect the actual costs or expenses of addressing the circumstance or circumstances pursuant to which the adjustment is authorized. The County agrees that it will evaluate the feasibility of long term financing for significant capital costs where appropriate.

(B) County Acceptable Waste Shortfall. In the event that the actual amount of County Acceptable Waste delivered to the Disposal System at the end of any Contract Year is less than the Cumulative Tonnage Target for such Contract Year for County Acceptable Waste, as specified in Appendix 2, the County shall utilize the following options, in the following order of priority, in order to remedy any adverse effects of such tonnage shortfall:

(i) reduce the costs of operating the Disposal System to the extent practicable;

(ii) utilize Restricted Reserves described in clause (iii) of Section 4.5 to pay costs of the Disposal System;

(iii) utilize Unrestricted Reserves to pay costs of the Disposal System; and

(iv) adjust the Contract Rate.

In the event that implementation of the steps described above does not result in sufficient revenues to satisfactorily address the shortfall in tonnage, the County shall have the right to terminate the Agreement on 60 days written

notice to the City. In addition, in the event that actual deliveries to the Disposal System exceed the Cumulative Tonnage Target as of the end of any Contract Year, the City acknowledges the County shall have the right to establish reserves intended to reflect the potential for lower than expected annual waste deliveries in subsequent years, and that any such reserves shall constitute "Restricted Reserves".

(C) [RESERVED]

(D) Interim Use of Remedies. In the event that, during any Contract Year, waste deliveries to the Disposal System are 25% or more below delivery projections for such Contract Year with the result that the County determines it is unlikely that the Cumulative Tonnage Target will be achieved as of the end of such Contract Year, the County may utilize the remedies described in Section 4.2(B) prior to the end of such Contract Year; provided, however, that if at the end of such Contract Year, the Cumulative Tonnage Target is actually met, the County shall reimburse any adjustments to the Contract Rate made pursuant to this Section to Participating Cities. Such reimbursement may be given as a credit or adjustment to the Contract Rate for future deliveries, rather than a lump sum payment.

(E) Special Charges. Notwithstanding Section 4.2(A), the County shall have the right to impose special charges for the receipt of hard to handle materials, such as bulky materials, construction and demolition debris, tree stumps and sludge. Such special charges shall be calculated to reflect the reasonable incremental costs to the County of accepting such hard to handle materials. In addition, in the event that the Board of Supervisors of the County makes a determination to implement a facility (including but not limited to a transfer station, landfill, conversion technology facility, or a materials recovery or processing facility), which facility would be intended to provide for disposal alternatives after the closure of one or more of the landfills currently operating within the Disposal System, the County may impose an additional charge of \$0.50 per ton of Acceptable Waste in order to pay the costs of the study, development, planning, construction and/or operation of such facility.

Adjustments pursuant to this Section 4.2(E) shall not require compliance with the provisions of Section 4.2(I).

(F) Escalation. The Contract Rate shall be adjusted each July 1, beginning July 1, 2011. The change will be equal to the positive percentage change in the Consumer Price Index – All Urban Consumers, U.S. city average, All items, Not Seasonally Adjusted, Series ID CUUR0000SA0 ("CPI") as measured from the October 21 months prior to the rate adjustment to the October immediately preceding the rate adjustment. For example: The July 1, 2011 rate adjustment shall be based upon the index change from October 2009, to October 2010, referred to as year 1 and year 2 respectively in the following example .

Formula to calculate percentage change in the Contract Rate:

Step 1:

$$\left[ \frac{\text{October Year 2 CPI}}{\text{October Year 1 CPI}} \right] - 1 = \% \text{ increase in Contract Rate}$$

Step 2: Current Contract Rate x (1+ % increase in Contract Rate) = Contract Rate as of July 1 Year 2

On each April 1, commencing April 1, 2011, the County shall provide the City with notice of the adjustment to the Contract Rate to be effective the following July 1. Such notice shall contain the calculation of the adjustment set forth above. The County will calculate the new Contract Rate each year.

In the event that the change in the CPI is negative, no rate adjustment will be made for that year. No adjustment under this Section 4.2(F) will take place until the October CPI index surpasses the index level as of the October immediately preceding the last annual rate adjustment pursuant to this Section 4.1(F), which will be considered "year 1" in calculating the change in the Contract Rate.

For example, if the CPI is measured as follows: October 2009 = 205, October 2010 = 204, October 2011 = 201, October 2012 = 208, then there would be no adjustment in July 2011, or July 2012, and an adjustment equal to the change from 205 to 208 would be implemented on July 1, 2013.

Adjustments pursuant to this Section 4.2(F) shall not require compliance with the provisions of Section 4.2(I).

(G) Adjustment Resulting from Increased Fees. In addition to the other adjustments specified herein, the Contract Rate shall be adjusted to reflect the imposition of new fees or increase in existing fees relating to the disposal of Controllable Waste imposed by state, federal or other agencies (i.e., the State's Integrated Waste Management fee, which is currently \$1.40 per ton). The adjustment shall be equal to the amount of any new or increased fee, and the adjustment shall take effect so as to coincide with the imposition of the new or increased fee. The County shall provide notice of any increase pursuant to this Section 4.2(G) as soon as practicable after becoming aware of the imposition of any fees described above.

Adjustments pursuant to this Section 4.2(G) shall not require compliance with the provisions of Section 4.2(I).

(H) Calculation of Cumulative Inflation Rate. For purposes of Section 4.2(A)(iv) for adjustments prior to July 1, 2011, the inflation shall be calculated as the change in the CPI between July of the year of calculation and July 1, 2008. Inflation shall be deemed to exceed the levels set forth below if the ratio between the CPI for July for the year of calculation (calculated in accordance with the formula below) and July 2008 exceeds the ratio corresponding to such year of calculation on the table below. The ratio shall be calculated in accordance with the following formula:

(July CPI of calculation year / CPI for July 2008)

| <i>Year of Calculation</i> | <i>Ratio</i> |
|----------------------------|--------------|
| July 1, 2008               | 1.0000       |
| July 1, 2009               | 1.0356       |
| July 1, 2010               | 1.0723       |

In the event the CPI is no longer published during the term of this Agreement, such other index identified by the Bureau of Labor Statistics or otherwise generally accepted as a replacement for CPI shall be used for purposes of this Agreement. In the event of an adjustment to the Contract Rate pursuant to this section 4.2(H), such adjustment shall be applied to the Contract Rate effective until June 30, 2010, and the Contract Rate effective July 1, 2010.

Adjustments pursuant to this Section 4.2(H) shall not require compliance with the provisions of Section 4.2(I).

(I) Procedure for Rate Adjustments. In the event the County determines that it is entitled to an adjustment of the Contract Rate pursuant to Section 4.2(A) (other than 4.2(A)(iv)) or Section 4.2(B), it shall utilize the procedures described in this Section 4.2(I). The County shall be required to provide the City with at least 90 days prior written notice of the adjustment, which notice shall identify the specific event(s) or circumstances which require the adjustment. The notice shall also specify the earliest date on which the County Board of Supervisors shall consider the proposed adjustment. At least 45 days prior to such meeting of the Board of Supervisors, the County shall provide the City with a report which shall contain the following information: a description of the specific event(s) or circumstances which require the adjustment; a description (including cost estimates) of any activities (which may include, but not be limited to capital improvements to the Disposal System) required in order to remedy such event or circumstance; certification by the County that it has implemented the remedies described in Section 4.2(A) or (B) prior to requiring the rate adjustment; and a description of the methodology used by the County to calculate the adjustment to the Contract Rate (hereinafter the "County Report"). In the event the City disputes the adjustment, it shall provide the County with a written description of the reason for the dispute at least 10 days prior to the meeting of the Board of Supervisors identified in the initial notice of the County (hereinafter the "City Report"). The City Report shall be provided to the Board of Supervisors for

consideration at such meeting in connection with the proposed rate adjustment. At any time from and after the date that the County provides the City with the County Report, upon the request of either party, the City and County shall meet and confer in good faith to resolve any dispute that may arise regarding the proposed adjustment to the Contract Rate. In any such meeting, the County shall be represented by the Director of the Department or his or her designee. In the event the Board of Supervisors approves all or a portion of the proposed rate adjustment, such rate adjustment shall become effective on the date identified in the initial notice sent by the County regardless of whether or not the procedures in Section 4.2(J) are utilized, but subject to potential reimbursement pursuant to clause (11) of Section 4.2(J).

(J) Procedure for Expedited Judicial Review of Contested Rate Adjustment. In the event that, within 30 days after the effective date of any Contract Rate adjustment made pursuant to Section 4.2(I), Participating Cities which, in the aggregate, accounted for more than 50% of the County Acceptable Waste delivered to the County System in the twelve months preceding the Contract Rate adjustment, provide notice to the County of their election to utilize the procedures described in this Section 4.2(J), then the provisions of this Section 4.2(J) shall be utilized by such Participating Cities and the County to resolve the dispute over the Contract Rate Adjustment. In the event that Participating Cities which have delivered the amount of waste contemplated in the preceding sentence do not provide notice to the County of such election, the County shall have no obligation to participate in or cooperate in the implementation of the procedures described below in this Section 4.2(J).

(1) In order to pursue the expedited judicial determination described in this Section (the "Expedited Rate Determination"), the Participating Cities which have made the election described in the paragraph above (the "Challenging Cities") must commence a civil action for breach of contract (the "Action") in the Orange County Superior Court within 45 days of the date on which the Board of Supervisors approves the challenged adjustment to the Contract Rate.

(2) Within two (2) days of filing the Action, the Challenging Cities shall personally serve on the County Counsel both the summons and complaint, and a stipulation and request for the entering of an order incorporating all of the procedural provisions relating to the Expedited Rate Determination as set forth in this Section 4.2(J) (such stipulation and request for order is hereinafter referred to as the "Expedited Rate Determination Stipulation"). The Expedited Rate Determination Stipulation shall be signed by each of the Challenging Cities.

(3) Within fifteen (15) days of the date of service upon the County of the summons and complaint, and Expedited Rate Determination Stipulation, the County Counsel shall execute the Expedited Rate Determination Stipulation and personally serve upon the Challenging Cities through their counsel of record the Expedited Rate Determination Stipulation and its answer to the complaint in the Action. The Stipulation shall also include a waiver by each of the parties of their right to a jury trial of the issues raised in the Action. The City and the County mutually agree that the duty to execute the Expedited Rate Determination Stipulation and comply with the procedures set forth for Expedited Rate Determination in this Section 4.2(J) shall be, and are hereby deemed to be, ministerial duties which the law specifically enjoins upon each of them, and shall be subject to enforcement by the parties herein pursuant to Code of Civil Procedure Section 1085, *et seq.*, or by means of a complaint for specific performance.

(4) Within three (3) days of the date of service by the County upon the Challenging Cities of the fully signed Expedited Rate Determination Stipulation, the County and the Challenging Cities shall jointly make *ex parte* application to the Orange County Superior Court in the Action for the issuance of the order contained in the Expedited Rate Determination Stipulation. At such *ex parte* application, the County and the Challenging Cities shall also seek to confirm with the Orange County Superior Court the briefing schedule, and request a hearing date in accordance with the procedures set forth in this Section 4.2(J).

(5) Within ten (10) days of the date of service by the County upon the Challenging Cities of the answer in the Expedited Rate Determination, the Challenging Cities shall file with the court and personally serve upon the County the Challenging Cities' opening brief and the Record in the Expedited Rate Determination. The opening brief shall not exceed 15 pages in length. The Record shall consist of, and be limited to, the record of the proceedings before the Board of Supervisors with respect to the adjustment of the Contract Rate, including but not limited to the County Report and the City Report prepared by each or any of the Challenging Cities pursuant to Section 4.2(I), any materials filed or lodged with the Board of Supervisors and the Orange County

Waste Commission, the transcript of the proceedings of the Board of Supervisors meeting and the Orange County Waste Commission, the minutes of the Board of Supervisors and the Orange County Waste Commission meeting, and the resolution and/or other documentation evidencing action by the Board of Supervisors and the Orange County Waste Commission to adjust the Contract Rate pursuant to Section 4.2(A) or (B). The record shall also include the most recent reports prepared pursuant to Sections 4.6 and 4.7. The Expedited Rate Determination shall be decided solely on the evidence in the Record, and no extrinsic evidence shall be submitted to or considered by the court.

(6) Within ten (10) days of service by the Challenging Cities of their opening brief and the Record, the County shall file and personally serve upon the Challenging Cities the County's opposition brief. The opposition brief shall not exceed 15 pages in length.

(7) Within five (5) days of service by the County upon the Challenging Cities of the opposition brief, the Challenging Cities may file and personally serve upon the County a rebuttal brief, which shall not exceed 10 pages in length.

(8) The trial of the Expedited Rate Determination shall be conducted as a hearing which shall be conducted at the date set by the court in the *ex parte* hearing conducted pursuant to Section 4.2(J)(4), or such other date and time ordered by the court. If the court requests the parties to prepare supplemental briefs in response to any question or issue raised by the court, the parties may do so.

(9) The standard of review for the Expedited Rate Determination shall be the preponderance of the evidence based upon the Record. The burden of proof shall be borne by the Challenging Cities, and the burden of proof shall be the same as with respect to a plaintiff in a damages action for breach of contract. Both parties have participated in the drafting of this Agreement. Accordingly, nothing set forth in this Agreement shall be interpreted or construed for or against either of the parties as a consequence of their participation in the drafting of this Agreement.

(10) The court shall issue its written statement of decision and enter judgment within thirty (30) days of the date of the hearing in the Expedited Rate Determination.

(11) If the court determines that any portion of the County's adjusted Contract Rate which is the subject of the Expedited Rate Determination was improperly imposed, the County shall, within 30 days of the date of the statement of decision, reimburse to the City the amount improperly imposed, together with interest calculated at the highest percentage rate that does not constitute usury under California laws. Such reimbursement may be made in the form of a reduction in the Contract Rate for a future period (not to exceed twelve months) reasonably calculated to provide full reimbursement of the amounts described above.

(12) If for any reason the court does not sign the order contained in the Expedited Rate Determination Stipulation, the City shall, within 30 days of the court's denial of such requested order, file with the court and personally serve upon the County a motion for summary judgment and/or motion for judgment on the pleadings, in accordance with Code of Civil Procedure Section 437(c) and 438. By executing this Agreement, the parties hereby stipulate that, in the event that the Challenging Cities file such summary judgment motion and/or motion for judgment on the pleadings, the Record shall be deemed to have been incorporated into the complaint and answer filed by the Challenging Cities and the County, and no evidence outside of the Record is relevant or material to the dispute raised in the Expedited Rate Determination. The briefing schedule and hearing on such motion for summary judgment and/or motion for judgment on the pleadings shall be in accordance with Code of Civil Procedure Section 437(c). The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (12).

(13) In the event that the court both does not sign the order contained in the Expedited Rate Determination Stipulation and either does not hear or does not issue a ruling on the merits on the motion for summary judgment and/or judgment on the pleadings which is dispositive of the issues, claims and causes of action in the complaint filed by the Challenging Cities, the County and the Challenging Cities shall, within twenty days following the issuance of the Court's order or decision not to honor the parties' stipulation or not to hear the parties' motion for summary judgment, make application to the Presiding Judge of the Orange County

Superior Court for an expedited hearing or trial date. The Challenging Cities and the County shall be bound by all of the requirements and restrictions set forth in Section 4.2(J) that are not in conflict with this paragraph (13). In this regard, and without limiting the foregoing, the only evidence to be presented at the hearing or trial shall be the Record, no testimony shall be presented at the hearing or trial; and both the County and the Challenging Cities waive all rights to a jury trial, to any reconsideration of the decision of the court, to a new trial after the court renders a decision, and to any appeal or review of the decision of the court.

#### SECTION 4.3 RESPONSIBILITY FOR PAYMENT OF THE CONTRACT RATE.

(A) Payment by City. In the event and to the extent (1) the City uses municipal collection forces directly for the haulage of Controllable Waste to the Disposal System or (2) the City uses non-municipal Franchise Haulers for collection but nonetheless elects to pay the Contract Rate from City revenues, the City, as its own Franchise Hauler, shall have direct responsibility for payment of the Contract Rate, and shall take all such budgetary, appropriation and other action as may be necessary to provide for the timely payment of the Contract Rate. Such action may include, depending upon the means authorized by the City to provide for such payment, the levy and collection of general or special taxes, the imposition of benefit assessments, or the collection of user fees, generator charges or other similar impositions for municipal solid waste disposal. The City shall use best efforts in accordance with Applicable Law to levy and impose all such taxes, assessments, fees or charges, and will take all steps, actions and proceedings for the enforcement, collection and payment of all such amounts which shall become delinquent, to the full extent permitted by Applicable Law. To the extent provided in Section 7.5 hereof, the obligation of the City for such Contract Rates shall be limited to amounts in the City's Solid Waste Enterprise Fund. From the Commencement Date to the date of expiration or termination of this Agreement, the obligation to the City to pay the Contract Rate, to the extent the City rather than Franchise Haulers is responsible directly for payment and provided that the Service Covenant has been complied with, shall be absolute and unconditional and shall not be subject to delay or diminution by reason of set-off, abatement, counterclaim, existence of a dispute or otherwise.

(B) Payment by Franchise Haulers. With respect to Controllable Waste delivered by Franchise Haulers other than City municipal collection forces, the obligation to pay the Contract Rate shall rest with such Franchise Haulers and not with the City and, unless the City has agreed with the County to be responsible for Franchise Hauler payments, the City shall not be financially responsible for any delay or failure by such Franchise Hauler to pay the Contract Rate or any portion thereof when due. In the event of any such failure, the County and the City shall cooperate with each other and use their best efforts to obtain timely payment. Such efforts by the County may include, as appropriate, requiring cash payments for disposal rights from such Franchise Hauler and bringing a legal proceeding for payment and damages. Such efforts by the City may include, as appropriate, legal proceedings to suspend, revoke or terminate the Franchise Hauler's franchise, permit or license rights.

(C) Disputes. If the City or the Franchise Hauler disputes any amount billed by the County in any Billing Statement, the City or the Franchise Hauler shall nonetheless pay the billed amount and shall provide the County with written objection within 30 days of the receipt of such Billing Statement indicating the amount that is being disputed and providing all reasons then known to the City or the Franchise Hauler for any objection to or disagreement with such amount. If the City or the Franchise Hauler and the County are not able to resolve such dispute within 30 days after the City's or the Franchise Hauler's objection, either party may pursue appropriate legal remedies.

SECTION 4.4 BILLING OF THE CONTRACT RATE. The County shall continue to bill Contract Rates after the Commencement Date, in the same manner as it has customarily billed tipping fees. Subject to the other provisions of this Agreement, the County shall have the right to modify or amend such manner of billing on reasonable notice to affected parties.

SECTION 4.5 RESTRICTED RESERVES. For purposes of this Agreement, "Restricted Reserves" means cash and other reserves of the Disposal System which are restricted to specific uses or are otherwise being reserved by the County to meet its obligations hereunder throughout the term of the Agreement with respect to the Disposal System pursuant to any Applicable Law, contract, adopted budget, budgetary policy of the County with respect to the Disposal System, or other arrangement. Such cash and other reserves are not required to be deposited in separate accounts or funds in order to constitute "Restricted Reserves" hereunder, and may be commingled with

Unrestricted Reserves or other funds of the County attributable to the Disposal System. "Restricted Reserves" shall include, but not be limited to, the following:

- (i) reserves for closure of components of the Disposal System to the extent required by Applicable Law;
- (ii) amounts reserved by the County for funding of post closure maintenance and monitoring with respect to components of the Disposal System;
- (iii) reserves established to protect the Disposal System against the adverse financial impact of potential decreases in waste deliveries pursuant to Section 4.2(B);
- (iv) amounts reserved to pay the costs of capital improvements with respect to the Disposal System;
- (v) amounts funded from revenues during the early years of the term of the Agreement reserved to enable the County to provide disposal services for the Contract Rate during the later years of the Agreement;
- (vi) amounts temporarily held by the County prior to payment to the State or other Governmental Bodies pursuant to Applicable Law (including any fees or charges payable to the State Integrated Waste Management Board);
- (vii) reserves required to meet bond covenants pursuant to financing agreements for Disposal System assets to the extent such amounts must be legally separate and distinct from other reserves identified in this Section;
- (viii) security deposits from landfill deferred payment program users;
- (ix) amounts held by the County in the Environmental Fund (provided, however, that such amounts in the Environmental Fund will be made available and used by the County if required to pay costs relating to environmental remediation or other related costs);
- (x) AB939 surcharges;
- (xi) amounts held by the County in the Corrective Action Fund held pursuant to CCR Title 27 to demonstrate financial assurance to pay for potential groundwater contamination; and
- (xii) an amount equal to three months of budgeted expenses for the Disposal System for the current fiscal year, representing working capital of the Disposal System.

**SECTION 4.6 AUDITED FINANCIAL STATEMENTS.** The County shall annually, on or before January 1 each year, prepare or cause to be prepared and have on file for inspection an annual report for the preceding Contract Year, accompanied by a certificate of an independent public accountant or of the County Auditor and Controller as to the examination of the financial statements therein (describing such statements as fairly presenting the information therein in conformity with generally accepted accounting principles) relating to the Disposal System, the Disposal Services, and the fiscal activities of the County OC Waste Disposal Enterprise Fund, and including statements in reasonable detail of the financial condition of the County OC Waste Disposal Enterprise Fund as of the end of the Contract Year and revenue and expenses for the Contract Year.

**SECTION 4.7 ANNUAL UPDATE OF TEN-YEAR FINANCIAL PROJECTION.** The County shall annually, on or before May 1 of each year, prepare or cause to be prepared, an updated Ten-Year Financial Projection for the Disposal System. Said Financial Projection shall include at least two full years of prior actual data and ten years of future projections including the following elements:

1. County Acceptable Waste, in tons;
2. Imported Acceptable Waste, in tons;
3. Revenues and expenditures;
4. Cash fund balances, including all monies in the County Solid Waste Enterprise Fund, with specific delineation of monies in the Environmental Fund, Restricted Reserves, Unrestricted Reserves, and all other funds of the System.
5. Projected liabilities for closure and post closure as well as reasonable reserves for other environmental costs.

The purpose of the Ten-Year Financial Projection is to keep the City fully informed about the future financial condition of the Disposal System. The County shall cause a copy of the Ten-Year Financial Projection to be delivered to the City Manager of the City no later than May 1 of each year. Upon request, the County shall make available to the Cities supporting information related to the ten-year financial projection

#### ARTICLE V BREACH, ENFORCEMENT AND TERMINATION

**SECTION 5.1 BREACH.** The parties agree that in the event either party breaches any obligation under this Agreement or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. Neither party shall have the right to terminate this Agreement except as provided in Section 5.2 and Section 5.3 hereof or as otherwise provided in this Agreement.

**SECTION 5.2 CITY CONVENIENCE TERMINATION.** The City shall have the right to terminate this Agreement in its sole discretion, for its convenience and without cause at any time during the Term hereof upon 90 days' written notice to the County. If the City exercises its rights to terminate the Agreement pursuant to this Section, the City shall pay the County a termination fee equal to the Contract Rate in effect at the time of such termination (or any higher rate with respect to which the County has provided notice pursuant to Section 4.2) multiplied by the number of tons of City Acceptable Waste delivered to the Disposal System during the preceding twelve months (or, if the City had been in breach of the Waste Disposal Covenant during such prior months, such amount as would have been delivered if the City had complied with the Waste Disposal Covenant), multiplied by the number of years remaining in the Term of the Agreement.

#### **SECTION 5.3 TERMINATION.**

(A) **By City.** Except as expressly provided herein, the City shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the County substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the City the right to terminate this Agreement for cause under this subsection unless:

(1) The City has given prior written notice to the County stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the County and which will, in its opinion, give the City the right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The County has neither challenged in an appropriate forum (in accordance with Section 5.5) the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the

County shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the County is continuing to take such steps to correct such breach).

(B) By County. Except as expressly provided herein, the County shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the City substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the County the right to terminate this Agreement for cause under this subsection unless:

(1) The County has given prior written notice to the City stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the City and which will, in its opinion, give the County right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The City has neither challenged in an appropriate forum (in accordance with Section 5.5) the County's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the City shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the City is continuing to take such steps to correct such breach).

SECTION 5.4 NO WAIVERS. No action of the County or the City pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the County or the City in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or the City under this Agreement shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

SECTION 5.5 FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Disposal System or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California having appropriate jurisdiction.

## ARTICLE VI TERM

### SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall become effective, shall be in full force and effect and shall be legally binding upon the City and the County from the Contract Date and shall continue in full force and effect until June 30, 2020, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) Option to Renew. This Agreement shall be subject to renewal by mutual agreement of the parties, on or before June 30, 2018, for an additional term of ten years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof. The City shall give the County written notice of its irrevocable election to renew this Agreement on or before June 30, 2017. If the parties do not renew this Agreement by June 30, 2018, the Agreement shall expire on June 30, 2020.

(C) Contract Rate During Renewal Term. In connection with the parties' right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(B), the parties shall, on or before June 30, 2018, negotiate an applicable change in the Contract Rate for such renewal term. In determining any revisions to the

Contract Rate to be applicable during any renewal period, in addition to the circumstances described in Section 4.2(A), the parties may take into consideration the following parameters, including but not limited to:

- (i) actual cost of operations;
- (ii) population growth;
- (iii) increase or decrease in available tonnage;
- (iv) economic and disposal market conditions in the Southern California region;
- (v) changes in transportation and technology;
- (vi) closure and expansion of nearby landfills;
- (vii) capacity of the Disposal System; and
- (viii) available reserves which are in excess of the amount reasonably required as reserves.

(D) Survival: Accrued Rights. The rights and obligations of the parties hereto pursuant to Sections 3.1(E)(2), 5.1, 5.3, 5.5, 7.2, 7.3, 7.5, 7.7, 7.8, 7.9, and 7.10 hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term of this Agreement, all other obligations of the parties shall terminate.

#### SECTION 6.2 COMMENCEMENT DATE.

(A) Obligations of the Parties Prior to the Commencement Date. The parties acknowledge that the Disposal Agreements may be executed and delivered on different dates and that, except as provided in this subsection, neither the County nor the City shall be obligated to perform its obligations hereunder until the participation threshold provided herein has been met and the other conditions to the occurrence of the Commencement Date have occurred. Prior to the Commencement Date, each party hereto shall at its own expense exercise good faith and due diligence and take all steps within its reasonable control in seeking to satisfy the conditions to the Commencement Date set forth herein as soon as reasonably practicable. The County and the City, each at its own expense, shall cooperate fully with each other and the other Participating Cities in connection with the foregoing undertaking. Until the Commencement Date occurs, the Original WDAs shall remain in full force and effect.

(B) Condition to the Commencement Date. The Commencement Date for the Agreement shall be the date on which the percentage of the County's Acceptable Waste attributable to Participating Cities which have executed and delivered Disposal Agreements shall exceed 85% percent (using the percentage rates attributed to such Cities in Appendix 1). Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with this Section 6.2(b) and Appendix 1 of this Agreement.

(C) Satisfaction of Condition and Commencement Date. Upon the satisfaction or waiver of the condition to the Commencement Date, the County shall give written notice thereof to the cities which have theretofore executed Disposal Agreements. The parties shall thereupon hold a formal closing acknowledging the satisfaction or waiver of the condition to the Commencement Date, certifying that the Commencement Date has occurred and designating the Participating Cities. Copies of all of the documents or instruments constituting or evidencing satisfaction of the Commencement Date conditions shall be furnished to each party prior to or on the Commencement Date.

(D) Newly Incorporated Cities. Any city within Orange County which becomes incorporated after the Commencement Date shall upon request be offered the opportunity by the County to become a Participating City. If any such City executes a Disposal Agreement and meets the applicable condition provided in subsection 6.2(B) hereof within 180 days following the date of its municipal incorporation, then such City shall be entitled to execute a Waste Disposal Agreement on substantially the same terms and conditions as this Agreement (including the Contract Rate), notwithstanding the limitations contained in Section 3.6(B).

(E) Failure of Condition. If by \_\_\_\_\_ [120 DAYS AFTER BOARD APPROVAL], or such later date as the County may agree, the condition to the Commencement Date specified in this Section is not satisfied, either party hereto may, by notice in writing to the other party, terminate this Agreement. Neither party shall be liable to the other for the termination of this Agreement pursuant to this subsection, and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the condition to the Commencement Date. Notwithstanding anything in this Agreement to the contrary, in the event that this Agreement is terminated pursuant to this Section, the provisions of the Original WDA shall remain in full force and effect on the terms and conditions set forth therein.

## ARTICLE VII GENERAL PROVISIONS

SECTION 7.1 OPERATION AND MAINTENANCE OF THE DISPOSAL SYSTEM. The County, at its cost and expense through the County Solid Waste Enterprise Fund, shall at all times operate, or caused to be operated, the Disposal System in accordance with Applicable Law and the operating rules and regulations of the Department.

### SECTION 7.2 UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the County nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

(B) Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 15 days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, (3) the estimated amount, if any, by which the Contract Rate may need to be adjusted as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such party under this Agreement and (5) potential mitigating actions which might be taken by the County or City and any areas where costs might be reduced and the approximate amount of such cost reductions. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor, reduce costs and resume performance under this Agreement. In addition, with respect to Changes in Law, the County shall diligently contest any such changes the imposition of which would have a material adverse impact on the Disposal System. While the delay continues, the County or City shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted.

(C) Impact on Contract Rate. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost to the County of meeting its obligations hereunder and providing Disposal Services to the Participating Cities in accordance herewith, the County shall be entitled to an increase in the Contract Rate as provided in Section 4.2 herein or an extension in the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. The proceeds of any insurance available to meet any such increased cost shall be applied to such purpose prior to any determination of cost increases payable under this subsection. Any cost reductions achieved through the mitigating measures undertaken by the County pursuant to subsection 7.2(B) hereof upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the

Contract Rate would have otherwise been increased or shall serve to reduce the Contract Rate to reflect such mitigation measures, as applicable.

**SECTION 7.3 INDEMNIFICATION.** To the extent permitted by law, the County agrees that, it will protect, indemnify, defend and hold harmless the City from and against all Loss-and-Expense arising from the City's activity as an "arranger" (for purposes of and as such term is defined under CERCLA or comparable state statutes) of municipal solid waste disposal pursuant to this Agreement. In the event the City shall determine that because of conflict or any other reason that it wishes to be defended by legal counsel other than the legal counsel provided by the County, the cost of providing such legal counsel shall be the City's sole responsibility. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement whether the County or the City provides legal counsel. Any costs incurred by the County pursuant to this Section shall be considered an Uncontrollable Circumstance cost and the County shall be entitled to adjust the Contract Rate as provided in subsection 4.2(A) herein. The County shall not, however, be required to indemnify or defend the City from and against all Loss-and-Expense arising from any willful, knowing, illegal or negligent disposal of hazardous waste (other than incidental amounts of Household Hazardous Waste commonly found in municipal solid waste and permitted to be disposed in Class III landfills under RCRA) which violates the County's landfill permits or Applicable Law. The parties agree that this provision constitutes an indemnity under CERCLA (to the extent of the specific provisions of this Section). The parties acknowledge that this subsection is not intended to and does not create any obligation on the part of the County to provide any indemnification or defense to any Franchise Hauler, whether franchised or not, or any Independent Hauler or Transfer Station, under any circumstances. The City acknowledges the County's legitimate interest in actively participating in any defense, litigation or settlement, and shall, as a condition to this indemnity, coordinate fully with the County in the defense.

**SECTION 7.4 RELATIONSHIP OF THE PARTIES.** Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The County is an independent contractor of the City and nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties.

**SECTION 7.5 LIMITED RECOURSE.**

(A) **To the City.** Except in the event the City has not established or maintained a City Solid Waste Enterprise Fund, no recourse shall be had to the general funds or general credit of the City for the payment of any amount due the County hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the County for all such amounts shall be to the funds held in any such Solid Waste Enterprise Fund. All amounts held in any City Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the County. The City shall make adequate provision in the administration of any City Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

(B) **To the County.** No recourse shall be had to the general funds or general credit of the County for the payment of any amount due the City hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the County's obligations hereunder. The sole recourse of the City for all such amounts shall be to the funds held in the County Solid Waste Enterprise Fund in accordance with the terms of this Agreement. All amounts held in the County Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the City. The County shall make adequate provision in the administration of the County Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

**SECTION 7.6 PRE-EXISTING RIGHTS AND LIABILITIES.** Nothing in this Agreement is intended to affect, release, waive or modify any rights, obligations or liabilities which any party hereto may have to or against the other party as of the Contract Date relating to the disposal of waste in the Disposal System or any other related matter.

SECTION 7.7 NO VESTED RIGHTS. The City shall not acquire any vested property, license or other rights in the Disposal System by reason of this Agreement.

SECTION 7.8 LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING. Any liability incurred by the City as a result of collecting Acceptable Waste or processing it for diversion from landfill, or as a result of causing, franchising, permitting, licensing, authorizing or arranging any of the foregoing, shall be its sole liability, except as expressly otherwise provided herein.

SECTION 7.9 NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 7.10 AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

SECTION 7.11 NOTICE OF LITIGATION. Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Agreement executed by the City or the County or any Legal Entitlement issued in connection herewith.

SECTION 7.12 FURTHER ASSURANCES. At any and all times the City and the County so far as may be authorized by law shall pass, make, do, execute, acknowledge and deliver any and every such further resolutions, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

SECTION 7.13 ASSIGNMENT OF AGREEMENT. (A) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party, which may be withheld in the other party's sole discretion. Notwithstanding the foregoing, either party may assign this Agreement to another public entity, subject to the reasonable consent of the other party. In such circumstances the party not requesting the assignment shall have the right to demand assurances of the financial, technical and legal ability of the proposed assignee to undertake the responsibilities and obligations of the assigning party.

(B) Sale. The County shall not enter into any agreement for the sale of the Disposal System which provides for an effective date for such sale prior to the termination of this Agreement.

SECTION 7.14 INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

SECTION 7.15 BINDING EFFECT. This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 7.13 hereof.

SECTION 7.16 NOTICES. Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth on the cover page of this Agreement. Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other party.

IN WITNESS WHEREOF, COUNTY and CITY have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF ORANGE

Date \_\_\_\_\_

By \_\_\_\_\_  
Director, OC Waste & Recycling

Date \_\_\_\_\_

By \_\_\_\_\_  
[NAME]  
City Representative  
City of Laguna Woods

Date \_\_\_\_\_

By \_\_\_\_\_  
[NAME]  
City Representative  
City of Laguna Woods

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA

By \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX 1**

**ESTIMATED ANNUAL TONNAGE**

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## APPENDIX 1

PERCENTAGE OF COUNTY ACCEPTABLE WASTE ATTRIBUTABLE TO PARTICIPATING CITIES FOR  
PURPOSE OF SECTION 6.2(b)

| Jurisdiction                                | Percentage of County<br>Acceptable Waste |
|---|--|
| Anaheim                                     | 13.4%                                    |
| Santa Ana                                   | 10.6%                                    |
| Irvine                                      | 7.5%                                     |
| Huntington Beach                            | 6.0%                                     |
| Orange                                      | 5.8%                                     |
| Garden Grove                                | 5.1%                                     |
| Fullerton                                   | 4.5%                                     |
| Unincorporated Orange County <sup>(1)</sup> | 4.3%                                     |
| Costa Mesa                                  | 3.6%                                     |
| Newport Beach                               | 3.0%                                     |
| Lake Forest                                 | 2.6%                                     |
| Buena Park                                  | 2.5%                                     |
| Mission Viejo                               | 2.3%                                     |
| Westminster                                 | 2.3%                                     |
| Yorba Linda                                 | 2.3%                                     |
| Brea  | 2.1%                                     |
| Tustin                                      | 2.0%                                     |
| Cypress                                     | 1.9%                                     |
| La Habra                                    | 1.8%                                     |
| San Clemente                                | 1.7%                                     |
| Fountain Valley                             | 1.6%                                     |
| Laguna Niguel                               | 1.6%                                     |
| Placentia                                   | 1.6%                                     |
| San Juan Capistrano                         | 1.6%                                     |
| Laguna Beach                                | 1.4%                                     |
| Dana Point                                  | 1.2%                                     |
| Stanton                                     | 1.1%                                     |
| Rancho Santa Margarita                      | 1.0%                                     |
| Laguna Hills                                | 0.9%                                     |
| Seal Beach                                  | 0.8%                                     |
| Aliso Viejo                                 | 0.7%                                     |
| Los Alamitos                                | 0.5%                                     |
| La Palma                                    | 0.3%                                     |
| Laguna Woods                                | 0.2%                                     |
| Villa Park                                  | 0.2%                                     |
| Total                                       | 100%                                     |

(1) Unincorporated County is assumed to be a Participating City for the purposes of determining the Commencement Date in accordance with Section 6.2(b) of this Agreement.

(2) A Participating City will only be included for purposing of determining the Commencement Date upon (i) execution of a Waste Disposal Agreement by that Participating City and (ii) execution of a Hauler Acknowledgement(s) by the Franchise Hauler(s) operating within such Participating City

**APPENDIX 2**  
**CUMULATIVE TONNAGE TARGETS**

## APPENDIX 2

**Cumulative County Acceptable Waste Tonnage Target to be Used  
for Purposes of Section 4.2 (B)**

| <i>Fiscal Year</i> | <i>County Acceptable Waste<br/>Tonnage</i> | <i>Cumulative County<br/>Acceptable Waste Tonnage</i> |
|--------------------|--|---|
| FY 2008-09         | 3,170,387                                  | 3,170,387   |
| FY 2009-10         | 3,092,806                                  | 6,263,193   |
| FY 2010-11         | 3,185,590                                  | 9,448,783   |
| FY 2011-12         | 3,344,870                                  | 12,793,653  |
| FY 2012-13         | 3,445,216                                  | 16,238,869  |
| FY 2013-14         | 3,514,120                                  | 19,752,989  |
| FY 2014-15         | 3,549,262                                  | 23,302,251  |
| FY 2015-16         | 3,565,608                                  | 26,867,859  |
| FY 2016-17         | 3,582,033                                  | 30,449,892  |
| FY 2017-18         | 3,598,535                                  | 34,048,427  |
| FY 2018-19         | 3,615,115                                  | 37,663,542  |
| FY 2019-20         | 3,631,774                                  | 41,295,316  |

APPENDIX 3  
 CUMULATIVE CAPITAL COSTS  
 to be Used  
 for Purposes of Section 4.2(A)vi

| Fiscal Year<br>(ending June 30) | Annual Capital Costs | Cumulative Capital Costs |
|---------------------------------|----------------------|--------------------------|
| 2009                            | \$37,939,538         | \$37,939,538             |
| 2010                            | \$59,343,405         | \$97,282,943             |
| 2011                            | \$10,433,978         | \$107,716,921            |
| 2012                            | \$13,678,113         | \$121,395,034            |
| 2013                            | \$17,525,040         | \$138,920,074            |
| 2014                            | \$11,259,518         | \$150,179,592            |
| 2015                            | \$37,682,758         | \$187,862,350            |
| 2016                            | \$5,068,800          | \$192,931,150            |
| 2017                            | \$10,662,265         | \$203,593,415            |
| 2018                            | \$29,397,698         | \$232,991,113            |
| 2019                            | \$8,263,795          | \$241,254,908            |
| 2020                            | \$45,103,805         | \$286,358,713            |

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**APPENDIX 4**  
**FORM OF HAULER ACKNOWLEDGMENT**

FRANCHISE HAULER ACKNOWLEDGMENT

THIS FRANCHISE HAULER ACKNOWLEDGMENT, dated as of \_\_\_\_\_, 2009 (the "Acknowledgment"), by and between the City of \_\_\_\_\_ (the "City") and \_\_\_\_\_ (the "Franchise Hauler").

WITNESSETH

[WHEREAS, the City and the Franchise Hauler have heretofore entered into an agreement entitled \_\_\_\_\_, dated as of \_\_\_\_\_ (the "Franchise"); and[

[WHEREAS, the City has issued to the Franchise Hauler a permit, license, approval or other authorization the "Authorization") which allows the Franchise Hauler to provide solid waste collection services within the City; and]]

[WHEREAS, the Franchise [SUBSTITUTE "AUTHORIZATION" THROUGHOUT IF APPLICABLE]] provides for the collection and disposal of certain municipal solid waste as described therein ("Franchise Waste") generated within the City; and]

WHEREAS, Orange County (the "County") owns, manages and operates a sanitary landfill disposal system for municipal solid waste generated within the County; and

WHEREAS, the City and the County have heretofore entered into a Waste Disposal Agreement, dated as of \_\_\_\_\_, 2008 (the "Disposal Agreement") determining that the execution of such Disposal Agreement will serve the public health, safety and welfare of the residents of the City and County, by maintaining public ownership and stewardship over the Orange County Landfill Disposal System (the "Disposal System"); and

WHEREAS, under the Disposal Agreement, the County has agreed to provide long-term disposal of all municipal solid waste generated within the City and the City has agreed to exercise all legal, and contractual power which it possesses from time to time to deliver or cause the delivery of such waste to the Disposal System; and

WHEREAS, the provisions of the Waste Disposal Agreement which guarantee capacity for the long term disposal of waste at specified rates generated in the City provide significant benefits to the Franchise Hauler;

WHEREAS, notwithstanding any Franchise provisions to the contrary, the Franchise Hauler explicitly acknowledges the aforementioned benefits to the City, the County and the Franchise Hauler in providing for the disposal of all Franchise Waste to the Disposal System; and

WHEREAS, the City and the Franchise Hauler desire to enter into this Acknowledgment to assure that the City and the Franchise Hauler will be entitled to the benefits of the Waste Disposal Agreement and to assure conformity with the waste delivery obligations which have been agreed to by the City under the Disposal Agreement through the delivery of waste by the Franchise Hauler to the Disposal System; and

WHEREAS, the Franchise Hauler's agreement to deliver Franchise Waste to the Disposal System under this Acknowledgment is given in consideration of the Franchise Hauler's right to receive the Contract Rate for such disposal as provided in the Disposal Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

- I. Capitalized terms used and not otherwise defined herein are used as defined in the Disposal Agreement.

Execution Copy

2. The Franchise Hauler hereby waives any right which it may possess under applicable law to contest on any ground, constitutional, statutory, case law, administrative or otherwise, (a) the right, power or authority of the County or the City to enter into or perform their respective obligations under the Disposal Agreement, (b) the enforceability against the County or the City of the Disposal Agreement, or (c) the right, power or authority of the City to deliver or cause the delivery of all Controllable Waste to the Designated Disposal Facility in accordance with this Acknowledgment.

3. The City and the Franchise Hauler each hereby represent that this Acknowledgment has been duly authorized by all necessary action of their respective governing bodies.

4. The Franchise Hauler shall deliver or cause to be delivered all Controllable Waste (including all residue from the processing by any means, wherever conducted, of Controllable Waste), to the Disposal System, and shall otherwise assist the City in complying with its obligations under the Waste Disposal Covenant in Section 3.1 of the Disposal Agreement.

5. The Franchise Hauler shall not haul Controllable Waste to any materials recovery facility, composting facility, intermediate processing facility, recycling center, transfer station or other waste handling or management facility unless the contract or other agreement or arrangement between the Franchise Hauler and the operator of such facility is sufficient in the opinion of the County to assure that the Residue from such facility constituting City Acceptable Waste (or Tonnage equivalencies) and the City Acceptable Waste transferred by such facility shall be delivered to the Designated Disposal Facility in compliance with the Waste Disposal Covenant.

6. The Franchise Hauler shall pay the Contract Rate imposed by the County at the Designated Disposal Facility for the disposal of all Controllable Waste, which rate shall be subject to potential adjustment necessary to reflect the circumstances set forth in the Disposal Agreement.

7. Nothing in this Acknowledgment is intended to restrict any right or responsibility explicitly given the Franchise Hauler in the Franchise to recycle City Acceptable Waste, except as provided in paragraph 5 above with respect to Residue from any such recycling operations.

8. The obligations of the Franchise Hauler under this Acknowledgment shall apply notwithstanding any provision of the Franchise which may conflict herewith.

9. This Acknowledgment may be enforced by the City by any available legal means. In any enforcement action by the City, the burden of proof shall be on the Franchise Hauler to demonstrate compliance herewith.

10. This Acknowledgment shall be in full force and effect and shall be legally binding upon the City and Franchise Hauler from the dated hereof and shall continue in full force and effect until the earlier of (i) the end of the term of the Franchise or (ii) the end of the term of the Disposal Agreement.

11. The City and Hauler agree that the County shall be an express third party beneficiary of this Acknowledgment, and shall be entitled to independently enforce the obligations of the Franchise Hauler hereunder.

12. The Hauler agrees to assist the County in verifying tonnage collected by the Franchise Hauler and providing information required by the County. Hauler will provide upon request refuse tonnage collected within the County, and outside the County (if relevant to confirming tonnage origination), separated by jurisdiction, by load type (residential, commercial, roll-off box), and by facility to which it was delivered (specify which landfill or transfer station). Hauler will provide customer service levels and route lists. Hauler will cooperate with County audits to verify reported origin of tonnage by making records and personnel available to the County and/or its auditors.

IN WITNESS WHEREOF, the parties have caused this Acknowledgment to be executed by their duly authorized officers or representatives as of \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

\_\_\_\_\_  
(Franchise Hauler)

Signature: \_\_\_\_\_

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

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