



**AGENDA**  
**REGULAR CITY COUNCIL /**  
**REDEVELOPMENT AGENCY MEETING**  
**TUESDAY, JANUARY 25, 2011, 7:00 P. M.**  
**MULTI-PURPOSE ROOM**  
**SENIOR CITIZEN/COMMUNITY CENTER**  
**201 E. BONITA AVENUE**

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**COUNCIL:**

Mayor Curtis W. Morris  
Mayor Pro Tem John Ebner  
Councilmember Emmett Badar  
Councilmember Denis Bertone  
Councilmember Jeff Templeman

**1. CALL TO ORDER AND FLAG SALUTE**

**2. ANNOUNCEMENTS**

- a. Pui-Ching Ho, Librarian, San Dimas Library
- b. Update on the H.E.R.O.E.S. program, including the Veteran's Memorial

**3. ORAL COMMUNICATIONS** (Members of the audience are invited to address the City Council on any item not on the agenda. Under the provisions of the Brown Act, the legislative body is prohibited from taking or engaging in discussion on any item not appearing on the posted agenda. However, your concerns may be referred to staff or set for discussion at a later date. If you desire to address the City Council on an item on this agenda, other than a scheduled public hearing item you may do so at this time and ask to be heard when that agenda item is considered. Comments on public hearing items will be considered when that item is scheduled for discussion. The Public Comment period is limited to 30 minutes. Each speaker shall be limited to three (3) minutes.)

- a. Members of the Audience

**4. CONSENT CALENDAR**

(All items on the Consent Calendar are considered to be routine and will be enacted by one motion unless a member of the City Council requests separate discussion.)

- a. Resolutions read by title, further reading waived, passage and adoption recommended as follows:
  - (1) **RESOLUTION NO. 2011-02, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, CALIFORNIA, APPROVING CERTAIN DEMANDS FOR THE MONTHS OF JANUARY AND FEBRUARY, 2011.**
  - (2) **RESOLUTION NO. 2011-04, A RCALIFORNIA, AUTHORIZING THE APPLICATION FOR ELIGIBLE GRANT PROGRAMS ADMINISTERED BY THE DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY.**

- b. Approval of Facility Rental Fees and Policies.

END OF CONSENT CALENDAR

**5. PUBLIC HEARING**

*(The following items have been advertised and/or posted. The meeting will be opened to receive public testimony.)*

- a. Precise Plan 10-01, a request to construct a 674 square foot addition for a deli/sandwich shop and a 656 square foot covered patio for outdoor eating area in conjunction with an existing fruit stand business at 264 E. Foothill Blvd. (APN: 8661-014-030) Applicant: Steve Rudy, Starberry Farms. (Continued from January 11, 2011).

- 1) **RESOLUTION NO. 2011-03**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING PRECISE PLAN REVIEW 10-01, A REQUEST TO CONSTRUCT A 674 SQ. FT. ADDITION FOR A DELI/SANDWICH SHOP AND A 656 SQ. FT. COVERED PATIO FOR AN OUTDOOR EATING AREA IN CONJUNCTION WITH AN EXISTING FRUIT STAND BUSINESS LOCATED AT 264 EAST FOOTHILL BOULEVARD (APN: 8661-014-030)

**6. ORDINANCES**

- a. Ordinances read by title, further reading waived, passage and adoption recommended as follows:

- 1) **ORDINANCE NO. 1202**, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING A DEVELOPMENT AGREEMENT RELATING TO THE APPROVAL OF A RESIDENTIAL DEVELOPMENT FOR 61 SINGLE-FAMILY RESIDENTIAL LOTS IN THE NORTHERN FOOTHILLS OF SPECIFIC PLAN NO. 25. **SECOND READING AND ADOPTION**

**7. OTHER MATTERS**

- a. MOU adoption to complete Energy Efficiency Activities through the Southern California Edison (SCE) California Long-term Energy Efficiency Strategic Plan (CEESP) Grant.
- b. Speed limit designation on certain streets:
  - 1) **ORDINANCE NO. 1203**, AMENDING THE SAN DIMAS MUNICIPAL CODE BY AMENDING SECTION 10.06 THERETO DESIGNATING SPEED LIMITS ON CERTAIN STREETS IN THE CITY OF SAN DIMAS. **FIRST READING AND INTRODUCTION**
- c. Approve 2011 Farmers Market proposal submitted by Advocates For Healthy Living, for Wednesdays, April 6, 2011 through September 28, 2011, with street closure on First Street and Iglesia Street from 4:00 p.m. to 10:00 p.m..
- d. Metro Gold Line Foothill Extension Azusa to Montclair - Environmental Impact Report/Environmental Impact Statement (EIS/EIR Letter providing comments for the environmental scoping for Phase 2B portion of the Gold Line project.)

## 8. SAN DIMAS REDEVELOPMENT AGENCY

- a. Oral Communications (This is the time set aside for members of the audience to address the Board. Speakers are limited to three minutes.)
- b. Approval of minutes for meeting of January 11, 2011.
- c. Executive Director
- d. Members of the Agency

## 9. ORAL COMMUNICATIONS

- a. Members of the Audience (Speakers are limited to five (5) minutes or as may be determined by the Chair.)
- b. City Manager
- c. City Attorney
- d. Members of the City Council
  - 1) Request from the Sheriff's Booster Club for the City to appoint a representative to serve as an Ex-Officio non-voting member of their Board.
  - 2) Councilmembers' report on meetings attended at the expense of the local agency.
  - 3) Individual Members' comments and updates.

## 10. ADJOURNMENT

The next meeting is on Tuesday, February 8, 2011, at 6:00 p.m. for a study session on the Façade program in the downtown and sales and marketing procedures for Agency owned housing in the Grove Station project.

**AGENDA STAFF REPORTS:** COPIES OF STAFF REPORTS AND/OR OTHER WRITTEN DOCUMENTATION PERTAINING TO THE ITEMS ON THE AGENDA ARE ON FILE IN THE OFFICE OF THE CITY CLERK AND ARE AVAILABLE FOR PUBLIC INSPECTION DURING THE HOURS OF 8:00 A.M. TO 5:00 P.M. MONDAY THROUGH FRIDAY. INFORMATION MAY BE OBTAINED BY CALLING (909) 394-6216. CITY COUNCIL MINUTES AND AGENDAS ARE ALSO AVAILABLE ON THE CITY'S HOME PAGE ON THE INTERNET: <http://www.cityofsandimas.com/minutes.cfm>.

**SUPPLEMENTAL REPORTS:** AGENDA RELATED WRITINGS OR DOCUMENTS PROVIDED TO A MAJORITY OF THE SUBJECT BODY AFTER DISTRIBUTION OF THE AGENDA PACKET SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION AT THE CITY CLERK'S OFFICE AT 245 EAST BONITA AVENUE DURING NORMAL BUSINESS HOURS. [PRIVILEGED AND CONFIDENTIAL DOCUMENTS EXEMPTED]

**HEARING ASSISTANCE:** THE CITY OF SAN DIMAS CITY COUNCIL CHAMBERS IS EQUIPPED WITH A HEARING ASSISTANCE SYSTEM. PLEASE CONTACT THE CITY CLERK (909) 394-6216 TO CHECK OUT A RECEIVER.

**POSTING STATEMENT:** ON JANUARY 21, 2011, A TRUE AND CORRECT COPY OF THIS AGENDA WAS POSTED ON THE BULLETIN BOARDS AT 201 EAST BONITA AVENUE (SAN DIMAS SENIOR CITIZEN/COMMUNITY CENTER); 186 VILLAGE COURT (SAN DIMAS TEMPORARY CITY HALL); 145 NORTH WALNUT AVENUE (LOS ANGELES COUNTY PUBLIC LIBRARY, SAN DIMAS BRANCH); AND 300 EAST BONITA AVENUE (UNITED STATES POST OFFICE) AND AT THE VONS SHOPPING CENTER (Puente/Via Verde) AND THE CITY'S WEBSITE AT [www.cityofsandimas.com/minutes.cfm](http://www.cityofsandimas.com/minutes.cfm).

**RESOLUTION NO. 2011-02**

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF SAN DIMAS, CALIFORNIA, APPROVING  
CERTAIN DEMANDS FOR THE MONTH OF  
JANUARY, 2011

WHEREAS, the following listed demands have been audited by the Director of Finance;  
and

WHEREAS, the Director of Finance has certified as to the availability of funds for  
payment thereto; and

WHEREAS, the register of audited demands have been submitted to the City Council for  
approval.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Dimas  
does hereby approve Warrant Register: 01/31/11; 134364 through 134505; in the amount of  
\$1,747,601.00.

PASSED, APPROVED AND ADOPTED THIS 25th DAY OF JANUARY 2011.

\_\_\_\_\_  
Curtis W. Morris, Mayor of the City of San Dimas

ATTEST:

\_\_\_\_\_  
Ina Rios, CMC, City Clerk

I HEREBY CERTIFY that the foregoing Resolution was adopted by vote of the City  
Council of the City of San Dimas at its regular meeting of January 25, 2011, by the following  
vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Ina Rios, CMC, City Clerk

42(1)



***THE WARRANT DISBURSEMENT  
JOURNAL IS NOT AVAILABLE TO  
VIEW THROUGH LASERFICHE***

***A PAPER COPY IS AVAILABLE IN THE  
FINANCE DEPARTMENT***

***SORRY FOR ANY INCONVENIENCES.***

***DOCUMENT IMAGING DEPT.***



# Agenda Item Staff Report

**To:** Honorable Mayor and Members of the City Council  
*For the Meeting of January 25, 2011*

**From:** Lisa Monreal, Environmental Services Coordinator

**Subject: APPROVAL OF RESOLUTION 2011-04 CAL RECYCLE GRANT PROGRAMS APPLICATION**

## Summary

The California Integrated Waste Management Board has become the California Department of Resources Recycling and Recovery (CalRecycle). CalRecycle is administrator for various grant programs. Resolution 2011-04 will allow staff to continue work on current funding efforts, and apply for future payments funded by CalRecycle.

## BACKGROUND

CalRecycle funds are used to support a multitude of grants including the Used Oil Program, recycling grants, rubberized asphalt and slurry mix and others. The agency has historically required specific authorization for each grant application.

## DISCUSSION

As part of the administration of the grant (program), a signature authority must be assigned for contract documents. Additionally, this authority may be delegated to another staff member. As in previous years, the Signature Authority is the Assistant City Manager, with the delegation to the Director of Public Works. The Environmental Coordinator is responsible for work on the grant applications as well as administration of programs such as the Used Oil Program. In order to streamline the application process, and to continue the City's participation in existing and future programs, this resolution will authorize the application and administration of CalRecycle grant programs for five years, or until January 25, 2016.

## RECOMMENDATION

Staff recommends that Council approve Resolution 2011-04 that authorizes the application for eligible grant programs administered by the Department of Resources Recycling and Recovery.

Respectfully submitted,

Lisa Monreal  
Environmental Services Coordinator

Attachment: Resolution 2011-04

lm/01-11-21

4a(2)

**RESOLUTION NO. 2011-04**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS  
AUTHORIZING THE APPLICATION FOR ELIGIBLE GRANT PROGRAMS  
ADMINISTERED BY THE DEPARTMENT OF RESOURCES RECYCLING AND  
RECOVERY**

WHEREAS, Public Resources Code sections 40000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle), formerly known as the California Integrated Waste Management Board, to administer various Grant Programs (grants) in furtherance of the state of California's (State) efforts to reduce, recycle and reuse solid waste generated in the State thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the City of San Dimas authorizes the submittal of application(s) to CalRecycle for all grants for which City of San Dimas is eligible; and

BE IT FURTHER RESOLVED that the Assistant City Manager, with delegation of signature authority to the Director of Public Works, is hereby authorized and empowered to execute in the name of the City of San Dimas all grant documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective for five (5) years from the date of adoption of this resolution (from January 25, 2011 through January 25, 2016).

APPROVED AND ADOPTED this 25<sup>th</sup> day of January, 2011.

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Mayor of the City of San Dimas

ATTEST:

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City Clerk

Lm/01-11-20



# Agenda Item Staff Report

**To:** Honorable Mayor and Members of the City Council  
*For the meeting of January 25, 2011*

**From:** Blaine Michaelis, City Manager

**Initiated By:** Theresa Bruns, Director of Parks and Recreation *TB*

**Subject:** Community Facility Rental Fees and Policies

## Summary

Staff has updated the policies and fee schedule for the reservation of Community Facilities.

## BACKGROUND

The last comprehensive review and update of the Community Facilities Rental Policy Guide and Information packet occurred in 1992, and the last comprehensive update of facility rental fees occurred in 1997. The newly remodeled and expanded Stanley Plummer Community Building affords an opportunity for review and update of each.

## ANALYSIS

Currently there are separate rental policy guidelines for each of the Community Facilities: Stanley Plummer Community Building; Senior Citizen/Community Center; Ladera Serra Park; and the Walker House Conference Room. Staff is recommending consolidation of those into one comprehensive policy guide. Upon review of the policies staff is recommending the following changes:

FACILITY	CURRENT POLICY	RECOMMENDED POLICY
Community Building	Residents may reserve 14 days to 6 months in advance.	Residents may reserve 14 days to 9 months in advance.
	Non-Residents may reserve 14 days to 4 months in advance.	Non-Residents may reserve 14 days to 6 months in advance.
Senior Citizen/ Community Center	Residents may reserve 14 days to 3 months in advance.	Residents may reserve 14 days to 6 months in advance.
	Facility not available to Non-Residents	Non-Residents may reserve 14 days to 3 months in advance.
	Activities must cease by 12:00 a.m.	Activities must cease by 1:00 a.m.

In addition to the recommended changes to the policy, many clarifications to current policy and practice have been included in the recommended policy.

*HB*

Staff also conducted a survey of nine local municipal agencies comparing facility rental fees, and recommend changes to the current fee schedule as indicated in the attached Community Facilities Rental Fees schedule. The recommended changes in the fee schedule include:

1. Elimination of the "first hour" fee and "additional hour" fee, changing to a "per hour" fee.
2. Including rates for "sectional use" of the Community Building based upon the divisibility of the expanded facility.
3. Clarification of fees for hours of use of the Senior Citizen/Community Building to include times when the facility is regularly staffed versus weekend use.
4. Inclusion of Marchant Park in the fee schedule in the event of future availability.
5. Include a \$10 per day charge for use of the Ladera Serra Park restroom key. Currently there is no charge, only a deposit is required.
6. Inclusion of fees for use of the City Hall facilities, including the City Council Chambers and the Council Board Room, available only to San Dimas organizations.
7. Inclusion of a deposit fee for use of the Walker House Conference Room. Currently none is required.

The recommended fee schedule is attached as well as the current fee schedule for comparison sake.

The Community Facilities Rental Policy Guide and Information, and the recommended fee schedule were presented to and reviewed with the Parks and Recreation Commission on Tuesday, January 18, 2011. The Commission unanimously recommends that the City Council adopt both.

## **RECOMMENDATION**

Staff and the Parks and Recreation Commission recommend that the City Council adopt the Community Facilities Rental Policy Guide and Information as well the recommended Community Facilities Rental Fee Schedule effective immediately for subsequent facility rentals.

### **Attachments:**

- Community Facilities Rental Policy Guide and Information - recommended
- Community Facilities Rental Fee Schedule – recommended
- Facility Rental Fees - current

RECOMMENDED

City of San Dimas,  
Parks & Recreation Department

# Community Facilities

## Rental Policy Guide and Information

- I. Policy Statement
- II. Use Policy
- III. Rules and Regulations
- IV. Kitchen Use
- V. Fees and Permits
- VI. Set Up Arrangements
- VII. Lottery Procedure

245 E. Bonita Avenue  
San Dimas, CA

(909) 394-6230

January 21, 2011



## COMMUNITY FACILITIES

### RENTAL POLICY GUIDE

#### I. POLICY STATEMENT

- A. The Stanley Plummer Community Building; the Senior Citizen/Community Center Multi-Purpose Room, Meeting Room and Conference Room; the Walker House Conference Room; the Ladera Serra Park Recreation Building; and the Marchant Park Recreation Building (hereafter collectively referred to as "Community Facilities") shall be available for activities which contribute to the best recreational, social, cultural, civic and educational interests of the citizens of San Dimas. The Senior Citizen/Community Center is primarily for senior citizen use; however, other compatible community uses are permitted. Any dispute regarding the "best recreational, social, cultural, civic and educational interests of the citizens of San Dimas" shall be referred to the Director of Parks and Recreation or, if necessary, the City Manager for final determination.

#### II. USE POLICY

- A. Reservations for the use of Community Facilities shall be made through the Parks and Recreation Department and granted at the discretion of the Director of Parks and Recreation for the following activities without charge, or at a custodial charge, and with preference in the following order:
1. City sponsored or co-sponsored activities.
  2. Activities sponsored by other governmental agencies if requested use is during regular business hours. Fees shall be charged for after hours use.
  3. Activities sponsored by the Bonita Unified School District, which serves the citizens of San Dimas, shall be billed at custodial rate when reserved by District staff.
- B. Reservations for all other uses of Community Facilities shall be made through the Parks and Recreation Department and granted at the discretion of the Director of Parks and Recreation at the established rates and on a first come, first served basis.
- C. Non-City sponsored activities may not be scheduled on a recurring basis Fridays through Sundays. A maximum of three dates, Mondays through Thursdays, may be reserved on one reservation.

- D. Rental of Ladera Serra Park Recreation Building and Marchant Park Recreation Building is available to San Dimas residents only.
- E. For the purpose of definition, the following shall prevail:

**RESIDENT USE:** Resident use is defined as use by a San Dimas resident; a business located in the City of San Dimas; a San Dimas based organization whose membership is composed of 51% San Dimas residents (roster may be required); a person who owns and pays taxes on a business or property in San Dimas; or a political campaign directly related to the City of San Dimas.

**NON-PROFIT:** Groups and organizations such as service clubs, youth organizations, school student body activities, church groups, PTA groups, booster clubs, etc. A membership roster, Articles of Incorporation indicating status as San Dimas based, and proof of non-profit status (501(C)(3)) may be required as a condition of receiving classification in this category.

**PRIVATE:** Individuals whose use is for a private function which is not open to the general public, or for private enterprise use by a business, i.e. company dances, dinners, exhibits; advertising programs, fashion shows, etc.

**PROOF OF RESIDENCY:** Proof of residence in the form of a valid California driver's license or California ID, and current utility bill (water, gas, electric, or copy of lease) bearing the same name and address is required for individuals. Resident business must produce a valid San Dimas business license.

### III. RULES AND REGULATIONS

- A. All City ordinances must be observed.
- B. All persons and organizations requesting use of Community Facilities must submit an application for approval.
  - 1. Applications for use of the Stanley Plummer Community Building by San Dimas residents must be filed at least 14 days and not more than 9 months prior to requested date of use, and 14 days to 6 months for non-residents.
  - 2. Applications for use of the Senior Citizen/Community Center Multi-Purpose Room by San Dimas residents must be filed at least 14 days before and not more than 6 months prior to the time of use, and 14 days to 3 months for non-residents.
  - 3. Applications for use of the Senior Citizen/Community Center Meeting Room and Conference Room, and the Walker House

Conference Room by all applicants must be filed at least 14 days before and not more than 3 months prior to the time of use.

4. Applications for use of Ladera Serra Park and Marchant Park Recreation Buildings must be filed at least 14 days before and not more than 3 months prior to the time of use. The park Recreation Rooms are open to Residents of San Dimas only.
- C. Applicant must present valid California I.D. Residents must present a utility (water, electric, gas) bill dated within the last 30 days indicating the name of the applicant and the address in San Dimas. Applicant must be at least 21 years of age at time of reservation. Resident businesses must submit a valid San Dimas Business License.
  - D. Required security/cleaning deposit must accompany the application. Final approval is granted upon payment of balance due. Facility reservations are subject to cancellation if fees are not paid fifteen days prior to event.
  - E. The security/cleaning deposit will be fully refunded by City check made payable to the applicant, and mailed approximately four weeks after the date of the activity under the following conditions: cleaning requirements are met; applicant does not extend the activity beyond the hours specified on application; no damage, theft, or abuse to the building or grounds occurs during the use.
  - F. The deposit refund will be adjusted to reflect costs associated with the repair of damages or abuse, or for the extension of hours beyond those reserved. Violation of any stated rules or regulations may also result in loss of security/cleaning deposit.
  - G. The deposit will be retained if the facility reservation is canceled less than 30 days prior to the event.
  - H. Equipment located with the facility (such as television, piano, audio visual screen, etc.) is not available for use. No equipment or furnishings may be removed from the premises.
  - I. The City is not responsible for any lost, stolen or damaged items.
  - J. Applicant must sign a Hold Harmless Agreement and assume all liability for damages and theft of City property. Applicant is held responsible for reimbursing the City of all damaged or missing items.
  - K. Applicant is held responsible for proper conduct and ethical control of guests during facility use. Gambling, use of profane language, or improper conduct

will not be permitted and may be grounds for termination of activity and/or loss of deposit.

- L. Only teen dances sponsored or co-sponsored by the Parks and Recreation Department shall be permitted. Exception may be granted to the Bonita Unified School District providing all requirements regarding security and control are met, as determined by the Director of Parks and Recreation. School District personnel must make application for use of facilities for school events.
- M. The City of San Dimas reserves the right of full access to all activities at any time in order to ensure that all rules, regulations, City and State laws are being observed.
- N. A City employee shall be assigned to any activity scheduled in Community Facilities. Users of facility must obey instructions of City employees on duty. Failure to comply with the instructions of City employees may be grounds for termination of the activity and/or loss of deposit.
- O. Any damages or any accident must be reported immediately to the employee on duty.
- P. The City has the right to require chaperones and/or security guards at applicant's expense for any function.
- Q. Decorations must be of a flameproof material and approved prior to installation. No open flames are allowed. Decorations must be removed immediately at the conclusion of each event. No nails, tacks, staples, tape (blue tape permitted) or other materials considered harmful or defacing to the facility or furnishings will be permitted. Nothing shall be attached to the draperies in any Community Facility.
- R. Smoking is not permitted in any City of San Dimas facility or park. Smoking is permitted in the parking lots and on the street.
- S. Approval is required at time of application for the service of food or beverages.
- T. Barbecue grills may be used in the designated area for the Stanley Plummer Community Building and in the Senior Citizen/Community Center Multi-Purpose Room with approval at time of application.
- U. The use of alcoholic beverages is prohibited at Ladera Serra Park and Marchant Park. Inside the Stanley Plummer Community Building and the Senior Citizen/Community Center Multi-Purpose Room, are the only Community Facility locations where the use of alcoholic beverages is

allowed, and must be approved by the Director of Parks and Recreation on a case by case basis in accordance with the following conditions:

1. Alcoholic beverages may be served, sold, or consumed only if a meal is served. Hors d'oeuvres, snacks, etc. are not considered a meal.
  2. Such service, sale and consumption may be permitted only at those events for which the facility rental application so specifies and requests.
  3. Only a person or organization possessing a current, valid license from the Alcohol Beverage Control Board may sell alcoholic beverages.
  4. No one under the age of 21 is permitted to consume alcoholic beverages.
  5. No alcoholic beverages may be consumed outside the facility except as approved by the Director of Parks and Recreation.
- V. All Activities, including clean up, must cease by 1:00 a.m. in the Stanley Plummer Community Building and in the Senior Citizen/Community Center Multi-Purpose Room. Activities in the Senior Citizen/Community Center Meeting Room or Conference Room, the Walker House Conference Room, and the Ladera Serra and Marchant Park Recreation Buildings must cease by 10:00 p.m.
- W. Facilities must be left in a clean and orderly condition. Clean up includes the removal of all decorations, food, rented items, dishes, utensils, debris, etc. Trash must be disposed of in available containers, and the sink disposal flushed.
- X. Ladera Serra Park Restroom Key: San Dimas residents may reserve a restroom key for Ladera Serra Park at a daily fee rate. The key may be reserved, picked up and returned to the Parks and Recreation Department. A refundable deposit will be taken at time of pick up and returned when the key is returned. Key must be returned the first business day immediately following use. Security and condition of the restroom shall be the sole responsibility of the person signing for the key. Applicant shall bear all costs for replacement of lost keys and new locks. Duplication of a key shall be considered unlawful and subject to prosecution.

#### IV. KITCHEN USE

- A. Kitchens may not be used without prior approval.

- B. Applicants utilizing kitchen facilities in the Stanley Plummer Community Building or the Senior Citizen/Community Center Multi-Purpose Room shall furnish their own dishes, silverware, cooking utensils, towels, soap, etc.
- C. Kitchen equipment such as ice machine, microwave oven, stove, oven, and refrigerator, are available for use.
- D. All applicants utilizing kitchen facilities must leave the kitchen in a clean and orderly condition after use.
- E. The City reserves the right to ban caterers or applicants from future use of facilities if they fail to clean the kitchen in accordance with the standards established by the City.

#### V. FEE AND PERMIT

- A. Fees will be assessed per the rates listed in the "Community Facilities Rental Fees" schedule. A holiday surcharge will apply to any reservation scheduled on a holiday observed by the City of San Dimas.
- B. Applications shall be issued only to responsible adults who shall be in attendance for the entire function for which application is made.
- C. All applicants reserving Community Facilities are required to pay an additional fee for general liability insurance or provide the City with a Certificate of Insurance in an amount no less than \$1 million and naming the City of San Dimas as additional insured.
- D. Applicant may cancel a facility reservation up to thirty (30) days prior to scheduled event, and all fees will be refunded, minus a service charge. Deposit will be retained if reservation is canceled less than thirty (30) days prior to scheduled event.
- E. Final approval is granted upon payment of balance. Facility reservation is subject to automatic cancellation if fees are not paid fifteen days prior to scheduled event.

#### VI. SET UP ARRANGEMENTS

- A. Table and chair arrangements must be submitted at least two weeks prior to scheduled use of facility. Set up diagrams are available based upon the occupancy of each facility. Only approved arrangements will be accommodated.

- B. Approval at time of application is required for the set up of tables and chairs on the stages inside the Community Facilities.
- C. City owned tables and chairs shall not be taken outside of the Community Facilities, except as approved by the Director of Parks and Recreation.
- D. Applicants may provide their own tables and chairs with approval at time of application.

## VII. LOTTERY PROCEDURE

- A. If two or more eligible applicants are interested in reserving the same Community Facility and arrive at the Parks and Recreation Department counter at the same time, then the following lottery procedure will take place:
  - 1. Eligibility of applicants will be verified, and only eligible applicants will be included.
  - 2. The Parks and Recreation Department employee will write consecutive numbers on pieces of paper, starting with one (1) and continuing through the number of parties to be included in the lottery.
  - 3. The pieces of paper shall be folded so that the numbers are not visible, and then inserted into a container.
  - 4. One representative of each party shall pick one piece of paper out of the container. The number on that piece of paper establishes the priority of each party.
  - 5. The party holding priority number 1 shall be able to rent the facility for any available and eligible date at that time.
  - 6. Each party shall be taken in turn of their priority, from lowest number to highest, as established by the lottery for any remaining available and eligible dates.

Failure to comply with all rules and regulations governing use of City of San Dimas Community Facilities may be grounds for termination of activity, may result in forfeiture of deposit and possible ban from future use.

**CITY OF SAN DIMAS  
PARKS AND RECREATION DEPARTMENT**

**RECOMMENDED**

**COMMUNITY FACILITIES RENTAL FEES**

	CAPACITY		DEPOSIT			RENTAL RATE/HR			
	Banquet Seating	Audience Set Up	Res NP	Res	Non-Res	Res NP	Res	Non-Res	
<b>COMMUNITY BUILDING</b>			14 days - 9 mos. In advance		14 days - 6 mos. In advance				
FULL	350	400	\$300	\$500	\$500	\$75	\$100	\$125	
FRONT	250	300	\$300	\$500	\$500	\$50	\$75	\$100	
BACK	125	150	\$300	\$500	\$500	\$50	\$75	\$100	
REAR NORTH	48	75	\$100	\$200	\$200	\$25	\$50	\$75	
REAR SOUTH	48	75	\$100	\$200	\$200	\$25	\$50	\$75	
MEETING ROOM	24	30	\$50	\$100	\$100	\$25	\$50	\$75	
<b>SENIOR CITIZEN/ COMMUNITY CENTER</b>			14 days - 6 mos. In advance		14 days - 3 mos. In advance				
MULTIPURPOSE ROOM	120	200	\$300	\$500	\$500	\$50	\$75	\$100	
MEETING ROOM	30	50							
Mon - Fri 8:00am-10:00pm			\$50	\$100	\$100	\$10	\$15	\$30	
Sat-Sun 8:00am-12:00am			\$50	\$100	\$100	\$25	\$50	\$75	
CONFERENCE ROOM	15	20							
Mon - Fri 8:00am-10:00pm			\$50	\$50	\$50	\$10	\$15	\$30	
Sat-Sun 8:00am-12:00am			\$50	\$50	\$50	\$25	\$50	\$75	
<b>LADERA SERRA &amp; MARCHANT PK</b>	75	100	\$100	\$100	x	\$15	\$30	x	
LSP RESTROOM KEY ONLY			\$30	\$30	x	\$10/day	\$10/day	x	
<b>CITY HALL - SD ORGANIZATIONS ONLY</b>									
CITY COUNCIL CHAMBERS		75							
Mon - Fri 8:00am-10:00pm			\$100	\$100	x	\$25	\$50	x	
Sat-Sun 8:00am-12:00am			\$100	\$100	x	\$25	\$50	x	
COUNCIL BOARD ROOM		40							
Mon - Fri 8:00am-10:00pm			\$100	\$100	x	\$25	\$50	x	
Sat-Sun 8:00am-12:00am			\$100	\$100	x	\$25	\$50	x	
<b>WALKER HOUSE</b>									
CONFERENCE ROOM	30	45							
During Restaurant Hrs Tu-Sa 11a-9p & Su 10a-9p			\$25	\$50	\$50	\$0	\$15	\$25	
When Restaurant Closed 8am-10pm Daily			\$25	\$50	\$50	\$15	\$30	\$40	
<b>COMMUNITY EQUESTRIAN ARENA</b>			\$100	\$100	\$100	\$100/day	\$100/day	\$100/day	

<b>Bonita Unified School District</b>	Hourly rate for activities reserved by BUSD personnel	\$20/hr
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<b>Liability Insurance</b>	See Rate Chart on Reverse
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<b>Holiday Surcharge</b>	Charged for activities scheduled on City observed Holidays. Requires approval at time of application.	\$20/hr
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<b>Cancellation Service Charge</b>	Charged for the processing of any cancellation	\$10
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Current

**CITY OF SAN DIMAS  
PARKS AND RECREATION DEPARTMENT  
FACILITY RENTAL FEES**

**COMMUNITY BUILDING: MAX 250 BANQUET, 300 AUDIENCE STYLE**

	<b>Resident Non-Profit</b>	<b>Resident private</b>	<b>Non-Resident All uses</b>
Cleaning/Damage Deposit (Refundable)	\$100.00	\$300.00	\$300.00
First Hour	35.00	200.00	300.00
Each Additional Hour	25.00	50.00	60.00
Liability Insurance- <b>No alcohol</b>	117.00*	117.00*	117.00*
<b>With Alcohol</b>	<b><u>SEE CHART ON REVERSE SIDE</u></b>		

**SENIOR CITIZEN/COMMUNITY CENTER: Residents only.** (MAY BE RENTED ONLY BY SAN DIMAS RESIDENTS, BUSINESSES, AND NON-PROFIT ORGANIZATIONS)

**MULTI PURPOSE ROOM: MAX 120**

	<b>Non-Profit</b>	<b>Private/Business</b>
Cleaning/Damage Deposit (Refundable)	\$300.00	\$500.00
First Hour	25.00	100.00
Each Additional Hour	20.00	30.00
Kitchen use fee	50.00	50.00
Liability Insurance <u>No alcohol use</u>	117.00*	117.00*
<u>With alcohol use</u>	<b><u>SEE CHART ON REVERSE SIDE</u></b>	

**MEETING ROOM MAX 30**

**CONFERENCE ROOM MAX 15**

		<b>Non-Profit</b>	<b>Private/Business</b>
Monday-Friday      8:00 am – 5:00 pm	1-3 Hours	\$5.00 per use	\$10.00 per use
Monday-Friday      5:00 pm -10:00 pm	1-3 Hours	\$10.00 per use	\$15.00 per use
Saturday and Sunday    8:00am- 10:00 pm		\$25.00 per hour	\$30.00 per hour

**LADERA SERRA PARK: MAX 75**

*Residents Only*

	<b>NON-PROFIT</b>	<b>PRIVATE</b>	<b>FUNDRAISER COMMERCIAL</b>
Cleaning/Damage Deposit	\$50.00	\$50.00	\$50.00
Usage Fee	Up to 4 hours 48.00	Up to 2 hours 41.00	Up to 2 hours 44.00
Each additional hour	28.00	28.00	29.00
Liability Insurance ( <i>No alcohol allowed</i> )	84.00	84.00	84.00

**LSP: Restroom key issued for a refundable deposit of \$10.00 (*Residents only*)**

**CITY HALL COUNCIL CHAMBER CONFERENCE ROOM: *City Groups ONLY***

**HOLIDAYS: NO RENTALS ON NEW YEAR'S EVE**

**SEE CHART ON REVERSE SIDE REGARDING SURCHARGES FOR EVENTS SCHEDULED ON A CITY OF SAN DIMAS HOLIDAY**

- **FACILITY USE BY**  
**BONITA UNIFIED SCHOOL DISTRICT**      ***MOD CHARGE ONLY \$15.00 per hour***

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- **BOOSTERS AND OTHER FUNDRAISERS**      **RESIDENT NON PROFIT RATE**  
(For BUSD)



# Agenda Item Staff Report

**TO:** Honorable Mayor and Members of City Council  
*For the Meeting of January 25, 2011*

**FROM:** Blaine Michaelis, City Manager

**INITIATED BY:** Community Development Department

**SUBJECT:** **CONSIDERATION OF PRECISE PLAN 10-01** - A request to construct a 674 square foot addition for a deli/sandwich shop and a 656 square foot covered patio for an outdoor eating area in conjunction with an existing fruit stand business located at 264 East Foothill Boulevard (APNL 8661-014-030).

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## **SUMMARY**

*Precise Plan 10-01 is a request to construct an addition to expand the existing business located at 264 East Foothill Boulevard in the Commercial Highway Zone with the Scenic Highway Overlay Zone. The Development Plan Review Board reviewed this project on October 14, 2010 and the Planning Commission also reviewed this project on November 3, 2010 and December 1, 2010; both recommended approval of this project with conditions.*

The applicant is proposing to construct a 674 square foot addition for use as a deli/sandwich shop and a 656 square foot covered patio for an outdoor eating area to an existing fruit stand business, located at 264 East Foothill Boulevard. The project is located in the C-H (Commercial Highway) Zone with a Scenic Highway Overlay.

The Development Plan Review Board reviewed and recommended approval of the Precise Plan at its October 14, 2010 meeting.

This proposal was then presented at the November 3, 2010 Planning Commission Meeting and was continued to review concerns that were brought up by nearby residents at the meeting. Staff was then given 30 days to research for any documented facts that supported comments made by the residents and to refer the proposal back to the Traffic Safety Committee.

Prior to the November 17, 2010 Traffic Safety Committee meeting, all the residents located in the Rodeo Court and Longhorn Drive community were

5a(1)

notified about the meeting and invited to join. Staff contacted the Sheriff's Department for crime information reports for the Rodeo Court and Longhorn Drive community (Exhibit D). The Sheriff's Department reported that there have been 4 accidents in the past 5 years at the intersection of Walnut Avenue and Foothill Boulevard.

Staff prepared a memo for the Traffic Safety Committee to summarize the questions that were raised at the Planning Commission meeting (Exhibit E). The only public members that attended were: Steve Rudy (applicant), Alan Smith (designer) and Planning Commissioner David Bratt. The Traffic Committee is composed of the Director of Public Works, Street Maintenance Superintendent, Street Maintenance Supervisor, Traffic Engineer, Transportation Department of Bonita Unified School District, Senior Engineer and Environmental Coordinator. For the meeting of November 17, 2010, the Committee invited a representative from the Los Angeles County Sheriff's Department to address any questions regarding accidents and crime.

At the Traffic Safety Committee Meeting, the item was re-introduced and it was explained why the item was returned. A traffic count was conducted on May 12, 2010, and based on those numbers it was concluded that the intersection of Foothill Boulevard and Walnut Avenue is unlikely to meet any signal warrants and that the traffic created by the proposed addition will not significantly impact the current flow. The Committee also addressed the possible relocation of the proposed driveway in order to preserve an existing mature tree (see Exhibit B) and stated that it could be possible; however, it would affect the parking lot layout and would require the applicant to submit new plans to reflect the change. The applicant has chosen to continue proposing the driveway at its current proposed location and has offered to use 24" box replacement trees, rather than the minimum 15 gallon.

At the Planning Commission hearing, the nearby residents expressed general concerns about traffic issues in their neighborhood that may/may not be directly attributed to activities at Starberry Farms. The Traffic Safety Committee reviewed each of the concerns and stated that the residents need to contact the Public Works Department to discuss possible solutions. Rodeo Court and Longhorn Drive are public streets, so it appears that placing a sign at the entrance of the neighborhood stating "No Outlet" or "No Parking" would be the only option.

At the December 1, 2010 Planning Commission meeting, the proposal was presented by Staff and the Commission stated that they felt the concerns of the residents were addressed. The public comment portion was closed at the previous meeting and was not re-opened at this meeting; therefore, the Commission recommended approval by a 5-0 vote.

## **ANALYSIS**

The property is zoned Commercial Highway and is located in the Scenic Highway Overlay (SHO) Zone. Any construction, relocation, modification, rebuilds and/or alterations to any building requires the Precise Plan process, which requires approval from the Development Plan Review Board, Planning Commission and City Council. If the proposal complies with the provisions and intent of the SHO zone, and that such conditions as recommended by the DPRB are acceptable, the Planning Commission can recommend to the City Council that they approve the plan pursuant to the findings and conditions of the DPRB. If the Planning Commission deems it necessary, additional conditions, and/or the alteration of recommended conditions, may be made to the plan.

The existing size of the business is 987 square feet. The proposed addition is 674 square feet which will provide room to expand the existing business for a deli/sandwich/smoothie shop use. The proposed patio is 656 square feet which will provide customers a shaded seating area with non-permanent furniture. The area of the patio will be bordered with a two-and-a-half-foot tall concrete block wall. The proposed construction is intended to match in architectural features, scale and massing as the existing business.

## **FINDINGS FOR PRECISE PLAN:**

1. The development of the site in accordance with the development plan is suitable for the use or development intended.

The proposal to construct a 674 square foot addition and a 656 square foot covered patio to an existing fruit stand business is in accordance with the Commercial Highway zoning designation. The architectural design and site plan for the project is designed to improve the existing conditions of the property.

2. The total development is so arranged as to avoid traffic congestion, ensure public health, safety and general welfare and prevent adverse effects on neighboring property.

The site is located on the southwest corner of Foothill Boulevard and Walnut Avenue. The applicant is responsible for meeting all circulation and traffic standards imposed by the City of San Dimas. The parking will accommodate the proposed use; all streets are sufficient in width and pavement to carry the quantity and kind of traffic generated by the proposed use. The conditions imposed will ensure that the public health, safety and general welfare will be protected as well as prevent adverse effects on neighboring properties.

3. The development is in general accord with all elements of the General Plan, Zoning Ordinance and all other Ordinances and regulations of the City.

The proposed project is consistent with the General Plan, Zoning Ordinance and all other Ordinances and regulations of the City.

**RECOMMENDATION**

Staff recommends approval of Resolution Number 2011-03 for Precise Plan 10-01.

Respectfully Submitted,



Kristi Grabow  
Associate Planner

Attachments:           Exhibit A – Vicinity Map  
                              Exhibit B – Photos  
                              Exhibit C –Planning Commission Minutes-November 3, 2010  
                              Exhibit D – Crime Information Report  
                              Exhibit E – Traffic Committee Memo  
                              Exhibit F – Traffic Committee Draft Minutes  
                              Exhibit G – Plans

City Council Resolution No. 2011-03

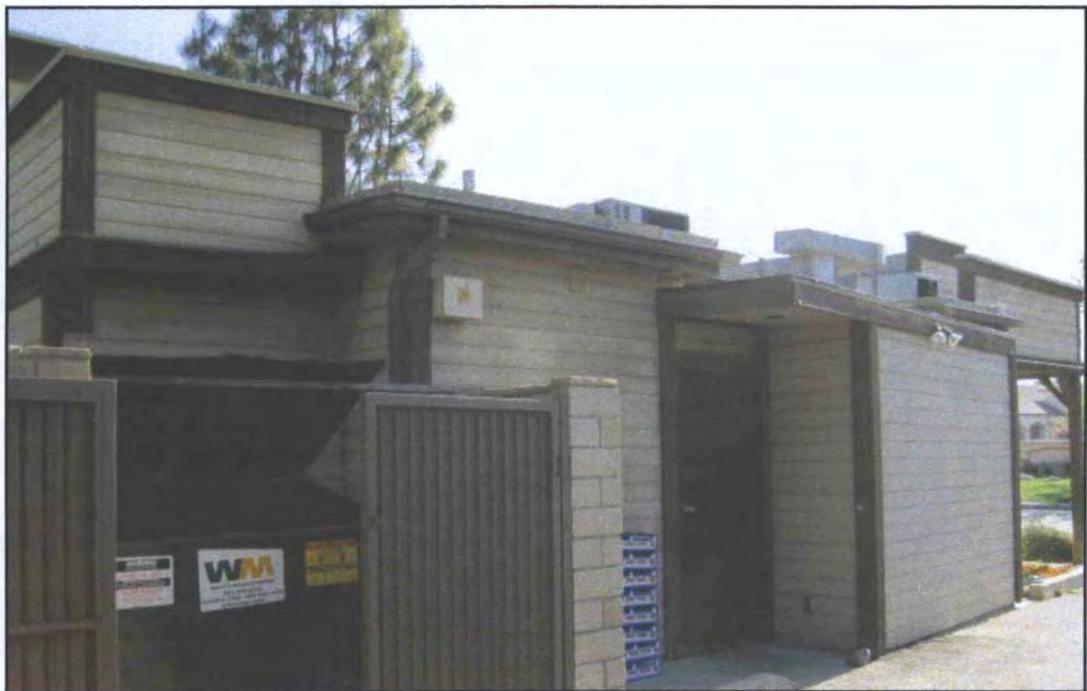
# EXHIBIT A

## VICINITY MAP



**EXHIBIT B**







# CITY OF SAN DIMAS PLANNING COMMISSION MINUTES

Regularly Scheduled Meeting  
Wednesday, November 3, 2010 at 7:00 p.m.  
270 South Walnut Avenue, Sheriff's Community Meeting Room

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## **Present**

Chairman Jim Schoonover  
Commissioner David Bratt  
Commissioner Stephen Ensberg  
Commissioner M. Yunus Rahi  
Director of Development Services Dan Coleman  
Associate Planner Kristi Grabow  
Planning Commission Secretary Jan Sutton

## **Absent**

Commissioner John Davis

## **CALL TO ORDER**

Chairman Schoonover called the regular meeting of the Planning Commission to order at 7:02 p.m. and Commissioner Bratt led the flag salute.

## **CONSENT CALENDAR**

1. Approval of Minutes: October 20, 2010

**MOTION:** Moved by Bratt, seconded by Ensberg to approve the Consent Calendar. Motion carried 3-0-1-1 (Davis absent, Rahi abstain).

## **PUBLIC HEARINGS**

2. **CONSIDERATION OF MUNICIPAL CODE TEXT AMENDMENT 10-03** – a request to amend various provisions of the Parking Chapter 18.156 of the Zoning Code for consistency with the 2010 CALGREEN Building Code.

Staff report presented by **Director of Development Services Dan Coleman**, who stated California is known for being a leader in environmentally friendly building codes. Recently the state adopted the CALGREEN code, which is the new building code that will go into effect January 1, 2011. As part of that, the City needs to amend the current parking code to comply with state mandates that require spaces near the entrances of buildings for low emission and carpool vehicles in the required ratios, along with providing bicycle parking and pavement

stenciling for clean air vehicles. This amendment, along with updates to all the other building codes, will go to the City Council for first and second reading, and then adoption. Staff is recommending approval.

**Commissioner Ensberg** asked if the City came up with the language for the amendments, and noted that the proposition to scale back environmental protections was defeated at the polls yesterday, so this appears to be in accordance with what the citizens of the state want.

**Director Coleman** stated the language for the amendments comes from the State code.

**Commissioner Rahi** stated the State is requiring these laws to be effective January 1, 2011 and asked if the City adopts this in December, will it become effective immediately.

**Director Coleman** stated yes, we want our codes to be consistent with the State codes to avoid confusion.

**Commissioner Bratt** stated it appears the number of carpool and vanpool spaces is based on the square footage of the building, but would the number of overall parking spaces required be based on the type of business.

**Director Coleman** stated the changes to the code won't affect the overall number of spaces required, which is determined by the use in the building; it will just require that a certain number be labeled for clean air parking spaces.

Chairman Schoonover opened the meeting for public hearing. There being no response, the public hearing was closed.

#### RESOLUTION PC-1423

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN DIMAS RECOMMENDING APPROVAL OF MUNICIPAL CODE TEXT AMENDMENT 10-03 REGARDING VARIOUS PROVISIONS OF THE PARKING CHAPTER 18.156 OF THE ZONING CODE FOR CONSISTENCY WITH THE 2010 CALGREEN BUILDING CODE

**MOTION:** Moved by Ensberg, seconded by Bratt to adopt Resolution PC-1423 recommending the City Council approve Municipal Code Text Amendment 10-03. Motion carried 4-0-1 (Davis absent).

3. **CONSIDERATION OF PRECISE PLAN 10-01 AND CONDITIONAL USE PERMIT 10-07** – A request to Construct a 674 square foot addition for a deli/sandwich shop and a 656 square foot covered patio for an outdoor eating area; and a request to Allow Outdoor Display/Sales of Product at an Existing Fruit Stand Business located at 264 East Foothill Boulevard. (APN: 8661-014-030)

Staff report presented by **Associate Planner Kristi Grabow**, who stated the Commission is considering two applications for this location. The first one is the Precise Plan which is a request to expand the existing business to include a deli/sandwich/smoothie shop and add a covered patio for an outdoor eating area. The eating area will not contain any permanent furniture, but there will be low walls around it that will enclose the patio area. This property is

located in the Scenic Highway Overlay zone, which requires approval from the DPRB, Planning Commission and City Council. The DPRB reviewed the application on October 14, 2010 and recommends approval. This item also went to Traffic Committee in May and August of this year to review circulation and parking requirements. The applicant is increasing parking to meet the zoning code requirements.

The second application is a Conditional Use Permit to allow for outdoor sales/display of merchandise, in five moveable carts to be located in the colonnade area, as required by the Commercial Highway zone. Conditions limit the carts to that area only and require they be positioned to leave clear access into the business. Staff is recommending the Commission approve the Conditional Use Permit and recommend approval to the City Council of the Precise Plan.

**Commissioner Ensberg** asked if there would be any alcohol sales here and what the hours of operation would be for the sandwich shop.

**Associate Planner Grabow** stated there will be no alcohol sales, and the hours for the deli will be the same as the fruit stand, which the applicant can go over.

**Commissioner Rahi** asked if the Traffic Committee had any concerns with the width of the one-way driveway. He also asked about the number of parking spaces and if they were calculated for the retail or restaurant use.

**Associate Planner Grabow** stated the access plan was reviewed by the Traffic Committee and approved. There was discussion about the width of the driveway, but since it is one-way and a straight shot, and the applicant explained how deliveries would be made, they had no objections to the design. She said the applicant is providing 22 parking spaces as required by code, and the total includes calculating the square footage for retail and restaurant separately and then combining the total.

**Commissioner Bratt** was concerned that the placement of the driveway on Foothill Boulevard required the removal of what appears to be a healthy tree and was wondering if the driveway could be relocated slightly to preserve the tree.

**Associate Planner Grabow** stated the Traffic Committee required increasing the driveway width for safety purposes which would require removal of the tree. While the findings for removal can be met by the need to allow for construction, Staff can note his objection to the removal when this item moves forward.

**Commissioner Bratt** noted that it appears the display carts are already being used and that the adoption of the Conditional Use Permit was to bring the business into compliance.

Commissioner Schoonover opened the meeting for public hearing. Addressing the Commission were:

**Alan Smith, 12223 Highland Avenue, Suite 106-201, Rancho Cucamonga, Consultant for the Applicant**, thanked Staff for their hard work on this proposal, especially with addressing parking and traffic requirements. He felt this will provide for a very nice expansion of the store that has been there for many years. He clarified for the Commission that the hours of operation are Monday through Saturday 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m.

**Commissioner Rahi** asked how they arrived at 22 parking spaces.

**Associate Planner Grabow** stated the market requires four parking spaces while the restaurant requires 17.73, which was rounded up to 18, totaling 22 spaces.

**Commissioner Bratt** wanted to know if the seasonal operations were moving further to the west. He also reiterated that he felt the driveway could be reconfigured to save the tree along Foothill, and asked if the purpose of the Conditional Use Permit was to bring the business into compliance.

**Alan Smith, Consultant**, stated the new parking area is going where the seasonal operations are currently located so they will be moving further to the west. He stated the Traffic Committee wanted the driveway widened to address safety issues and comply with ADA requirements, and while it is a nice tree, he didn't think it was a specimen tree and that they would be providing replacement trees on the property. He confirmed that the CUP was to make the business compliant with the code.

**Barbara Alvarez, 1300 Longhorn Drive**, stated she has lived across Foothill from this business for 28 years and was very concerned about traffic issues. She stated a number of years ago a woman was killed pulling out of Walnut to turn west on Foothill because it is difficult to see the traffic from both directions. She stated her house has been broken into a couple of times and was concerned that the increase in customers will increase security issues. She felt adding the restaurant would not be beneficial to her neighborhood and would increase noise for them. People already use her cul-de-sac as a turnaround. She already deals with the cell tower, dust from the equestrian center and a huge light shining into her bedroom window. She felt 20 parking spaces would not be enough, especially during the seasonal sales.

**Joe Aiello, 1317 Longhorn Drive**, concurred. He stated since moving to this neighborhood he has seen a number of cars pull into the cul-de-sac to take pictures, stopping in front of the houses, or using it as a turnaround. He stated cars park constantly in front of the tract and the restaurants. He felt the on-site parking would be full constantly during the seasonal sales period. He thought it had been brought to the City before to gate their community, and hoped that they would take their concerns into consideration. He felt the surrounding businesses would be used for overflow parking and that the City will be getting constant calls.

**Commissioner Ensberg** asked what he would suggest since the code says they are providing enough parking and will be compliant.

**Joe Aiello** stated he respects that statement but felt there would still be overflow parking and wanted to know how they were going to keep people out of his neighborhood. He is concerned for the safety of his children and his neighbors and would like to see either a gate or permit parking required for his neighborhood.

**Director Coleman** clarified that the existing parking on-site is 11 spaces, and it will be doubling to 22 spaces with the proposed development.

**Associate Planner Grabow** stated there is legal street parking on the south side of Foothill, while on the north side it is prohibited west of Longhorn.

**Randy Bell, 216 Rodeo Court**, stated his backyard faces the store across Foothill. He stated he is a Sheriff's Deputy for San Dimas and understands the traffic problem. There are 11 homes in this neighborhood and five of them are occupied by law enforcement officers. He stated cars park in the neighborhood all the time, including students from Western University because they are carpooling. He has asked the City for help and has been told they could have no parking signs installed, but he would prefer a red curb rather than a sign post in his front

yard. He stated the seasonal sales create traffic problems for them three months of the year. He has seen people park on Longhorn and then cross Foothill carrying their Christmas trees. He stated the tree delivery trucks park on Foothill to unload, and that he hears the pounding of stands being put on the trees until 11:00 p.m.

**Commissioner Ensberg** stated maybe the issue for the neighbors is the seasonal sales and not the addition of the restaurant.

**Randy Bell** felt the restaurant will just add to the existing chaos. He feels that area is a disaster for six months of the year, and adding 11 more parking spaces will not help the problem. He stated the woman was killed at that intersection because she couldn't see oncoming traffic.

**Catherine Bell, 216 Rodeo**, stated she enjoys running and exercising, and when she runs by Starberry Farms she has observed that it is very narrow where they are proposing the restaurant and additional parking. She stated people do park across Foothill and it is dangerous to cross.

**Catherine McNeil, San Dimas Equestrian Center**, stated there have been many accidents in that area over the years and that it is difficult when heading north on Walnut to cross. She suggested putting a "No U-Turn" sign on Foothill at Walnut to limit congestion and confusion. She would prefer a traffic signal but knows they are expensive to install.

**Brian DeLeon, 1324 Longhorn**, wanted to reiterate the concerns expressed by his neighbors about traffic. He felt adding the restaurant would increase the congestion in that area and cause people to linger. He was also concerned about increased traffic because of the number of horses in that area. He has seen several near accidents between cars and horses and was concerned that having more people come there for the restaurant might increase the chance of accidents. He lives at the end of the cul-de-sac and was concerned for the safety of his children. He has had people ask for directions to the golf course because they pull into his neighborhood when they get lost coming off the freeway at San Dimas Avenue.

**Xavier Alvarez, 1300 Longhorn**, stated his house has been broken into three times and wanted to know what they can do to secure his neighborhood, such as a community gate. He is ready to ask the City for higher walls to help with his security. He felt the City should gate their community to keep people out of the cul-de-sac. He said there is already an issue at Christmas time with the noise from cutting the trees and nailing on stands. He did not think this area was meant for all these activities and that Starberry Farms should have additional parking for their seasonal sales. He wanted to know how many people would be allowed in the outdoor eating area.

**Steve Rudy, Applicant**, stated he is trying to keep his business viable. With new stores opening in the area, his produce sales are down, so he thought adding a sandwich shop would help to make up for that lost revenue. He was already in the process when he heard about the café across the street going in. He stated this is not going to be like a full-service restaurant, and that he is complying with all the City regulations. He added he just wants to be a good neighbor.

There being no further comments, the public hearing was closed.

**Chairman Schoonover** asked when the last time a warrant study was done for a traffic signal for Foothill and Walnut. He stated when this item came to the Traffic Committee and DPRB no residents attended, and asked if they were sent notices.

**Director Coleman** stated he did not know when the last time a traffic study was done.

**Associate Planner Grabow** stated they did not send notices to the north side of Foothill for the DPRB meeting as usually they notice adjacent properties only. She did not know what the noticing practices were for Traffic Committee as that is handled by the Public Works Department.

**Commissioner Ensberg** asked how parking for seasonal sales is handled.

**Associate Planner Grabow** stated retail and restaurant are permitted by right in the Commercial Highway zone, and the parking is calculated for those uses. The Temporary Uses ordinance allows for temporary sales of pumpkins and Christmas trees, but there are no specific parking requirements because it is a temporary use.

#### RESOLUTION PC-1424

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN DIMAS RECOMMENDING APPROVAL OF PRECISE PLAN REVIEW 10-01, A REQUEST TO CONSTRUCT A 674 SQ. FT. ADDITION FOR A DELI/SANDWICH SHOP AND A 656 SQ. FT. COVERED PATIO FOR AN OUTDOOR EATING AREA IN CONJUNCTION WITH AN EXISTING FRUIT STAND BUSINESS LOCATED AT 264 EAST FOOTHILL BOULEVARD (APN: 8661-014-030)

#### RESOLUTION PC-1425

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN DIMAS APPROVING CONDITIONAL USE PERMIT 10-07, A REQUEST TO ALLOW FOR OUTDOOR DISPLAY/SALES AT AN EXISTING FRUIT STAND BUSINESS LOCATED AT 264 EAST FOOTHILL BOULEVARD (APN: 8661-014-030)

**MOTION:** Moved by Ensberg, seconded by Schoonover, to continue this item for 30 days to allow Staff to research if there are any documented facts that support the anecdotal statements made tonight in regards to traffic, and to refer this back to the Traffic Committee for additional review of the comments made by the residents and to notice the surrounding neighborhood of that meeting.

**Commissioner Rahi** stated the Traffic Committee has reviewed this twice and they only required additional parking and did not mention any line-of-sight issues with cars parked on the street.

**Associate Planner Grabow** stated there are already regulations with how close cars can be parked to the corner and that there are conditions on the plans to provide restrictive measures.

**Commissioner Bratt** stated he would also like information from the Sheriff's Department included in the research.

**Alan Smith, Consultant**, in response to a question from Commissioner Ensberg stated the project does conform to the code and the business owner has not witnessed people crossing Foothill, and to keep in mind that in 2012 the City is planning to widen the bridge there which should alleviate some of the line-of-sight and parking issues.

Motion carried 4-0-1 (Davis absent)

#### **ORAL COMMUNICATION**

##### **4. Director of Development Services**

**Director Coleman** announced that Associate Planner Kristi Grabow completed her Master's Program at the University of La Verne. He also reminded the Commissioners that the next meeting on November 17<sup>th</sup> will be held at the Senior Citizen/Community Center to discuss the Brasada Project.

##### **5. Members of the Audience**

No communications were made.

##### **6. Planning Commission**

No communications were made.

#### **ADJOURNMENT**

**MOTION:** Moved by Ensberg, seconded by Bratt to adjourn. Motion carried 4-0-1 (Davis absent). The meeting adjourned at 8:04 p.m. to the regular Planning Commission meeting scheduled for November 17, 2010, located at the Senior Citizen/Community Center in the Community Meeting Room, 201 E. Bonita Avenue.

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Jim Schoonover, Chairman  
San Dimas Planning Commission

ATTEST:

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Jan Sutton, Planning Commission Secretary

Approved: December 1, 2010

Los Angeles County Sheriff's Department  
**CRIME INFORMATION REPORT**  
**INCIDENTS COUNT FOR PRIMARY STAT CODE**  
AGENCY: CA0190008  
REPORT PERIOD: 11/01/2007 to 11/15/2010

**>> REPORT PARAMETERS <<**

REPORT DATE RANGE

START DATE: 11/01/2007

END DATE: 11/15/2010

AGENCY ORI: CA0190008 FORIII-SAN DIMAS

REPORTING DISTRICT:

RD GROUP: -

STREET DIRECTION

STREET NUMBER:

STREET NAME: RODEO

STREET TYPE

REPORT GROUPED BY: NO GROUP SELECTED

DISPLAY DETAIL CASES? Y

DISPLAY SUMMARY PAGE? N

**note: Reported counts reflect actual cases counted by primary statistical codes. Counts do not include adjustments to previously reported crimes and may vary slightly from UCR reports.**

\* Reflects the number of victims associated with the primary statistical codes.

\*\* Reflects the number of stolen vehicles involved with the cases.

**CRIME INFORMATION REPORT**  
**INCIDENTS COUNT FOR PRIMARY STAT CODE**

AGENCY: CA0190008

REPORT PERIOD: 11/01/2007 to 11/15/2010

CRIME	STAT CODE SERIES	COUNT					
<b>THEFT, PETTY (\$400 OR LESS)</b>	<b>38-</b>	<b>1</b>					
STAT CODE: 384 THEFT, PETTY (\$400 OR LESS): From Auto (Except Parts/Accessories) Count = 1							
<u>Year</u>	<u>Seq</u>	<u>ORI</u>	<u>RD</u>	<u>Rpt Date</u>	<u>Incident Date/Time Range</u>	<u>Address</u>	<u>Cross Street</u>
2009	05960	CA0190008	0810	09/15/09	09/15/09 00:39 - 09/15/09 07:00	224 RODEO	
<b>NON-CRIMINAL</b>	<b>44-</b>	<b>1</b>					
STAT CODE: 444 NON-CRIMINAL: Suspicious Circumstances, Possible Criminal Activity Count = 1							
<u>Year</u>	<u>Seq</u>	<u>ORI</u>	<u>RD</u>	<u>Rpt Date</u>	<u>Incident Date/Time Range</u>	<u>Address</u>	<u>Cross Street</u>
2008	07286	CA0190008	0813	11/21/08	11/21/08 10:00 -	208 RODEO	
		<b>TOTAL</b>					<b>2</b>

**Note: Reported counts reflect actual cases counted by primary statistical codes. Counts do not include adjustments to previously reported crimes and may vary slightly from UCR reports.**

Los Angeles County Sheriff's Department  
**CRIME INFORMATION REPORT**  
**INCIDENTS COUNT FOR PRIMARY STAT CODE**  
AGENCY: CA0190008  
REPORT PERIOD: 11/01/2007 to 11/15/2010

**>> REPORT PARAMETERS <<**

REPORT DATE RANGE

START DATE: 11/01/2007

END DATE: 11/15/2010

AGENCY ORI: CA0190008 FORIII-SAN DIMAS

REPORTING DISTRICT:

RD GROUP: -

STREET DIRECTION

STREET NUMBER:

STREET NAME: LONGHORN

STREET TYPE

REPORT GROUPED BY: NO GROUP SELECTED

DISPLAY DETAIL CASES? Y

DISPLAY SUMMARY PAGE? N

**note: Reported counts reflect actual cases counted by primary statistical codes. Counts do not include adjustments to previously reported crimes and may vary slightly from UCR reports.**

\* Reflects the number of victims associated with the primary statistical codes.

\*\* Reflects the number of stolen vehicles involved with the cases.

**CRIME INFORMATION REPORT**  
**INCIDENTS COUNT FOR PRIMARY STAT CODE**

AGENCY: CA0190008

REPORT PERIOD: 11/01/2007 to 11/15/2010

CRIME	STAT CODE SERIES	COUNT					
<b>BURGLARY, RESIDENCE</b>	<b>06-</b>	<b>1</b>					
STAT CODE: 064 BURGLARY, RESIDENCE: Day, Entry By Force Count = 1							
<u>Year</u>	<u>Seq</u>	<u>ORI</u>	<u>RD</u>	<u>Rpt Date</u>	<u>Incident Date/Time Range</u>	<u>Address</u>	<u>Cross Street</u>
2009	03929	CA0190008	0810	06/29/09	06/29/09 08:30 - 06/29/09 17:45	1300 LONGHORN	
<b>ACCIDENTS, TRAFFIC-VEHICLE OR BOAT</b>	<b>47-</b>	<b>1</b>					
STAT CODE: 472 ACCIDENTS, TRAFFIC-VEHICLE OR BOAT: Traffic (Non-Injury) Count = 1							
<u>Year</u>	<u>Seq</u>	<u>ORI</u>	<u>RD</u>	<u>Rpt Date</u>	<u>Incident Date/Time Range</u>	<u>Address</u>	<u>Cross Street</u>
2009	08143	CA0190008	0813	12/11/09	12/11/09 21:30 - 12/11/09 21:30	27 W LONGHORN	FOOTHILL
		<b>TOTAL</b>					<b>2</b>

Note: Reported counts reflect actual cases counted by primary statistical codes. Counts do not include adjustments to previously reported crimes and may vary slightly from UCR reports.



# MEMORANDUM

**DATE:** November 17, 2010  
**TO:** Traffic Committee  
**FROM:** Kristi Grabow, Associate Planner  
**SUBJECT:** Precise Plan 10-01: 264 East Foothill Boulevard

Starberry Farms is located 264 East Foothill Boulevard on the southwest corner of Foothill Boulevard and Walnut Avenue. The applicant is proposing to construct an expansion to the existing fruit stand business and to construct a patio for outdoor seating. The existing size of the business is 987 square feet. The proposed addition is 674 square feet which will provide room to expand the existing business for a deli/sandwich/smoothie shop use. The proposed patio is 656 square feet which will provide customers a shaded seating area with non-permanent furniture. The area of the patio will be bordered with a two-and-a-half-foot tall concrete block wall. The proposed construction is intended to match in architectural features, scale and massing as the existing business.

On May 19, 2010, this item was brought to the Traffic Committee Meeting. At that meeting it was required of the applicant to amend his plans to have the following list of items before returning to the Committee Meeting:

1. Line of sight study from Walnut Avenue,
2. Widen driveway to minimum of 35 feet at the property line,
3. Show truck turning paths,
4. Show survey markers on plans,
5. Include curb and gutter improvements west of driveway,
6. Consider circular driveway,
7. Provide Staff with a land survey and reflect that information onto the plans,
8. Submit plans to LA County to determine accurate property ownership, and
9. Consider bollards at ADA parking stalls in lieu of wheel stops.

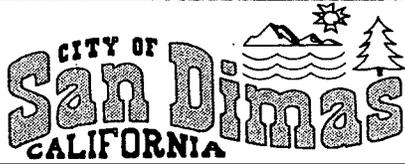
On July 21, 2010 at Traffic Committee Meeting it was concluded that all these items had been addressed and the proposal was approved.

On October 14, 2010, this proposal was reviewed and approved by the Development Plan Review Board.

On November 3, 2010, this item was presented and reviewed at the Planning Commission Meeting. At that meeting, there were concerned residents that live in the community located just north of the subject site. The item was continued for 30 days to

allow this proposal to go back to the Traffic Committee for further review and to address the questions that were asked by the residents and Planning Commission, which are:

1. What are the traffic facts for Foothill Boulevard/Walnut (i.e., latest traffic counts, accident history based upon police reports)?
2. What were the contributing factors to fatal traffic accident that killed a woman at this intersection?
3. When was last traffic signal warrant study done and what were the findings?
4. Can Foothill driveway be shifted 8-10 feet to the west to preserve existing mature tree?
5. Will proposed sandwich restaurant use significantly increase traffic?
6. What can be done for the safety of Starberry Farms' customers who park on north side of Foothill (on Longhorn Drive or Rodeo Court) and cross Foothill during seasonal pumpkin patch and Christmas tree lot?
7. How can City better control overflow "off-site" parking of customers during seasonal pumpkin patch and Christmas tree lot?
8. How can City improve line-of-sight for drivers on Walnut trying to turn onto Foothill Boulevard? The complaint is that when cars are parked on south side of Foothill they block line-of-sight.
9. How can City prohibit non-residents from driving or parking on Longhorn Drive or Rodeo Court? This occurs during Starberry Farms' seasonal pumpkin patch and Christmas tree lot, and during special events at equestrian center. Parking also occurs on regular basis due to students from Western University going to the equestrian center. One resident also said he has been asked several times by drivers how to get to golf course. Examples given by the residents that could help with these issues are to restrict parking by permit only or private gated community.
10. Could City install a 'NO U-TURN' sign on Foothill at Walnut?
11. Commissioner Rahi asked via email if critical traffic issues were comprehensively considered and evaluated in the previous traffic committee meetings, such as vehicle turning movement counts at the intersection of Foothill and Walnut, especially during the 7am-9am and 4pm-6pm peak commuter hours, to see if turning left from Walnut creates significant problems for drivers. Also if there were any sight distance problems for drivers exiting out of Walnut that can be mitigated by minor modification of project site design; and if there will be a need/warrant for a traffic signal (at least the peak hour volume warrant can be tested) considering there will be other nearby projects in the area that will add traffic to Foothill and also at the intersection of Foothill/Walnut.



**City of San Dimas**  
**Public Works Department**  
**Traffic Safety Committee**

**MEETING MINUTES**

**Wednesday, November 17, 2010, at 9:30 A.M.**  
**TCH, Public Conference Room, 186 Village Court**

Committee Members Present: Krishna Patel (Committee Chair/Public Works Director), Shari Garwick (Senior Engineer, Public Works Dept.), John Campbell (Street Maintenance Superintendent, Public Works Dept.), Gary Bishop (Street Maintenance Supervisor, Public Works Dept.), Lisa Monreal (Committee Secretary/Environmental Coordinator, Public Works Dept.), Warren Siecke (Traffic Engineer), Deputy John Rodriguez (San Dimas Sheriff's Dept.) and Robert Harrison (Transportation Dept., Bonita Unified School District).

\* \* \* \*

Meeting called to order at 9:37 AM.  
TSC and Audience Introductions.  
Development Services Director Dan Coleman present.

**CONTINUED ITEMS**

**05-10-05 EAST FOOTHILL BLVD- STARBERRY FARMS**

REQUEST FROM PLANNING COMMISSION: Revisit traffic issues associated with proposed expansion of property.

DISCUSSION: Chair Patel provided the traffic review history of the project. Initially reviewed in May 2010, the proposed sandwich shop and patio seating at 264 E. Foothill Blvd project was recommended to be revised to include a line of sight study from Walnut Ave, widen the access driveway, show truck turning movements, include curb and gutter improvements, consider a circular driveway, show survey markers on plans, submit plans to LA County in respect to shared property lines, and ADA considerations. The project was brought back to the TSC in July, and the revised plans met traffic safety requirements. However, the new plan did not have a circular driveway but did have more on-site parking. The Development Plan Review Board reviewed the proposal in Oct 2010 and the Planning Commission in early November. The issue was brought back to the TSC to address several concerns raised at the November 3, 2010 Planning Commission hearing.

1. *What are the traffic facts for Foothill Boulevard/Walnut (i.e., latest traffic counts, accident history based upon police reports)?*

Chair Patel stated a traffic count was done in May 2010 as part of the City-wide Speed Zone Study. TE Siecke stated the machine counts measured eastbound, westbound and northbound vehicles entering the intersection. Foothill Blvd daily volume, equally distributed between eastbound and westbound traffic is 19,690. Northbound Walnut is 665 vehicles. Foothill traffic is 30 times greater than Walnut. The afternoon peak hour on Foothill is 950 cars and morning is 1,536. Walnut afternoon peak hour is 68 and morning is 42 vehicles. The State warrant for a traffic signal requires a peak hour minimum volume of 75 vehicles for a side street approach. Chair Patel stated that this warrant is only 1 out of 11 requirements for a traffic signal.

2. *What were the contributing factors to fatal traffic accident that killed a woman at this intersection?*

Deputy Rodriguez stated there were no fatal accidents in the last 10 years at the intersection. Steve Rudy stated the accident occurred 12-14 years ago. Chair Patel recalled it was someone turning left onto Walnut, and was struck by an eastbound car. David Bratt stated the gentleman driver turned left, and the passenger, his wife was killed. The accident occurred in the late afternoon. Chair Patel stated detailed accident information could be obtained by researching older sheriff archives.

3. *When was last traffic signal warrant study done and what were the findings?*

With use of the May 2010 traffic volumes TE Siecke presented a preliminary warrant study that indicated none of the 11 warrants were met. Deputy Rodriguez provided accident history, with a total of 4 accidents in the last 5 years. One involved an animal in the roadway, two involving left turning traffic, and one vehicle ran off the road. TE Siecke stated that based on the received accident data, the totals are well short of 5 accidents per year, which is one of the signal warrant requirements.

4. *Can Foothill driveway be shifted 8-10 feet to the west to preserve existing mature tree?*

Chair Patel stated this was looked at by the TSC in May. By constructing a circular driveway, parking is lost. TE Siecke stated moving the driveway 8-10 feet would result in a lost parking spot. Planner Grabow stated the project is designed with the required 22 spaces. Chair Patel stated that moving the driveway might also encroach onto County Flood Control property. SE Garwick stated to save the tree the driveway would have to be moved significantly. DD Coleman asked about shifting the driveway to the east and Planner Grabow stated concern about loss of handicapped spaces and access. TE Siecke stated there probably wouldn't have enough room to get a driveway and also maintain sidewalk in front of building.

Steve Rudy stated one reason to not move too far west is because of the Christmas trees, and the need to accommodate for the tent.

After clarifying which tree was under discussion, DD Coleman stated the sycamore in question is protected because it is mature and that there appears to be over 60 feet available west of driveway, w/out affecting anything else on Foothill. Moving the driveway west would give people exiting more room to enter the left turn pocket.

TE Siecke brought up the future widening plans for the bridge on Foothill, and concern that moving the driveway would affect this. It would also create two driveways adjacent to each other, creating the potential that people would turn into the wrong driveway. This could be mitigated.

In response to Chair Patel, TE Siecke stated moving the driveway 9 feet would be the width of a parking space. DD Coleman stated this would put the curb line 12' from the trunk of the tree.

Chair Patel stated he would like to see the right turn turning radius shown on plans if driveway is shifted to west, to make sure turning radius is there. Once funding is programmed to widen Foothill Blvd, those improvements will be installed. It appears possible to move the driveway one stall length (9') west.

Alan Smith of Starberry Farms stated that since they are required to replant anyways, it seems like a lot of expense to make this change, which would result in several thousand dollars to the owner. The project has been approved, and accepted. They are willing to replant with many trees. Steve Rudy stated he can plant bigger boxes than required, and choose fast growing trees.

DD Coleman stated the decision is for Planning Commission.

5. *Will proposed sandwich restaurant use significantly increase traffic?*

Chair Patel stated that based on the anticipated volumes, traffic will not be significantly increased. TE Siecke stated there will be minor increase, but not enough to warrant any additional traffic control.

SE Garwick stated the entry on Walnut is inbound only, and SS Campbell stated additional onsite parking will allow less impact on Foothill.

In response to David Bratt, TE Siecke stated the Institute of Traffic Engineers (nationally recognized standard) publishes traffic generation rates per square foot. For the proposed development (600 square feet) would only create a small increase. Chair Patel stated the published ITE estimation will be provided to the Planning Commission.

\*Note: The estimated peak hour rate for the proposed use is 42 trips. Not considered a significant impact. Additionally, the majority of customers will probably be "pass by" meaning they will not be new trips added to the street system. Additionally, since any "new" traffic approaching the site on Walnut will enter the site via the one-way driveway, it will not increase the volume entering the Foothill/Walnut intersection and therefore, will not impact the warrants for signalization.

6. *What can be done for the safety of Starberry Farms' customers who park on north side of Foothill (on Longhorn Drive or Rodeo Court) and cross Foothill during seasonal pumpkin patch and Christmas tree lot?*

Chair Patel stated that with the increase in parking areas, it should decrease some of the parking issues on Foothill. SS Campbell stated that it is such a short window that special events are set up, and historically no problems have been observed. Any seasonal issues can be addressed through the Temporary Use Permit process.

In response to TE Siecke's question of whether or not people buy trees and drag across Foothill, Steve Berry stated one gentleman who had attended the Planning Commission meeting stated the residents have changed their mind about opposing the project, and now they think it is a good idea so they chose not to attend the TSC meeting. The perceived parking problem is not from Starberry Farms customers, but other people.

7. *How can City better control overflow "off-site" parking of customers during seasonal pumpkin patch and Christmas tree lot?*

Chair Patel stated that overflow parking is addressed as part of the permit process, and does not appear to be a problem. SE Garwick stated this is addressed through the CUP. DD Coleman stated that enforcement of "no parking" is a police issue.

Chair Patel stated there are legal unmarked crosswalks on Foothill at the intersections. Deputy Rodriguez concurred, as long as crossers do not impede traffic.

In response to the TSC, Steve Rudy stated Starberry Farms has a lease from the County for use of their property. David Bratt asked if they could provide off street parking on the County property, and Steve Rudy stated the perception at the Planning Commission is not accurate.

David Bratt stated that it does get crowded, and if patrons park on south side, that it presents a problem because of line of sight. Asking for consideration to look at the County property. In response, Steve Rudy stated that people do park there, and that his workers will. DD Coleman stated this would double the "on-site" parking count.

8. *How can City improve line-of-sight for drivers on Walnut trying to turn onto Foothill Boulevard? The complaint is that when cars are parked on south side of Foothill they block line-of-sight.*

Chair Patel stated the City has asked for additional dedication for line of sight. As part of mitigation on the property corner, Starberry Farms is restricted in terms of planting. Once improvements are completed, some extension of red curb will mitigate some line of sight issues.

In response to DD Coleman's question about line of sight at the narrow neck of the flood control channel, Chair Patel stated that it is better now because of the parking lane and bike lane, so traffic is already offset 13 ft from curb, creating better visibility.

DD Coleman stated it could be the resident's intention to ask the City to put a traffic signal. TE Siecke restated that no signal warrants are satisfied and the issue is to whether to prohibit parking on foothill, which can be done by extending red curb.

Steve Rudy requested for some customer parking on Foothill to allow customers who want to quickly get in and out. Chair Patel stated there is existing 5' of red curb and after review in the field, painting another 25-30 feet of red curb would restrict parking directly in front, but if the driveway was also shifted to the west, there would be room for one or two vehicles. TE Siecke concurred that with the driveway shifted, it creates space.

9. *How can City prohibit non-residents from driving or parking on Longhorn Drive or Rodeo Court? This occurs during Starberry Farms' seasonal pumpkin patch and Christmas tree lot, and during special events at equestrian center. Parking also occurs on regular basis due to students from Western University going to the equestrian center. One resident also said he has been asked several times by drivers how to get to golf course. Examples given by the residents that could help with these issues are to restrict parking by permit only or private gated community.*

Chair Patel stated that the City does not have a neighborhood permit parking policy. Longhorn is a public street, therefore can't prohibit people parking. In response to Steve Rudy's suggestion to restrict parking to 2 hours, Chair Patel stated residents have previously stated they did not want this signage. TE Siecke stated that restricting parking to keep outsiders away also affects insiders/residents resulting in the cumbersome permit system.

Chair Patel expressed surprise that Equestrian Center users park on Longhorn, and that they should be notified this is a perceived ongoing problem.

In response to David Bratt, Chair Patel stated that placing a "No Outlet" sign is an appropriate measure at this location.

10. *Could City install a 'NO U-TURN' sign on Foothill at Walnut?*

Planner Grabow clarified this request is from the Equestrian Center, unrelated to the Starberry Farms proposal. TE Siecke stated that by moving the Starberry Farms driveway westerly, it will further accommodate eastbound U-turn traffic. SE Garwick stated that northbound traffic on Walnut has to clear the left turn traffic in addition to two travel lanes. In response to DD Coleman, TE Siecke stated there are no criteria for restriction. There has not been a demonstrated accident problem.

11. *Commissioner Rahi asked via email if critical traffic issues were comprehensively considered and evaluated in the previous traffic committee meetings, such as vehicle turning movement counts at the intersection of Foothill and Walnut, especially during the 7am-9am and 4pm-6pm peak commuter hours, to see if turning left from Walnut creates significant problems for drivers. Also if there were any sight distance problems for drivers exiting out of Walnut that can be mitigated by minor modification of project site design;*

*and if there will be a need/warrant for a traffic signal (at least the peak hour volume warrant can be tested) considering there will be other nearby projects in the area that will add traffic to Foothill and also at the intersection of Foothill/Walnut.*

Chair Patel stated that critical traffic issues have been addressed. TE Siecke clarified that turning movement counts were not completed, but machine counts showed the highest total from machine counts at peak hour of 68. This incorporates all traffic, including turning movements. The total is below signal warrants. In response to DD Coleman's question of whether or not to re-evaluate after new business is established to see if traffic counts have gone up, TE Siecke stated there is not a lot of potential for this business to increase northbound traffic on Walnut. Project traffic would enter on Walnut and not approach intersection at Foothill. Chair Patel stated that with the preliminary traffic study counts not meeting minimum thresholds, there is not a problem w/ left bound traffic. TE Siecke stated there will be a little delay.

In reference to line of sight problems, these were already addressed with the project design restrictions, and will be further improved with extension of red curb if driveway is moved west. Chair Patel suggested highlighting the clear line of sight on the aerial photograph for the next Planning Commission review. Also suggested to look at final plan for proper signage restricting Walnut entrance by "One Way Only/Do Not Enter" signage.

**RECOMMENDATION:**

1. Notify Equestrian Center to request users to park on site, and do not park on Longhorn Drive.
2. Install "No Outlet" sign at Longhorn Drive/Foothill Blvd.

**09-10-01 CITY WIDE SPEED SURVEY**

Presentation from Traffic Engineer of analysis of San Dimas Avenue from Puddingstone Drive to Avenida Loma Vista.

DISCUSSION: Chair Patel stated the request to re-evaluate two streets, Walnut Avenue and San Dimas Avenue, which the initial speed survey counts showed a suggested increase in speed based on the 85<sup>th</sup> percentile speeds. TE Siecke stated most recent counts on these streets showed speeds on San Dimas Avenue with an 85% average of 52 and speeds on Walnut of 32. These results allow the speed limits to remain as is, with San Dimas Avenue at 50 mph and Walnut Avenue at 30 mph.

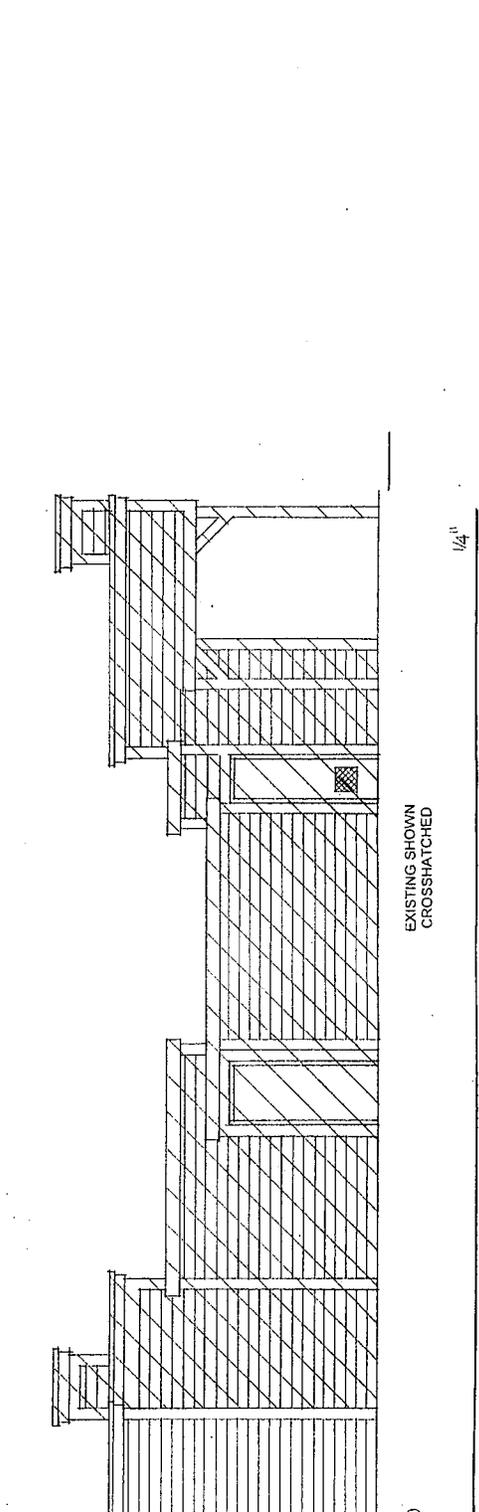
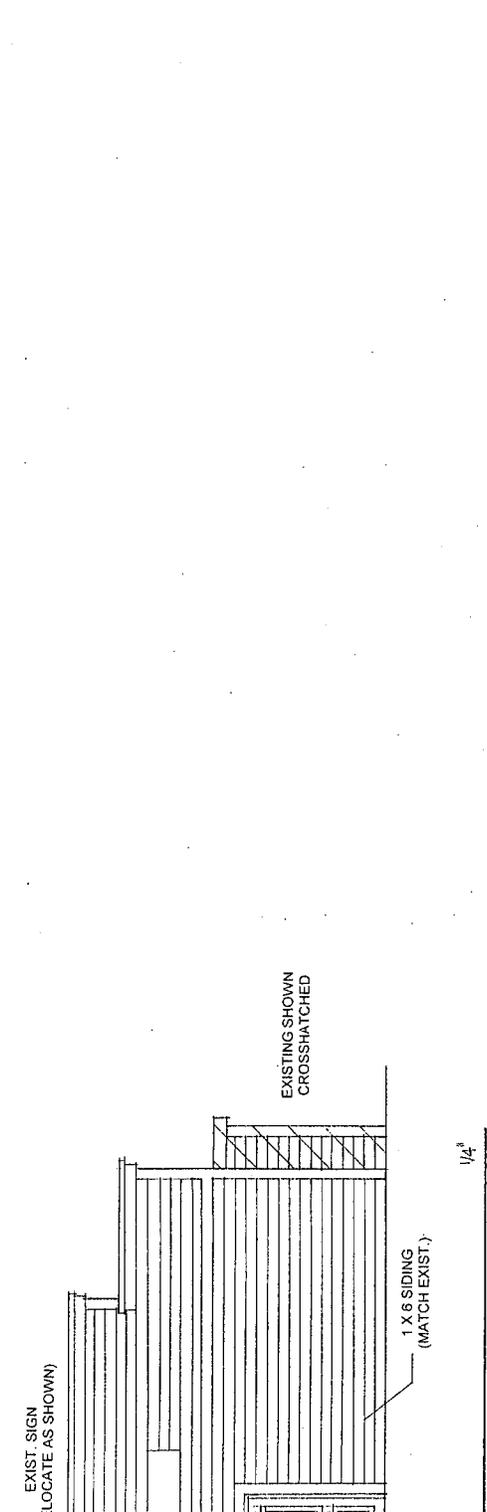
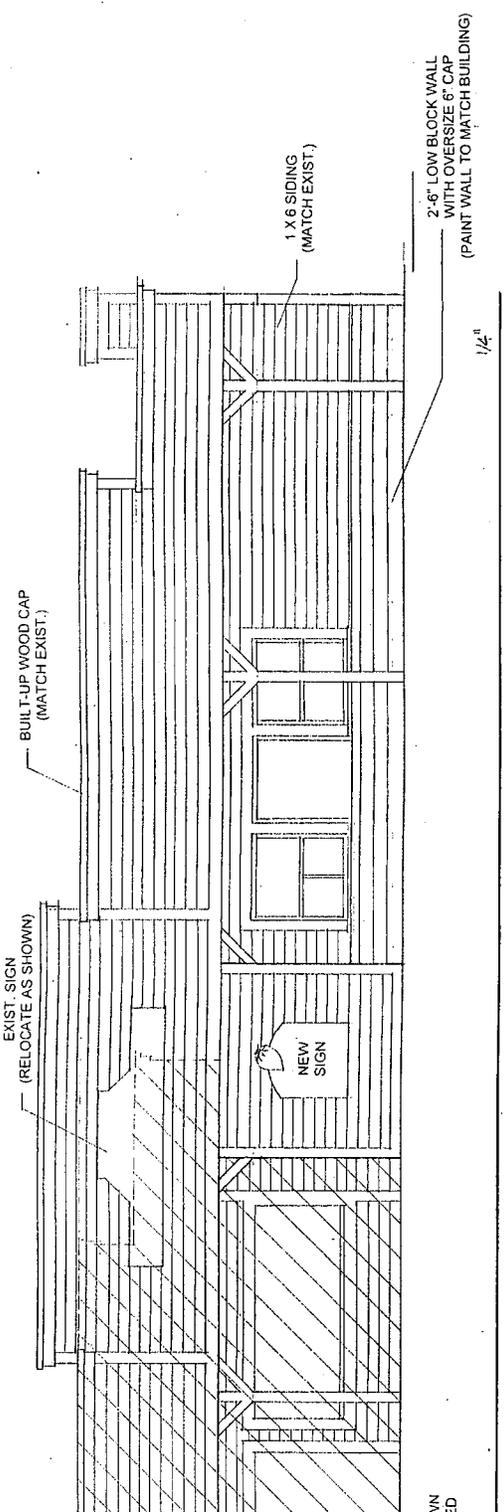
Chair Patel stated the entire City's Speed Survey findings will be summarized for Council's first meeting in January.

Meeting adjourned at 10:31 am.





REVISIONS	BY



**RESOLUTION NO. 2011-03**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING PRECISE PLAN REVIEW 10-01, A REQUEST TO CONSTRUCT A 674 SQ. FT. ADDITION FOR A DELI/SANDWICH SHOP AND A 656 SQ. FT. COVERED PATIO FOR AN OUTDOOR EATING AREA IN CONJUNCTION WITH AN EXISTING FRUIT STAND BUSINESS LOCATED AT 264 EAST FOOTHILL BOULEVARD (APN: 8661-014-030)

WHEREAS, an application was filed for a Precise Plan Review by:

Steve Rudy  
Starberry Farms  
264 East Foothill Boulevard  
San Dimas, CA 91733

WHEREAS, Precise Plan Review Case No. 10-01 is described as:

A request to construct a 674 square foot addition and a 656 square foot patio in conjunction with an existing fruit stand business located at 264 East Foothill Boulevard.

WHEREAS, this approval applies to the following described real property:

264 East Foothill Boulevard, APN 8661-014-030

WHEREAS, the City Council has received the report and recommendation of such agencies as have submitted information including the written report and recommendation of Staff; and

WHEREAS, pursuant to San Dimas Zoning Code Section 18.108.060.A, no person shall construct, relocate, modify, rebuild, and/or alter any building, wall/fence or site plan until a precise plan has been approved by the City Council; and

WHEREAS, all requirements of the California Environmental Quality Act and the City's Environmental Guidelines have been met for the consideration of whether the project will have a significant effect on the environment.

NOW, THEREFORE, in consideration of the evidence received at the Development Plan Review Board, Planning Commission and City Council hearings, and for the reasons discussed by the Council Members at the hearing, and subject to the Conditions attached as "Exhibit A", the City Council now finds as follows:

1. The development of the site in accordance with the development plan is suitable for the use or development intended.

The proposal to construct a 674 square foot addition and a 656 square foot patio in conjunction with an existing fruit stand business is in accordance with the Commercial Highway zoning designation. The architectural design and site plan for the project is designed to improve the existing conditions of the property.

2. The total development is so arranged as to avoid traffic congestion, ensure public health, safety and general welfare and prevent adverse effects on neighboring property.

The site is located on the southwest corner of Foothill Boulevard and Walnut Avenue. The applicant is responsible for meeting all circulation and traffic standards imposed by the City of San Dimas. The parking will accommodate the proposed use; all streets are sufficient in width and pavement to carry the quantity and kind of traffic generated by the proposed use. The conditions imposed will ensure that the public health, safety and general welfare will be protected as well as prevent adverse effects on neighboring properties.

3. The development is in general accord with all elements of the General Plan, Zoning Ordinance and all other Ordinances and regulations of the City.

The proposed project is consistent with the General Plan, Zoning Ordinance and all other Ordinances and regulations of the City.

PURSUANT TO THE ABOVE FINDINGS, IT IS RESOLVED that the City Council hereby approves Precise Plan No. 10-01. A copy of this Resolution shall be mailed to the applicant.

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

**PASSED, APPROVED AND ADOPTED THIS 25TH DAY OF JANUARY, 2011.**

\_\_\_\_\_  
Curtis W. Morris, Mayor of the City of San Dimas

ATTEST:

\_\_\_\_\_  
Ina Rios, CMC, City Clerk

I, INA RIOS, CITY CLERK of the City of San Dimas, do hereby certify that Resolution No. 2011-03 was passed and adopted at the regular meeting of the City Council held on the 25th day of January, by the following vote-to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Ina Rios, CMC, City Clerk

**EXHIBIT A**

**CONDITIONS OF APPROVAL  
PRECISE PLAN 10-01**

**PLANNING DIVISION - (909) 394-6250**

1. The applicant shall agree to defend at his sole expense any action brought against the City, its agents, officers or employees because of the issuance of such approval, or in the alternative, to relinquish such approval. The applicant shall reimburse the City, its agents, officers or employees for any Court costs and attorney's fees which the City, its agents, officers or employees may be required by a court to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action but such participation shall not relieve applicant of his obligations under this condition.
2. Copies of the signed Conditions shall be included on the plans (full size). The sheet(s) are for information only to all parties involved in the construction/grading activities and are not required to be wet sealed/stamped by a licensed Engineer/Architect.
3. The developer shall comply with all requirements of the Commercial Highway Zone and the Scenic Highway Overlay Zone.
4. The building permits for this project must be issued within one year from the date of approval or the approval will become invalid. A time extension may be granted under the provisions set forth in Chapter 18.12.070 E.
5. The applicant shall sign an affidavit accepting all Conditions and all Standard Conditions before issuance of building permits.
6. All parking provided shall meet the requirements of Section 18.156 (et. seq.) of the San Dimas Municipal Code.
7. The applicant shall comply with all City of San Dimas Business License requirements and shall provide a list of all contractors and subcontractors that are subject to business license requirements.
8. The developer shall comply with all conditions as approved by the City Council on January 25, 2011.

## **DESIGN**

9. The applicant shall use a decorative block in the patio area. The type of block and design shall be approved by the Planning Department.
10. Remove or fully screen all roof-mounted equipment. Appropriate screening would match style and materials of existing building.
11. Remove all unpermitted signs on the existing building prior to issuance of building permits.

## **LANDSCAPE**

12. The developer shall submit to the Planning Division, prior to the issuance of building permits, detailed landscaping and an automatic irrigation plan prepared by a State registered Landscape Architect. All landscaping and automatic irrigation shall be installed and functional prior to occupancy of the building(s), in accordance with the plans approved by the Planning Division.
13. All trees removed shall be replaced with four (4) mature specimens that are California native.

## **BUILDING DIVISION – (909) 394-6260**

14. Submit to the Building Division of the City of San Dimas plans to be forwarded for review by the Los Angeles County Fire Department. Plans may include, access, occupancy separation, fire sprinklers, mechanical ventilation, and any other applicable items regulated under the Fire Code.
15. Comply with the latest codes as adopted by reference by the City of San Dimas: California Building Code, California Mechanical Code, California Plumbing Code, and California Electrical Code
16. Comply with the latest disabled access regulations as found in Title 24 of the CA Code of Regulations and the Americans with Disabilities Act (parking, access, interior accessibility)
17. Comply with California Title 24 Energy requirements for all new lighting, insulation, and mechanical equipment.
18. Applicant shall submit a site grading plan prepared by a licensed engineer.
19. Applicant shall submit a soils report which makes recommendations for foundation and pavement section design. Compaction reports required prior to City inspection.

20. Occupancy in the area of remodel shall not be granted until all improvements required as part of the approval have been completed in full, and approved or finalized by the appropriate department.
21. Plans shall be submitted to LA County Health Department for approval.
22. Plans shall be submitted to LA County Industrial Waste for approval.
23. Prior to the issuance of any grading permits, the developer shall submit an application for a grading permit, per Appendix, Chapter 33 of the Uniform Building Code, latest Edition, accompanied by plans and specifications.
24. If grading is performed or drainage facilities are not installed during the period between October 15 and April 15, a temporary erosion control plan, submitted by the developer, shall be approved by and filed with the City and shall be installed and operable at all times.

#### **ENGINEERING DIVISION – (909) 394-6250**

25. The developer shall provide drainage facilities to carry runoff of storm waters in the area proposed to be developed, and for contributory drainage from adjoining properties. A Hydrology Study for the site and contributory drainage will be required.
26. For all non-exempt projects which disturb less than one- (1) acre of soil and are not part of a larger common plan of development which in total disturbs one acre or more, applicant must submit a signed certification statement declaring that contractor will comply with Minimum Best Management Practices (BMPs) required by the National Pollutant Discharge Elimination System (NPDES). In order to manage storm water drainage during construction, one or more of the following measures shall be implemented to prevent flooding of adjacent property, prevent erosion and retain soil runoff on the site:
  - i. Retention basins of sufficient size shall be utilized to retain storm water on the site.
  - ii. Where storm water is conveyed to a public drainage system, collection point, gutter, or similar disposal method, water shall be filtered by use of a barrier system, wattle, or other method approved by the enforcing agency.
  - iii. Compliance with a lawfully enacted storm water management ordinance.
27. For projects which disturb soil during wet season, applicant must submit a signed certification statement declaring that contractor will comply with Minimum Best Management Practices (BMPs) required by the National

Pollutant Discharge Elimination System (NPDES), and also submit a Local Storm Water Pollution Prevention Plan/Wet Weather Erosion Control Plan.

- 28. Prior to the issuance of grading permits, the developer shall submit a precise paving and drainage plan for review and approval by the City Engineer.
- 29. The developer shall provide full street improvements on all streets within the limits of the development. Improvements to include curbs and gutters, sidewalks, medians, and paving according to City standards, as shown in the following table:

Street Name	Curb & Gutter	Pavement A.C.	Side-walk	Drive Approach	Street Lights	Street Trees	Equestrian Trail	Median Island	Bike Trail	Other
Foothill Blvd	X	X	X	X		X				
<b>Notes:</b>	On the Southwest corner of Foothill Blvd. and Walnut Avenue, the applicant shall dedicate an easement for line-of-sight. Anything located north of the line-of-sight cannot be over 30 inches and block views.									

- 30. The developer shall dedicate a street right-of-way corner cut-off at the intersection of Foothill and Walnut to the satisfaction of the City Engineer.
- 31. The Developer shall be responsible for any repairs within the limits of the development, including streets and paving, curbs and gutters, sidewalks, and street lights, or the installation of same where not existing, as determined by the City Engineer.
- 32. All work adjacent to or within the public right-of-way shall be subject to review and approval of the Public Works Department.

**PARKS & RECREATION – (909) 394-6230**

- 33. The developer shall provide street trees throughout the development. The species, container size and location shall be designated by the City, as approved by the City Arborist.
- 34. The developer shall comply with City regulations regarding property development tax. Fees shall be paid prior to issuance of building permits.

**McKenna Long  
& Aldridge**<sup>LLP</sup>  
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**MEMORANDUM**

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**TO:** The Honorable Mayor and Members of the City Council  
**FROM:** J. Kenneth Brown, City Attorney  
**DATE:** January 21, 2011  
**RE:** Ordinance No. 1202 – Approval of Development Agreement

---

At the January 11, 2011 meeting we presented a Development Agreement (the "Agreement") that included changes from that presented at the December 14, 2010 meeting. We also discussed, as did the Developer and his attorney, three additional sections of the Agreement:

Section 4.6.1. This section addresses the granting of a license for equestrian uses. These are generally as shown on Exhibit E to the Agreement, a copy of which is attached hereto. The Developer objects to the inclusion of the most westerly trail shown on the exhibit; the one that begins at the southwest corner of the property and continues up near but does not connect with the NJD property. The staff prefers to leave the trails as shown until it completes its study of the potential future trail system. Reference to the east west equestrian trail license at this time has been deleted. That trail will be constructed as provided in the Tract Map conditions of approval.

Section 4.7. This section deals with the timing of the transfer of the 84 acre open space parcel. As a result of the discussions at the last meeting it was our understanding that the Council agreed that this parcel would be conveyed to the City when the first phase final map is recorded. The Agreement so provides.

Section 7.32. This section was proposed by the Developer and would have provided for the payment of attorneys fees in the event of litigation. This section is not included in the attached Agreement.

The attached Agreement now reflects those changes which have been approved by the City Council and, except as noted above, agreed to by the Developer. Because there may be some additional non-material changes to the Agreement and/or the Exhibits we request that we be authorized to approve those non-material changes after discussions with the City Manager.

We recommend that the city council waiver further reading and adopt:

**ORDINANCE NO. 1202, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING A DEVELOPMENT AGREEMENT RELATING TO THE APPROVAL OF A RESIDENTIAL DEVELOPMENT FOR 61 SINGLE-FAMILY RESIDENTIAL LOTS IN THE NORTHERN FOOTHILLS OF SPECIFIC PLAN NO. 25.**

**ORDINANCE NO. 1202**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS APPROVING A DEVELOPMENT AGREEMENT RELATING TO THE APPROVAL OF A RESIDENTIAL DEVELOPMENT FOR 61 SINGLE-FAMILY RESIDENTIAL LOTS IN THE NORTHERN FOOTHILLS OF SPECIFIC PLAN NO. 25

**THE CITY COUNCIL OF THE CITY OF SAN DIMAS DOES ORDAIN AS FOLLOWS:**

As provided by Section 65867.5 of the California Government Code, and Resolution 2010-62 of the City, the City Council does find, based on the facts included in the staff reports and other written materials which were presented and the public comments which were received during the public hearing on the Project, and those facts and findings set forth in the Development Agreement which is attached hereto as Exhibit A, that the Development Agreement is consistent with the City's approved general plan, as amended, and specific plan No. 25 as amended, and that it will promote the welfare and public interest of the City of San Dimas, and the Development Agreement is hereby approved.

**SECTION 2.** This Ordinance shall take effect 30 days after its final passage, and within 15 days after its passage the City Clerk shall cause it to be published in the Inland Valley Daily Bulletin, a newspaper of general circulation in the City of San Dimas hereby designated for that purpose.

**PASSED, APPROVED AND ADOPTED THIS \_\_\_\_ DAY OF JANUARY 2011.**

\_\_\_\_\_  
Curtis W. Morris, Mayor of the City of San Dimas

ATTEST:

\_\_\_\_\_  
Ina Rios, CMC, City Clerk



RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of San Dimas  
245 East Bonita Avenue  
San Dimas, California 91773  
Attn: City Clerk

No Recording Fee (Government Code Section 6103)

---

(Space above for recorder's use)

**Agreement No. 2010-**

**DEVELOPMENT AGREEMENT**

by and between

**CITY OF SAN DIMAS,**  
a general law city and municipal corporation

and

**NJD, LTD.,**  
a Texas limited partnership

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## EXHIBITS

- Exhibit A Description of the Property
- Exhibit B Location Map
- Exhibit B-1 Location of Additional Property
- Exhibit B-2 Description of Additional Property
- Exhibit C Developer Fees as of Effective Date
- Exhibit D Enabling Resolution
- Exhibit E Trail Areas

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement" or "Development Agreement") is made and entered into as of January 25, 2011, by and between the CITY OF SAN DIMAS, a general law city and municipal corporation ("City"), and NJD, LTD., a Texas limited partnership ("Developer") pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, Sections 65864 through 65869.5 of the California Government Code. The City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties."

### RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement:

- (a) Developer is the owner of certain real property which is located in the City, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference and is shown on the location map attached hereto as Exhibit B (hereafter "Property"); and
- (b) Developer has contractual rights to acquire approximately 76.7 acres of property in the City adjacent to the Property, commonly known as Assessor's Parcel Numbers ("APN") 8665-001-004 and 8165-001-005, which property is depicted on Exhibit B-1 and more particularly described in Exhibit B-2 attached hereto and incorporated herein by reference (the "Additional Property"). Developer's rights to acquire the Additional Property are established by that certain Option Agreement and Right of First Refusal, as amended ("Option Agreement"), as evidenced by that recorded Amendment to Memorandum of Option Agreement and Right of First Refusal recorded as Instrument No. 2008-1872650 in Los Angeles County, California. County Official Records on October 21, 2008. As provided by Sections 4.3 and 4.4 of that Option Agreement, Developer is entitled to seek Project-related approvals and the current fee owner is obligated to cooperate in seeking such approvals. At such time that Developer becomes fee owner of the Additional Property an approximately 40-acre portion of the Additional Property, as depicted on Exhibit B-1, shall become part of the "Property" for purposes of this Agreement. The Parties agree that this is a sufficient beneficial interest for an approximately 40 acre portion of the Additional Property to be included in this Agreement.
- (c) Developer desires to construct a Project (as hereinafter defined) on the Property consisting, among other improvements and amenities, of sixty-one (61) single family homes and approximately eighty-four (84) acres of open space; and
- (d) Developer and City are also parties to that certain Settlement Agreement & Release dated as of December 21, 2004 (the "Settlement Agreement"), pursuant to which the current Project is being processed; and
- (e) Concurrently with or prior to approval of this Agreement, City has approved and/or adopted the General Plan Amendment, the Specific Plan Amendment, the TTM, and the other Project Approvals (as all of the foregoing terms are hereinafter defined) applicable to the Project; and

(f) The Project is fully described in the FEIR (as hereinafter defined) and the Project Approvals, which are on file with the City; and

(g) Developer's TTM and other Project Approvals allowing construction of the Project have been conditionally approved concurrently herewith, and the Conditions of Approval (as hereinafter defined) applicable thereto have been accepted by the Developer as being lawfully imposed thereon; and

(h) Developer has applied to the City for approval of this Agreement pursuant to the provisions of the Development Agreement Act (as hereinafter defined), the Enabling Resolution (as hereinafter defined), and other applicable laws; and

(i) The City is authorized pursuant to the Development Agreement Act and other applicable laws to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the development of property as therein described; and

(j) The City desires to obtain the binding agreement of the Developer for the development of the Project in accordance with the provisions of this Agreement; and

(k) Developer desires to obtain the vested right from the City to allow Developer to develop the Project in accordance with the provisions and requirements of this Agreement, the Project Approvals, the Conditions of Approval and the Applicable Rules (as hereinafter defined), including only those modifications, changes or additions to those Applicable Rules permitted or required by this Agreement; and

(l) The Planning Commission and the City Council of the City have each conducted a duly noticed public hearing to consider the approval of this Agreement pursuant to Government Code Section 65867 and each has found that the provisions of this Agreement are consistent with the City's adopted plans and policies, the General Plan (as hereinafter defined), and the Specific Plan; and

(m) An environmental review has been conducted and completed with regard to the Project and a FEIR was certified by the City Council on December 14, 2010, in accordance with CEQA (as hereinafter defined), including all State and local guidelines, which FEIR contemplates a development agreement and its execution by the Parties as one component of the Project; and

(n) This Agreement is in furtherance of the public health, safety and welfare of the residents of the City and the surrounding region, and will serve the public interest, convenience and necessity of the City and its residents and the surrounding region; and

(o) The City Council has specifically considered and approved the impact and benefits of the Project upon the welfare of the City and the region; and

(p) This Agreement will serve to eliminate uncertainty in planning and will provide for the orderly development of the Project in a manner consistent with the Applicable Rules and the General Plan and Specific Plan; and

(q) This Agreement will provide Developer with the assurance that it can complete the Project and that the Project will not be changed, delayed or modified after the Effective Date (as hereinafter defined) of this Agreement, except pursuant to the provisions of this Agreement; and

(r) The Project will provide substantial benefit to the City by providing, without limitation, increased tax and other revenues, the construction and dedication of public improvements, the offer for dedication to permanent public open space of approximately eighty-four (84) acres, the provision for dedication and improvement of equestrian trails connecting Horse Thief Canyon Park and the Sycamore Canyon trail system, and the creation of job opportunities for residents of the City.

### AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and the Enabling Resolution, and in consideration of the premises and mutual promises and covenants herein contained, and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

#### Section 1. Incorporation of Recitals.

The foregoing recitals are hereby acknowledged and affirmed by the Parties and are incorporated herein as a substantive term of this Agreement.

#### Section 2. Definitions.

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as set forth below:

2.1 "Applicable Rules" means, as provided in Government Code Section 65866, the rules, regulations, and official policies, including but not limited to those contained in the City's General Plan (as Amended by the Project Approvals), Municipal Code (as Amended by the Project Approvals), Specific Plan No. 25 (as amended by the Project Approvals) and Zoning Regulations (defined below), governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to development of the Property, whether adopted by the City Council or the voters in an initiative, which are in force as of the Effective Date of this Agreement. During the term of this Agreement and except as otherwise expressly provided herein, (1) the permitted uses of the Property; (2) the density or intensity of that use; (3) the maximum height and size of proposed buildings on the Property; and (4) the provisions for reservation or dedication of land for public purposes applicable to the Property shall be those provided by the "Project Approvals" (as defined below), including, without limitation, the "General Plan" (as defined below), the "Specific Plan" (as defined below), and the TTM. Applicable Rules shall also mean and include all Developer Fees (as hereinafter defined) and Processing Fees (as hereinafter defined) in effect from time to time during the term of this Agreement and there shall be no limit upon the Developer Fees and the Processing Fees payable with respect to the Project by virtue of this Agreement; provided that, as further provided in this Agreement below, so long as this

Agreement remains in effect, no new Development Fees other than those shown on Exhibit C attached hereto shall be imposed upon the Project in connection with its development. Notwithstanding anything above contained in the definition of the Applicable Rules which appears to be to the contrary, (i) this Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations and policies which do not conflict with the Project Approvals or Applicable Rules applicable to the Property as set forth herein ("New Rules"), nor prevent the City from denying or conditionally approving any subsequent development project application on the basis of such New Rules (except this shall not apply to Minor Modifications), (ii) this Agreement shall not prevent the City from imposing reasonable conditions or restrictions on future tentative subdivision or parcel maps and/or conditional use permits where such conditions or restrictions are necessary to avoid putting the residents of the Project or the area immediately surrounding the Project in a condition which would adversely impact their health or safety, or both, based on objective and identified health and safety standards, and (iii) this Agreement shall not prevent the City from requiring that the Project meet all applicable requirements of the Los Angeles County Flood Control District. Notwithstanding anything above to the contrary, the term "Applicable Rules" shall not limit the application to the Project of new rules, regulations, and official policies of the City governing design, improvement and construction standards and specifications (each a "Design Rule") if (i) such change is a citywide change applying uniformly throughout the City, and (ii) except for update or adoption of uniform codes pursuant to the next sentence (which shall apply to the Project in any event), such change does not impose a material adverse financial impact upon the overall Project or the development thereof as contemplated by this Agreement and the Project Approvals; provided, further, that the additional time, if any, necessary to comply with a change in a Design Rule (as opposed to the additional cost or expense of compliance) shall not, in itself, constitute a material adverse financial impact. Notwithstanding anything herein to the contrary, the Developer Parties specifically acknowledge and agree that the construction of the Project shall be subject to (i) any adoption or update of building, electrical, mechanical, fire, pool or other similar uniform codes of citywide scope which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including all applicable California Building Standards Codes (as defined below) and (ii) all City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called "sustainability" or "green building" laws, regulations or ordinances). Nothing in this Agreement deprives Developer of any rights it may have under Government Code Section 66474.2(a) and nothing in this Agreement constitutes a waiver by Developer of such rights.

2.2 "California Building Standards Codes" means those building, electrical, mechanical, fire, pool and other similar regulations, which are mandated by state law and which become applicable throughout the City, including, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code (including those amendments to the promulgated California codes which reflect local modification to implement requirements justified by local conditions, as allowed by state law, and which are applicable City-wide).

2.3 "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000, et seq.) (the "Act") and the guidelines promulgated by the Governor's Office of Planning and Research in accordance with said Act (the "Guidelines"), as they now exist or may hereafter be amended.

2.4 “City Manager” shall mean the City Manager of the City, or his designee.

2.5 “Conditions of Approval” shall mean those conditions of approval imposed by the City upon the Project Approvals as of the date hereof, as they may be amended or modified by the City upon NJD’S application prior to recording of the Final Map in order to comply with the requirements of other approving agencies (e.g., without limit, USFWS, CDFG, Division of Dam Safety) including all requirements of any applicable Mitigation Monitoring Program, and any additional conditions of approval hereafter imposed on the Project consistent with Section 5.1.2 below.

2.6 “Developer Fees” mean those fees established and adopted by City with respect to development and its impacts pursuant to applicable governmental requirements, including Section 66000, *et seq.*, of the Government Code of the State of California, including impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on or in connection with new development by the City. Developer Fees does not mean or include Processing Fees or any third party fees imposed by other agencies or jurisdictions even if collected by the City on behalf of those entities, such as, Regional Congestion Mitigation Fees, (if approved) Regional Water Quality Control Board fees, school fees and similar third party fees. The Developer Fees in effect as of the Effective Date of this Agreement are listed on Exhibit C, which is incorporated into this Agreement by this reference. The Developer Fees listed on Exhibit C are the only Developer Fees that the City may impose or levy on the Project and no new Developer Fees first adopted by the City after the Effective Date of this Agreement shall be applicable to the Project during the Term of this Agreement; provided, that nothing herein shall be construed or applied to limit any increases in the Developer Fees and the Project shall be subject to any properly adopted increase in those existing Developer Fees after the date of this Agreement.

2.7 “Development Agreement” or “Agreement” means this Agreement.

2.8 “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

2.9 “Discretionary Action(s)” or “Discretionary Approval(s)” means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Permit or Ministerial Approval.

2.10 “Effective Date” shall mean the date this Agreement, fully executed, is recorded in the Office of the Recorder of Los Angeles County.

2.11 “Enabling Resolution” means Resolution No. 2010-62 adopted by the City Council on November 23, 2010 (Exhibit D hereto).

2.12 “FEIR” shall mean that certain Final Environmental Impact Report (FEIR) (SCH#2010051020) which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA. “Mitigation Monitoring Program” shall mean the

mitigation measures imposed upon the Project pursuant to the FEIR and the Conditions of Approval.

2.13 “General Plan” means the General Plan of the City, as amended by the City prior to or concurrent with this Agreement.

2.14 “General Plan Amendment” means that certain General Plan Amendment approved by the City Council by Resolution No. 2010-68.

2.15 “Ministerial Permit(s)” or “Ministerial Approval(s)” mean a permit or approval including, but not limited to, building permits, grading permits, zone clearances and certificates of occupancy, which require the City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, conditions of approval and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

2.16 “Mortgagee” means a mortgagee of a mortgage or a beneficiary under a deed of trust encumbering all or a portion of the Property.

2.17 “Phase” shall mean any discrete portion or part of the Project developed by the Developer or any successor in interest thereto.

2.18 “Processing Fees” means all processing fees and charges required by the City including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, subdivision or parcel maps, inspection fees and certificates of occupancy. Processing Fees shall not mean or include Developer Fees.

2.19 “Project” means the project as described in the General Plan Amendment, the Specific Plan Amendment, the TTM and the other Project Approvals.

2.20 “Project Approvals” shall mean, collectively, the Specific Plan Amendment, the General Plan Amendment, the TTM, this Agreement and any other plans, maps, permits and entitlements of every kind and nature specifically applicable to the Project, and shall also include any subsequent project specific approvals obtained by the Developer. To the extent that any of the Project Approvals are amended, from time to time, “Project Approvals” shall include, if Developer and City agree in writing, such matters as so amended. If this Agreement is required by law to be amended in order for “Project Approvals” to include any such amendments, then “Project Approvals” shall not include such amendments unless and until this Agreement is so amended.

2.21 “Property” means the real property described on Exhibit A and shown on the Location Map attached as Exhibit B. Upon Developer obtaining fee title to the Additional Property, the approximately 40-acre northern portion of the Additional Property, as depicted on Exhibit B-1 and described on Exhibit B-2, shall be deemed part of the “Property” for the purpose of this Agreement.

2.22 “Reserved Powers” means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date with respect to development or use of the Project that may be in conflict with the Applicable Rules, but are: (1) necessary to prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety based on objective and identified health and safety standards; (2) necessary to implement California Building Standards Codes; (3) necessary to comply with state or federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; (4) Design Rule changes described in Section 2.1 above; (5) agreed to or consented to by Developer; (6) are City-wide fees or charges of general applicability other than new Developer Fees which are inapplicable to the Project in accordance with the provisions of this Agreement; or (7) are City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called “sustainability” or “green building” laws, regulations, or ordinances).

2.23 “Specific Plan” means Specific Plan No. 25, as amended, as approved by the City prior to or concurrent with this Agreement pursuant to Ordinance No. 1201.

2.24 “Specific Plan Amendment” means the amendment to Specific Plan No. 25 resulting from and as approved by Ordinance No. 1201.

2.25 “Term” means the term of this Agreement, which shall commence on the Effective Date of this Agreement and shall terminate fourteen (14) years from and after the Effective Date of this Agreement unless modified or extended as set forth in this Agreement or by mutual written consent of the Parties hereto. If any party other than Developer initiates litigation that challenges the Project or the Existing Project Approvals, then Developer will have the right to toll commencement of the Term. The tolling shall commence upon receipt by the City of written notice from Developer invoking this right to tolling. The tolling shall terminate when (1) a final order is issued in said litigation that upholds the Project and the Project Approvals or (2) the litigation is dismissed with prejudice by all parties; whichever occurs first; provided that any tolling shall not exceed twenty-four (24) months unless the City consents thereto.

2.26 “TTM” means that certain Tentative Tract Map No. 70583, dated October 27, 2010, for the subdivision of the Property and a portion of the Additional Property into 61 residential lots, lettered common area lots, and related improvements, approved by the City Council pursuant to Resolution No. 2010-69.

2.27 “Zoning Regulations” shall mean the official zoning regulations of the City.

### Section 3. Recitals of Premises, Purpose and Intent.

3.1 State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act

which authorized any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

“(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

“(b) Assurance to the applicant for a development project that upon approval of the project the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.”

### 3.2 Intentionally Omitted

3.3 Property Ownership. The Developer is the owner of the Property and has a legal and equitable interest in the Additional Property and thus is qualified to enter into and be a party to this Agreement. Upon becoming fee title owner of the Additional Property, an approximately 40 acre portion of such property generally depicted on Exhibit B-1 shall be deemed part of the Property. The remainder of the Additional Property shall not be governed by or encumbered by this Agreement or the Project Approvals. After approval of the TTM, the parties shall execute such documents as necessary to cause this Agreement to be removed from record title to the remainder of the Additional Property.

3.4 Development of the Property. It is the Parties' understanding that Developer intends to develop the Property as described in the Project Approvals. The Parties hereby agree that, for the Term of this Agreement, the Developer shall have a vested right to develop the Property and the Project in accordance with, and to the extent of, the Project Approvals, the Applicable Rules, the Conditions of Approval and this Agreement.

3.5 Public Objectives. In accordance with the legislative findings set forth in Section 65864 of the Development Agreement Act, City wishes to attain certain public objectives that will be furthered by this Agreement. Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the Applicable Rules and the Project Approvals in a manner which is consistent with the surrounding community. Moreover, this Agreement will eliminate uncertainty in planning for and will secure orderly development of the Project, assure installation of necessary improvements, and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted.

## Section 4. Project Development.

4.1 Project Development; Entitlement to Develop. Developer may develop the Property or any portion thereof with a development of lesser height or density than that currently approved, provided that such development otherwise complies with the Applicable Rules, the Project Approvals, the Conditions of Approval and this Agreement.

The City has determined that the Project is consistent with the General Plan (as amended) and the Specific Plan (as amended). Notwithstanding anything herein to the contrary, including anything contained in Section 4.2 below, as a condition to the continued effectiveness of this Agreement, (i) Developer shall have recorded a final subdivision map with respect to at least forty-four percent (44%) of the residential lots contained in the Project (and shall have entered into all required subdivision improvement agreements and posted all required subdivision bonds in connection therewith) prior to the tenth anniversary of the Effective Date of this Agreement ("First Phase Map Condition Precedent"), and (ii) prior to the twelfth anniversary of the Effective Date, Developer shall substantially complete all subdivision improvements that are required to be constructed as a result of that map recordation, including the backbone road (identified as Brasada Lane on the TTM), equestrian trails (except that, with the approval of the City Manager, trails on non-backbone roads may be completed to a less finished form as agreed to by the City), backbone infrastructure and other like public improvements ("First Phase Improvement Condition Precedent"). At the time of completing those first phase improvements, Developer shall also complete the dedication and improvement of the equestrian trails described in Section 4.6 below if that dedication and improvement has not previously occurred. If Developer fails to record that map or complete those improvements by the outside dates set forth above, City may, at any time prior to completion of those actions, terminate this Agreement upon written notice to the Developer; provided that the City's only remedy for Developer's failure to timely record that map or complete those improvements by those outside dates set forth above shall be such termination and City shall not have the right to compel Developer to complete those actions by an action for specific performance.

4.2 Timing of Development and Allotment. The Project may be developed incrementally or in Phases and, except as otherwise specifically provided in this Agreement, Developer is under no obligation to commence or complete the Project in any particular timeframe or at all. The Parties acknowledge that the Developer cannot at this time predict when or the rate at which the Project would be developed and they acknowledge that the actual rate of development will depend upon numerous factors which are not all within the control of the Developer, such as market orientation and demand, interest rates, absorption, completion, availability of financing and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the intent of the Developer and City to hereby cure that defect by acknowledging and providing that, except as otherwise provided by the Project Approvals, Applicable Rules or this Agreement, including Section 4.1 above, the Developer shall have the right to develop the Property in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its sole and subjective business judgment. City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement. This Agreement shall immediately vest the right to develop the Property with the permitted uses of land and the density and intensity of uses specifically set forth in the Project Approvals, subject only to the requirements

of the Applicable Rules, the Project Approvals, the Conditions of Approval and the terms of this Agreement.

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

4.4 City Services. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals, Conditions of Approval, Applicable Rules and any subsequent additional Discretionary Approvals, if any, sought by Developer to implement the Project under any New Rules or Design Rules, City has determined and hereby finds that it will have sufficient capacity in its infrastructure, services and utility systems, including, as applicable, traffic circulation, storm drainage, sewer collection, sewer treatment, sanitation service and water supply, treatment, distribution and service, to accommodate the Project. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project.

4.5 Partial Termination. Developer shall have the right to request that the City approve a partial termination of this Agreement to release a portion(s) of the Property from the Agreement's obligations and benefits ("Partial Termination"). A Partial Termination may be approved by the City if Developer demonstrates to the City's satisfaction, in its sole and independent judgment, that the portion of the Property to be released from the Agreement obligations is not needed to satisfy any of the obligations established in the Agreement. If the City makes such a determination, such released Property shall not be subject to any of the obligations created in this Agreement, and similarly, will not receive any of the benefits created in this Agreement. Notwithstanding anything in this Agreement, the obligations of Developer in this Agreement are not intended to and shall not encumber any portion of the Property that has been finally subdivided, constructed and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user as a residential lot. Upon any such sale or lease, the residential lot shall be automatically and without further need for approval by the Parties be released from the duties and obligations of the Developer under this Agreement. Despite the intention of the Parties for this paragraph to be self-executing, the City shall execute a recordable instrument sufficient to release the Developer's obligations in this Agreement from a residential lot within thirty (30) days of a written request by Developer or any person with ownership rights to such residential lot. No such owner of an individual lot shall have the right to assert any rights of Developer under this Agreement, and Developer shall remain the responsible party for purposes of exercising any of those rights.

#### 4.6 Equestrian Trails.

4.6.1 Upon the later of (i) the approval of this Agreement and the expiration of any period for bringing a legal challenge to the Project Approvals with no challenge being filed, or, if such a challenge is timely filed, upon the resolution of that challenge in a manner that upholds the Project Approvals (the foregoing event is referred to herein as the "Closure of the Challenge Period"), or (ii) the sixtieth (60<sup>th</sup>) day after Developer closes escrow for the acquisition of the Additional Property, the Developer shall, upon the City's written request, provide to the City, for the benefit and use of the public, a temporary irrevocable license (subject to the terms and conditions contained in the license) for the use and maintenance of the existing service or access trails or roads traversing north-south through the Property and the Additional Property and the contiguous property to the south as are generally shown on Exhibit E attached hereto (or such portion thereof) that the City and the Developer, mutually and reasonably, determine are appropriate for equestrian use. The City shall bear all costs and all risk associated with the use of such license and any maintenance required as a result of such use. Such license shall provide that, in the event of a subsequent termination of this Agreement prior to satisfaction of the First Phase Map Condition Precedent, such license may be relocated as reasonably necessary to accommodate any alternative development the City may subsequently approve after such termination. Subject to the terms of the license, including the obligation of City to maintain those license areas, such license shall continue until superseded by the dedication of the permanent equestrian trails serving the same area. Such license shall be in a form acceptable to both Parties; provided that agreement upon the form of that license upon the request of either Party and the prompt execution and delivery of that license upon the occurrence of the trigger date set forth above shall constitute conditions to the continued effectiveness of this Agreement, and, if those requirements are not met, either Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Party until such requirements are met. The City shall have no right to assign or designate a designee for receipt of the license(s) or otherwise transfer its rights in the license(s) described above in this Section without obtaining the Developer's prior written consent, which consent may be granted or withheld in Developer's sole discretion.

4.6.2 In addition to the temporary license described above, concurrent with satisfaction of the First Phase Map Condition Precedent (and without limitation of the requirements of the Conditions of Approval and the Project Approvals), the Developer shall (i) offer for dedication (or convey to a third party designated by the City if the City so elects), and (ii) improve, consistent with the TTM and the Conditions of Approval, a permanent equestrian trail(s) within the Property in accordance with the requirements of the Project Approvals and the Conditions of Approval applicable thereto. The Developer shall have no obligation to maintain these trails following improvement by the Developer, and such maintenance shall be performed by either the City or a third party designated by the City following dedication or transfer thereof as provided above; provided, however, that if the City elects to designate a third party to maintain the trails, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. The permanent equestrian trails shall meet all requirements of the Project Approvals and all Conditions of Approval applicable thereto.

4.6.3 In addition to performance of the above obligations and as additional consideration to the City for its execution of this Agreement, within the later of (i) thirty (30) days after the Closure of the Challenge Period or (ii) the Developer's acquisition of the Additional Property, but, in any event not later than the termination of this Agreement for any reason other than the City's breach, the Developer shall deliver to the City readily available funds in the amount of \$8000, which the City shall retain and deposit into a City trust account and which the City, with input from the City's equestrian committee, shall thereafter use for equestrian trail maintenance anywhere in the City, as determined by the City in its sole discretion.

4.7 Dedication or Transfer of Open Space Parcel. At such time as City shall direct following the satisfaction of the First Phase Map Condition Precedent (as defined above), Developer shall convey to the City for use by the public (or convey to a third party designated by the City if the City so elects) an approximately eighty-four (84) acre tract of undeveloped property as permanent public open space area (the "Open Space Parcel"). If the City elects to designate a third party to receive conveyance of the Open Space Parcel, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. If, prior to the City's request that the Developer transfer the Open Space Parcel pursuant to this Section, the Developer has delivered a notice of default to the City and the City is not contesting, in good faith, the existence of such alleged default and any actual default has not been cured, then the Developer shall not be required to complete the conveyance of the Open Space Parcel until such default is cured. Any dedication or conveyance by Developer pursuant to this Section shall be free of all monetary liens or encumbrances but shall be subject to a Section 1542 waiver and release for Developer's benefit with respect to all disclosed or unknown conditions. The City or approved third party designee shall take title subject to, and Developer shall have a right to record prior to conveyance, a deed restriction on the Open Space Parcel restricting the uses of this parcel from development that would materially impair the successful development, marketing, sale and use of the Project. Such deed restriction shall include, without limitation, restrictions prohibiting the operation of motorized recreational or passenger vehicles, open space use restrictions, easements for the benefit of the Property for access and such other matters as the Parties may agree to. The Parties shall not unreasonably withhold, delay or condition their consent to the form of the deed restriction. Agreement upon the form of the deed restriction shall be a condition to the continued effectiveness of this Agreement and if the Parties are unable to agree upon the form of that restriction, then either Party may terminate this Agreement upon thirty (30) days written notice to the other until agreement upon the form of that restriction is achieved. The approximate location of the Open Space Parcel is shown on Exhibit B attached hereto. City shall not have any obligation to issue certificates of occupancy with respect to any improvements constructed on the Property until this condition has been satisfied or the City elects, in its sole and absolute discretion, to waive or defer that requirement; provided, however, if Developer is otherwise entitled to certificates of occupancy and City has not yet tendered its direction to Developer to offer the Open Space Parcel for dedication, then City shall have thirty (30) days from Developer's request for certificates of occupancy to do so. If a written request for dedication is not delivered to Developer within such thirty (30) day period then the condition requiring dedication prior to the issuance of those requested certificates of occupancy shall be waived; provided, however, that such Open Space Parcel's dedication obligation shall continue as otherwise provided in this Agreement and shall apply prior to the issuance of any further

certificates of occupancy; provided further that if additional certificates of occupancy are sought then the previous sentence concerning the final thirty (30) day window for demanding transfer of the Open Space Parcel shall likewise apply to such certificates of occupancy. If the City has not directed Developer in writing to complete such conveyance prior to expiration of the Term, then Developer shall provide the City with written notice thereof, and if the City does not direct Developer to make such conveyance within thirty (30) days thereafter, the obligation of Developer in this Section 4.7 shall be deemed waived.

Section 5. Changes.

5.1 Nonapplication of Changes; Additional Conditions of Approval and Other Exceptions.

5.1.1 Nonapplication of Changes to Applicable Rules Without Developer Consent. The adoption of any change in the Applicable Rules, adopted or becoming effective after the Effective Date of this Agreement, shall not be applied to the Project, unless the Developer gives written notice to the City of its election to have such change in the Applicable Rules applied to the Project, which it may grant or withhold in Developer's sole and absolute discretion, or unless such change in the Applicable Rules constitutes a lawful exercise of the City's Reserved Powers or is otherwise expressly authorized by this Agreement.

5.1.2 Additional Conditions of Approval. Although no additional conditions or dedications shall be imposed by the City on the development of the Project, the Parties acknowledge and agree that, in approving any tentative subdivision maps with respect to the Property filed after the date of this Agreement, the City reserves its right to impose normal and customary dedications pursuant to the Applicable Rules for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Property. In addition, nothing in this Section 5.1 shall preclude the City from requiring further conditional use permits, planned unit development permits, site plan reviews, architectural review, precise plan grading review and other approvals required by Specific Plan No. 25 as amended, and other development permits and Discretionary Approvals with respect to the Project that are provided for by the Applicable Rules.

5.1.3 Changes in Building Codes. As set forth above in Section 2.1, notwithstanding any provision of this Agreement to the contrary, any Project improvements that are not yet issued building permits shall be subject to changes occurring from time to time resulting from the City's adoption of building regulations based on the recommendations of a multi-state professional organization and which become applicable throughout the City, including, but not limited to, the California Building Standards Codes and other similar or related uniform codes.

5.1.4 Changes Mandated by Federal or State Laws or Regulations. In the event that any Federal, State, County or multi-jurisdictional laws or regulations (collectively "Federal or State law or regulation") enacted after the Effective Date but prior to the issuance of a building permit for the applicable improvements prevents or precludes compliance with one or more of the provisions of this Agreement or the Applicable Rules, such provisions of this

Agreement or the Applicable Rules shall be modified or changed as necessary to comply with such Federal or State law or regulation in a manner that minimizes, so far as reasonably possible, the adverse impact to the Project. In the event City has discretion to do so, the City shall interpret and implement a Federal, State, County or multi-jurisdictional law or regulation in a manner that minimizes, so far as reasonably possible, the adverse impact to the Developer's rights in the Project Approvals or under this Agreement. Where City or Developer believes that such modification or change is required, that Party shall take the following actions:

(a) Notice and Copies. The Party which believes a change or addition is required shall provide the other Party hereto with a copy of such State or Federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement.

(b) Modification Conferences. The Parties shall, within ten (10) days, meet and confer in good faith and engage in a reasonable attempt to modify this Agreement to comply with such Federal or State law or regulation consistent with the provisions of Section 5.1.4 above. In such discussions, the City and the Developer agree to preserve the terms of this Agreement and the rights of the Developer and the City derived from this Agreement to the maximum feasible extent while resolving the conflict.

(c) Council Hearings. Thereafter, if the representatives of the Parties are unable to reach agreement on the effect of such Federal or State law or regulation and the change in this Agreement or the Applicable Rules necessitated thereby, or if the required change which is agreed to by the Parties requires, in the judgment of the City Manager and the City Attorney, a hearing before and/or approval by the City Council, then, the matter shall be scheduled for hearing before the City Council by the City Clerk, at its next most convenient meeting. At least ten (10) days' written notice of the time and place of such hearing shall be given by the City Clerk to the representative of Developer and the City Manager. The City Council, at such hearing, or at a continuation of such hearing, shall determine the exact modification which is necessitated by such Federal or State law or regulation. Developer, and any other interested person, shall have the right to offer oral and written testimony at the hearing. The determination of the City Council shall be final and conclusive, except for judicial review thereof.

5.1.5 Cooperation in Securing Permits. Upon Developer's request, the City shall cooperate in good faith with Developer, at no cost or expense to the City, in the securing of any permits or approvals of other governmental agencies having jurisdiction over the Project required for the development of the Project, including, without limitation, any permits or approvals required as a result of a modification pursuant to Section 5.1.4 above.

5.1.6 Changes in Processing Fees and Developer Fees. Notwithstanding anything herein to the contrary, development of the Property and construction of the Project shall be subject to payment of all applicable Processing Fees and Developer Fees which may be in effect from time to time and which are then applicable to the Project in accordance with the terms thereof; provided, that the Developer Fees listed on Exhibit C are the only categories of Developer Fees that the City may impose or levy on the Project during the Term of this

Agreement, as such Developer Fees may be adjusted from time to time subject to City's compliance with any applicable laws relating to the enactment of fee increases.

5.1.7 Developer's Right to Contest New or Increased Fees, Charges or Assessments. Nothing in this Agreement shall prevent Developer from contesting, in any appropriate forum, the imposition or the amount of any Processing Fees, Developer Fees, or other fees, charges or assessments, or any increase therein. Such right of protest shall not extend to the existence or current amount of any Developer Fees identified on Exhibit C, or any Processing Fees in effect as of the Effective Date of this Agreement, and the Developer hereby agrees to cause to be paid the same pursuant to City's normal fee payment schedule without objection thereto. Notwithstanding any pending good faith contest of such new or increased fees, charges or assessments, City shall proceed with issuance of all required Ministerial Approvals with respect to the Project and shall not withhold or delay issuance of those Ministerial Approvals based upon any pending protest or appeal with respect to such fee, charges or assessments; provided any contested amount has been paid to City under protest with a reservation of rights.

5.1.8 Ministerial Permits. The City shall not require Developer to obtain any Ministerial Permits for the development of the Project in accordance with this Agreement other than those required by the Applicable Rules or by agencies unrelated to the City. Any Ministerial Permit required under the Applicable Rules shall be governed by the Applicable Rules.

5.1.9 Discretionary Approvals. Any approval involving a Discretionary Action or Discretionary Approval and required or needed after the Effective Date in order to commence or complete the approved Project, which does not materially change, modify or alter the Project, shall be governed by the Applicable Rules. Any subsequent Discretionary Action or Discretionary Approval sought by Developer in connection with a modification which materially changes, modifies or alters the Project shall be subject to all then applicable governmental rules, regulations and requirements without limitation to the Applicable Rules. Notwithstanding anything to the contrary contained herein, no subsequent Discretionary Action or Discretionary Approval shall require further CEQA review unless the City finds, based on substantial evidence, that such further CEQA review is required in order to comply with CEQA.

5.1.10 Timely City Actions. The City agrees to timely consider and act upon any matter which is reasonably required, necessary or desirable to accomplish the intent, purpose and understanding of the Parties in entering into this Agreement, including, without limitation, processing of any Ministerial Permit or Ministerial Approval or any request for a Discretionary Action or Discretionary Approval implementing the approved Project. City's obligations in this Section 5.1.10 are conditioned upon Developer satisfactorily complying with all preliminary procedures, actions, payments of applicable Processing and Developer Fees, and criteria generally required of developers by the City for processing applications for such Discretionary Actions or Discretionary Approvals or Ministerial Permits/Ministerial Approvals. If the City fails to timely act in the manner specified above, then upon written notice by Developer of such unreasonable delay and the identification of the specific cause(s) thereof and continuing so long as such delay continues, Developer's rights under this Agreement shall be extended on a day-for-day basis from the date of such notice until the delay has been remedied.

5.1.11 Interim Uses. City agrees that, until development of the Project, the Developer may continue the present use and operation of the Property.

5.1.12 Additional Staffing. If standard City staffing fails to result in processing of any permits or approvals as promptly as reasonably required for timely development of the Project by Developer, then the City agrees, upon request of Developer, to reasonably cooperate with Developer in hiring additional staff or consultants as City determines appropriate to process required Ministerial Permits and Approvals or Discretionary Actions and Approvals. The Developer shall reimburse the City for all direct and indirect costs of such additional staff or consultants, and any required training thereof, and all direct and indirect costs of the existing City staff in the supervision, review and coordination of such additional staff or consultants, within thirty (30) days after Developer receives an invoice identifying such reimbursable expenses; provided, the Developer shall have the right to audit such costs, at its expense, upon request. The City shall not charge a surcharge for such staffing in addition to such actual direct and indirect costs of City staff and such additional staff and consultants, nor shall the City charge any other separate fee for such additional staffing.

5.1.13 Term of Project Approvals. As provided in California Government Code Sections 66452.6 and 65863.9, the term of any tentative, vesting tentative or parcel map hereafter approved with respect to the Project and the term of each of the Project Approvals shall remain in effect and be valid through the scheduled termination date of this Agreement as set forth in Section 2.22 above.

5.1.14 Minor Modifications. It is contemplated that Developer may in the future desire to change or modify the Project based on, without limitation, precise planning, precise grading, structure siting on lots, road or trail configuration, drainage patterns or drainage needs and infrastructure, changes in market demand, or other factors in a manner that will not lead to a material increase in the severity of environmental impacts or materially change the Project as approved ("Minor Modifications"). Such Minor Modifications are contemplated by City and Developer as being within the scope of this Agreement as long as they are consistent with the Applicable Rules and shall, upon approval by City, continue to constitute the "Project Approvals" as referenced herein. The Parties agree that such Minor Modifications in Project Approvals that do not materially alter the Project may be agreed to in writing by the City Manager and the Developer. All Minor Modifications will require approval in accordance with the Applicable Rules. The Parties agree that any such Minor Modifications shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

## Section 6. Default Provisions.

6.1 Default by Developer. In the event the Developer does not perform its obligations under this Agreement ("Defaults") in a timely manner, the City shall have all rights and remedies provided herein or under applicable law, which shall include, but not be limited to, compelling the specific performance of the material obligations of Developer under this Agreement, or modifying or terminating this Agreement, provided that (i) except for recovery of any amounts, including attorneys' fees, owed to City under the terms of any indemnities in Sections 7.10 and 7.23 for the benefit of the City, the City hereby knowingly, willingly and intelligently waives any right to seek monetary damages from Developer for such breach,

including any monetary damages for the failure to start or complete the Project and (ii) with respect to any remedy the City has first complied with the following procedure:

(1) Notice of Default. The City shall give to Developer written notice of default identifying with specificity Developer's alleged Default(s).

(2) Period to Cure Non-Compliance. Twenty (20) days after service of the notice of default, Developer shall forthwith commence to cure the identified Default(s), and Developer shall complete the cure of such Default(s) within a reasonable period of time not to exceed sixty (60) days thereafter ("Developer Cure Period"). If a Default cannot be reasonably cured within sixty (60) days, the Developer Cure Period shall be extended for the period necessary to complete the cure so long as Developer has timely commenced to cure such Default(s) and continues to diligently pursue curing such Default(s) to completion within not more than one hundred twenty (120) days after service of the notice.

(3) Failure to Cure Default. If, after the Developer Cure Period (or any extension thereof) has elapsed, the City Council finds and determines that Developer remains in Default, the City Council may terminate or modify this Agreement, after compliance with the provisions of Section 65864 et seq. of the Government Code. Before ordering the termination of this Agreement, the City Manger shall have the matter set for hearing at its next most convenient meeting, and shall give not less than ten (10) days written notice of the time and place of such hearing to the Developer. The City Council shall conduct a public hearing to determine whether this Agreement should be terminated as authorized by Section 65864 et seq. of the Government Code and the provisions of this Agreement. The decision of the City Council to terminate or modify this Agreement shall be final and conclusive subject only to judicial review.

(4) Termination; City Remedies. If the City Council terminates this Agreement, after a final determination is made by City Council that the Developer is in Default and has not cured the Default within the Developer Cure Period, such termination of this Agreement shall not affect any right or duty of either party arising from entitlements or approvals, including the Projects Approvals, on the Property approved prior to the effective date of the City Council's order of termination. Notwithstanding termination of this Agreement, City shall have the right (i) to compel Developer by an action for specific performance to complete any public improvements which have been commenced and are partially completed as of the date of termination, including, without limitation, bringing an action against any bonds posted to secure the construction of those improvements, and (ii) to require Developer to dedicate any property required for public improvements and complete any public improvements which are required by the Project Approvals to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement, and (iii) so long as such termination is not due to a City default, to compel Developer by an action for specific performance to complete the dedication and improvement of the equestrian trail easements contemplated in Section 4.6 and the open space dedication or conveyance contemplated in Section 4.7.

6.2 Default by the City; Notice of Default. In the event the City does not timely accept, process, or render a decision on necessary development permits, entitlements, or

other land or building approvals for use of the Property as provided in this Agreement or by the Project Approvals under the Applicable Rules, or if the City otherwise fails to perform its obligations under this Agreement in a timely fashion, Developer shall have the right to specifically enforce the City's obligations hereunder, provided that Developer shall first serve on City a written notice of default stating with specificity those obligations which it believes City has not performed. The City shall commence to cure the identified default(s) within twenty (20) days after receipt of the notice of default and shall complete the cure of any default within sixty (60) days after receipt of the notice of default ("City Cure Period"). If a Default cannot be reasonably cured within sixty (60) days, the City Cure Period shall be extended for the period necessary to complete the cure so long as City has timely commenced to cure such Default(s) and continues to diligently pursue curing such Default(s) to completion within not more than one hundred twenty (120) days after service of the notice. Where the City fails to cure a default within the City Cure Period, Developer may, in addition to the specific performance remedy provided for above, forthwith terminate this Agreement and all further rights and obligations of the Parties hereunder; provided such termination shall not affect or release any obligations of a Party that have accrued as of the date of such termination. The Parties agree that Developer's obligations in Sections 4.6 and 4.7 shall not be deemed to be "accrued" for the purpose of the prior sentence if the Agreement is being terminated because of the City's uncured default. As a result, if Developer exercises its rights to terminate this Agreement upon an uncured City default and if the City has not yet accepted dedication or conveyance of the property in Sections 4.6 and 4.7 prior to such termination, then Developer's termination of this Agreement shall terminate any remaining obligations or rights in Sections 4.6 or 4.7; provided, that such termination of this Agreement shall not waive or limit any Conditions of Approval or the Developer's obligation to comply therewith in connection with any further development of the Property pursuant to the Project Approvals. If, prior to Developer's recordation of the first final map with respect to the Project, the City defaults and fails to cure such default after the Open Space Parcel has been conveyed to the City or a third party designee pursuant to Section 4.7 or after the temporary license for equestrian trails has been conveyed to the City or a third party designee pursuant to Section 4.6.1, then, upon such subsequent default and failure to cure, the temporary equestrian trail license shall automatically and without any further need for action by the Parties terminate and the Open Space Parcel shall without any need for further action revert in fee title to Developer's ownership. If a termination or reversion described in the previous sentence occurs, the City shall take any action reasonably necessary to provide Developer clear title to the Open Space Parcel and equestrian trails (including without limitation execution of quitclaim deeds and removal of any liens occurring after the date of such conveyance to City and caused by the actions of the City); provided, that such termination or reversion shall not waive or limit any Conditions of Approval or the Developer's obligation to comply therewith in connection with any further development of the Property pursuant to the Project Approvals. Notwithstanding anything to the contrary in the Applicable Rules or otherwise, as provided in California Government Code Sections 66452.6 and 65863.9, the term of any tentative, vesting tentative or parcel map hereafter approved with respect to the Project and the term of each of the Project Approvals shall remain in effect and be valid through the scheduled termination date of this Agreement as set forth in Section 2.24 above or the date such approval would otherwise be in effect under applicable law, whichever is later. In connection with the statement of the Developer's remedies in this Section, Developer acknowledges, and hereby knowingly, willingly

and intelligently waives any right to seek monetary damages against the City for the City's default under this Agreement.

Section 7. General Provisions.

7.1 Termination. Upon the expiration of the Term, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect any right or duty of a Party hereto, arising out of any Project Approval or the provisions of this Agreement, in effect on or prior to the effective date of such termination. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from the occurrence of any of the events set forth in Section 7.2 below, provided that the extension of the Agreement pursuant to this sentence shall not cumulatively exceed a period of five (5) years.

7.2 Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time is designated within which a Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including, without limitation, war; terrorist acts; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs, such as an annual review); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs, such as the annual review); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; extraordinary unavailability of goods or materials necessary for the Project or similar bases for excused performance which are not within the reasonable control of the Party to be excused. Economic constraints, or lack of available funding or financing, shall not constitute grounds for extension under this Section 7.2. Any Party wishing to obtain an extension under this Section 7.2 shall notify the other Party of the cause for that extension within ten (10) days of the Party's actual knowledge of the force majeure event, and the period of extension shall be from the delivery of that notice until the cessation of that specified event.

7.3 Developer's Right to Terminate upon Specified Events. Notwithstanding any other provisions of this Agreement to the contrary, the Developer retains the right to terminate this Agreement upon thirty (30) days written notice to the City in the event that the Developer reasonably determines that continued development of the Project has become economically infeasible due to changed market conditions, increased development costs, or burdens imposed, consistent with this Agreement, by the City or another governmental entity as conditions to subsequent project approvals. In the event the Developer exercises this right, it shall nonetheless be responsible for mitigation of impacts to City resulting from development that may have occurred on the Property prior to the notice of termination, on a fair share or nexus basis, and within the thirty (30) day notice period City and the Developer shall meet to identify any such mitigation obligation that may remain to be satisfied. If the Parties are in disagreement at the end of the (30) day notice period, the Agreement shall be terminated as to all matters

except for the remaining mitigation obligation in dispute. Notwithstanding anything herein to the contrary, if at any time during the term of this Agreement the Developer elects to abandon development of the portion of the Project located on the Property it owns or terminate this Agreement as provided in this Section 7.3, the Developer shall nevertheless be obligated to execute and deliver the offers of dedication and/or conveyance required under Sections 4.6 and 4.7 above with respect to the equestrian trail easements and open space dedication or conveyance described therein if such obligations have accrued in accordance with the terms of those sections as of the date of such termination. The preceding sentence is not applicable in cases of a termination of this Agreement due to a City default as provided in Section 6.2 above.

7.4 Venue. Any legal action arising out of this Agreement must be filed in the Los Angeles County Superior Court.

7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed in the State of California.

7.6 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement and in accordance with all applicable laws.

7.7 Assignment. In executing this Agreement, City has relied upon the financial capabilities of Developer to construct and operate the Project. Accordingly, except for transfers to an affiliate, parent, or subsidiary entity of Developer or its partners which is controlled by Developer or such partners (which shall not require any consent from the City but which Developer shall notify City of in writing concurrent therewith), the rights and obligations of Developer under this Agreement may not be transferred or assigned in whole or in part by Developer (collectively an "Assignment") without the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The Parties agree that any sale or lease of residential lots as provided in Section 4.5 shall not constitute an Assignment that requires City consent. City shall respond to such request in writing within ten (10) days after receipt and, in the event of any disapproval, set forth the reasons therefor. If City fails to respond within said ten (10) day period, the proposed assignment shall be deemed disapproved. The City Manager is hereby authorized to act upon any request for approval under the foregoing provision, and any approval granted by the City Manager shall constitute the action of and be binding upon the City.

7.8 Release of Transferring Owner. Upon any Assignment of the entirety of this Agreement or the rights hereunder approved by the City, the transferor shall be released of all obligations under this Agreement that relate to the Property or portion thereof being transferred to the extent arising from and after the date of the Assignment, and, thereafter, City shall look solely to such transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the Property or portion thereof acquired by such transferee. Except as otherwise provided in Section 4.5, in connection with each transfer of any portion of the Property or portion thereof, transferor shall require the transferee to assume in writing all of the obligations under this Agreement that relate to the portion of the Property or portion thereof being transferred. Notwithstanding anything above to the contrary (except as

provided in Section 4.5), the rights and obligations under this Agreement are non-severable and if any buyer, transferee or assignee Defaults under this Agreement, such Default shall constitute a Default by the owner of each other portion of the Property and shall entitle City to terminate this Agreement in its entirety if such Default is not timely cured. Each transferee shall be responsible for the reporting and annual review requirements relating to the portion of the property owned by such transferee.

7.9 Covenants. Until expiration of the Term, the provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property. All provisions of the Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with respect to development of the Property: (i) is for the benefit of and is a burden upon the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

7.10 Cooperation and Implementation.

(1) Processing. Upon Developer's completion of all required preliminary actions and the tender of payment (whether under protest or not) of appropriate Processing Fees, including the fee for processing this Agreement, the City shall promptly commence and thereafter diligently process all required steps necessary for the implementation of this Agreement. Developer shall, in a timely manner, provide the City with all documents, plans and other information required under the Applicable Rules which are necessary for the City to carry out its processing obligations. The provisions of this Agreement require a close degree of cooperation between City and Developer and the refinement and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character as to require an amendment hereof. The City Manager may execute any operating memoranda hereunder without Council or Planning Commission action.

(2) Other Governmental Permits. Developer shall apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project in connection with the development of, or provision of services to, the Project. The City shall cooperate, communicate and coordinate in good faith with Developer and any such third party agencies in connection with Developer's endeavors to obtain such permits.

(3) Legal Challenges. In the event of a legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to affirmatively cooperate with one another in defending said action. If litigation is filed contesting the validity of this Agreement or the right

of Developer to construct the Project in accordance with the provisions of this Agreement, the City, as well as Developer, shall be entitled to appear and defend against the allegations made in such litigation provided that Developer shall reimburse City for all of its expenditures actually incurred in the defense of such litigation, including, but not limited to, City's reasonable attorneys' fees and shall indemnify, defend and hold City and its representatives harmless from any such claim, action or proceeding and all costs arising therefrom or any judgment obtained in such action or proceeding. In connection with the conduct of such litigation, the City, the City Attorney and Developer shall meet and confer upon the request of the other party to formulate legal strategy for the conduct of such litigation and to control its cost. Developer shall have the right to provide input on the reasonableness of strategy and methods to ensure such costs are efficiently controlled as litigation pursuant to this subsection (3) proceeds; but any final decisions with respect to strategy and staffing of the City shall be made by City.

7.11 Relationship of the Parties. The Parties acknowledge and agree that Developer is not an agent, joint venturer or partner of the City.

7.12 Notices. Whenever notices are required to be given pursuant to the provisions of this Agreement, the same shall be in written form and shall be served upon the Party to whom addressed by personal service as required in judicial proceedings, or by deposit of the same in the custody of the United States Postal Service or its lawful successor in interest, postage prepaid, Registered or Certified Mail, or by reputable overnight courier or by electronic transmittal addressed to the Parties as follows:

CITY:

City of San Dimas  
245 East Bonita Avenue  
San Dimas, CA 91773  
Attn: City Manager and Director  
Planning & Community Development  
Facsimile:

WITH A COPY TO: McKenna Long & Aldridge LLP  
300 South Grand Avenue, Suite 1400  
Los Angeles, CA 90071-3124  
Attn: J. Kenneth Brown, Esq.  
Facsimile: (213) 687-2149

DEVELOPER: NJD, LTD., a Texas limited partnership  
3300 East First Avenue, Suite 510  
Denver, CO 80206  
Facsimile: (303) 399-3929

WITH A COPY TO: Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626  
Attn: Michael R. W. Houston, Esq.  
Facsimile: (714) 546-9035

Notices shall be deemed, for all purposes, to have been given and received on the date of (i) personal service or (ii) three (3) consecutive calendar days following the deposit of the same in the United States mail as provided above or (iii) the next business day after deposit with the overnight courier or (iv) upon receipt of a electronic transmittal confirmation, provided such transmittal occurs on a business day before 5:00 p.m. at the location of the Party receiving notice, otherwise such transmittal shall be deemed to occur at 9:00 a.m. the following business day., and provided such electronic transmittal is followed by a notice sent within forty-eight (48) hours thereafter by one of the methods provided above.

7.13 Recordation. As provided in Government Code Section 65868.5, the City shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by both Parties. Developer shall reimburse the City for all costs of such recording, if any.

7.14 Severability. If any provision of this Agreement is determined by a court to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to any applicable law which becomes effective after the Effective Date of this Agreement, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

7.15 Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

7.16 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in respect to any other occurrence or event.

7.17 No Third Party Beneficiaries. The only Parties to this Agreement are the City and Developer and their respective successors-in-interest. There are no third party

beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever.

7.18 Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter expressly contained in this Agreement. The Parties specifically acknowledge that this Agreement and the Project Approvals are intended to implement and satisfy, in full, the City's responsibilities and obligations under Sections 2 and 5 of the Settlement Agreement. Upon the Closure of the Challenge Period, the NJD Release set forth in Section 6a of the Settlement Agreement shall be deemed reaffirmed and extended to any claims for compensation for any interest in real or personal property, improvements to the realty, fixtures, equipment, inventory, lost business goodwill, relocation benefits, severance damage, precondemnation damages, litigation expenses, (including attorneys' fees and costs), or any other compensation or damage resulting from any acts, omissions, events or circumstances occurring on or before the Effective Date of this Agreement. The Parties agree however that this Section does not affect the rights of the Parties relative to the allocation of costs that may be subject to the provisions of the Settlement Agreement as well as those costs provided in Sections 10 (2) and (3) of the Developer Reimbursement Agreement dated June 11, 2010.

7.19 Advice; Neutral Interpretation. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against either of the Parties in its capacity as draftsman, but in accordance with its fair meaning.

7.20 Certificate of Compliance. At any time during the term of this Agreement, any lender or Party may request the other Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults, and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other Party within ten (10) business days of receipt of the written request therefor.

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

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

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

(3) If the City timely receives a request from a Mortgagee requesting a copy of any notice of default or notice of non-compliance given to Developer under the terms of this Agreement, the City shall provide a copy of that notice to the Mortgagee within ten (10) calendar days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed Developer under this Agreement, or (ii) sixty (60) days from delivery of the notice to Mortgagee.

(4) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement, provided, however, in no event shall such Mortgagee or its successors and assigns be (a) liable for any monetary defaults of Developer under the Agreement arising prior to acquisition of title to the Property, or portion thereof, by such Mortgagee, or (b) obligated to complete construction of the Project or any component thereof, except as expressly provided in Section 7.3 above; provided, however, if such Mortgagee does not elect to cure any such default, the City shall have the rights and remedies set forth in this Agreement, including the right to terminate this Agreement. In the event any Mortgagee seeks to develop or use portion of the Property acquired by such Mortgagee, such Mortgagee shall strictly comply with all of any the terms, conditions and requirements of this Agreement and the Project Approvals applicable to the Property or such part thereof acquired by the Mortgagee.

7.22 Processing of Modification. The Developer shall reimburse the City for its actual costs incurred in connection with any modification to this Agreement initiated by Developer or its Mortgagee.

7.23 Indemnity.

7.23.1 General. Developer shall indemnify the City, its officers, employees, and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "Claims or Liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Property, except to the extent such claims are excepted as provided below in Section 7.23.2.

(a) Developer will defend any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Developer will promptly pay any final judgment (subject to Developer's or City's rights to appeal from such final judgment) rendered against the City, its officers, agents, or employees for any such Claims or Liabilities arising out of or in connection with the indemnity in this Section 7.23.1, and Developer agrees to save and hold the City, its officers, agents, and employees harmless therefrom.

(c) In the event the City, its officers, agents, or employees is made a party to an action or proceeding filed or prosecuted for Claims or Liabilities described in the indemnity in this Section 7.23.1, the City shall promptly tender its defense to Developer, who pursuant to (a) above will defend the City, its officers, agents, or employees with attorneys selected by Developer and reasonably approved by City; Developer shall bear any and all costs and expenses in such action or proceeding, including but not limited to legal costs and attorneys' fees incurred in defending the City.

7.23.2 Exceptions. The foregoing indemnity shall not include Claims or Liabilities arising solely from the gross negligence or willful misconduct of the City, its officers, agents, or employees.

7.23.3 Loss and Damage. Except as provided in Section 7.23.2, City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. Except as provided in Section 7.23.2, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature.

7.23.4 Period of Indemnification. The obligations for indemnity under this Section 7.23 shall begin upon the Effective Date of this Agreement and shall terminate upon termination of this Agreement; provided, that any obligations that have accrued as of the date of such termination shall survive that termination and remain enforceable by the City.

7.23.5 Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any Claims or Liabilities to Developer or any other person or property, except as specifically provided in this Agreement and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents and employees.

## 7.24 Insurance.

### 7.24.1 Types of Insurance.

(a) Public Liability Insurance. Prior to commencement and until completion of construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of City and Developer broad form commercial general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage, providing protection of a least Three Million Dollars (\$3,000,000) per occurrence for bodily injury, death or property damage combined for any one accident or occurrence, which limits shall be subject to increases in amount as City may reasonably require from time to time.

(b) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act of negligence (but not willful or intentional violations of law) of City or Developer that might otherwise result in the forfeiture of the insurance, (2) the insurer waives the right of subrogation against City and against City's agents and representatives; (3) the policies are primary and noncontributing with any insurance that may be carried by City; and (4) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. The City's Risk Manager acknowledges and agrees that the insurance requirements above have been established based on contemplated use and activities on the Property.

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

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

(b) For any renewal or replacement of a policy already in existence, at least thirty (30) days prior to expiration of the existing policy.

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

7.25 Consideration. The City and Developer acknowledge and agree that there is good, sufficient and valuable consideration flowing to the City and to Developer pursuant to

this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

#### 7.26 Periodic Reviews.

(1) Annual Reviews. City shall conduct annual reviews to determine whether Developer is acting in good faith compliance with the provisions of this Agreement as provided in the Enabling Resolution ("Annual Review(s)"). The cost of each annual review conducted during the term of this Agreement shall be reimbursed to City by Developer. The annual review fee will initially be \$2500 per year, payable in advance by Developer prior to initiation of the review. The annual fee shall be increased after five years by the percentage increase in the Consumer Price Index for Los Angeles/Long Beach/Anaheim between the date of this Agreement and the month prior to the commencement of the applicable sixth year review. In addition, if the annual review results in a finding of default or breach by the Developer, the Developer shall reimburse the City upon demand for all actual and documented direct and indirect costs of staff or consultants attributable to such annual review to the extent those costs exceed the base annual review fee paid by Developer for that year.

(2) Special Reviews. In addition, the City Council of the City may order a special periodic review of Developer's compliance with this Agreement at any time ("Special Review(s)"). The cost of such Special Reviews shall be borne by the City, unless the City Council determines as a result of such Special Review that Developer is not acting in good faith compliance with the material provisions of this Agreement. In such cases, Developer shall reimburse City for all actual and reasonable costs, direct and indirect, incurred in conjunction with such a Special Review.

(3) Conduct of Reviews. The City Manager shall cause the Annual and Special Reviews to be conducted; provided, that the City's failure to timely conduct any Annual review shall not constitute or be construed as a breach or default under this Agreement. Any review by a party other than the City Council shall be provided to the City Council. A review concluding the Developer has complied with the terms of this Agreement may be considered by the City Council as a consent calendar item. Any review that recommends a finding that the Developer has not acted in good faith compliance with the provisions of this Agreement shall require City Council ratification and adoption at a public meeting at which the Developer shall be entitled to appear.

7.27 Record of Applicable Rules. Upon the Developer's written request to the City delivered within one hundred and twenty (120) days after the Effective Date of this Agreement, and at the Developer's sole cost and expense, City and Developer shall use reasonable efforts to identify two identical sets of the Applicable Rules, one set for City and one set for Developer, so that if it becomes necessary in the future to refer to any of the Applicable Rules, there will be a common set of the Applicable Rules available to both Parties.

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

7.29 Binding Effect. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the City and Developer, and any lawful successor in interest of the Parties. Whenever the term "Developer" is used herein, such term shall include any other lawfully approved successor in interest of Developer. Nothing in this Section shall limit or waive the restrictions in Section 7.7 above.

7.30 Conflicts of Interest. The City represents and warrants that, to the actual knowledge of the City Manager, no member, official or employee of the City has any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested.

7.31 Counterparts. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original, but all of which shall constitute one and the same Agreement.

*[SIGNATURES FOLLOW ON NEXT PAGE]*

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

McKenna Long & Aldridge LLP

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

CITY:

CITY OF SAN DIMAS,  
a municipal corporation

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

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

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

DEVELOPER:

NJD, LTD., a Texas limited partnership

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

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

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

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

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

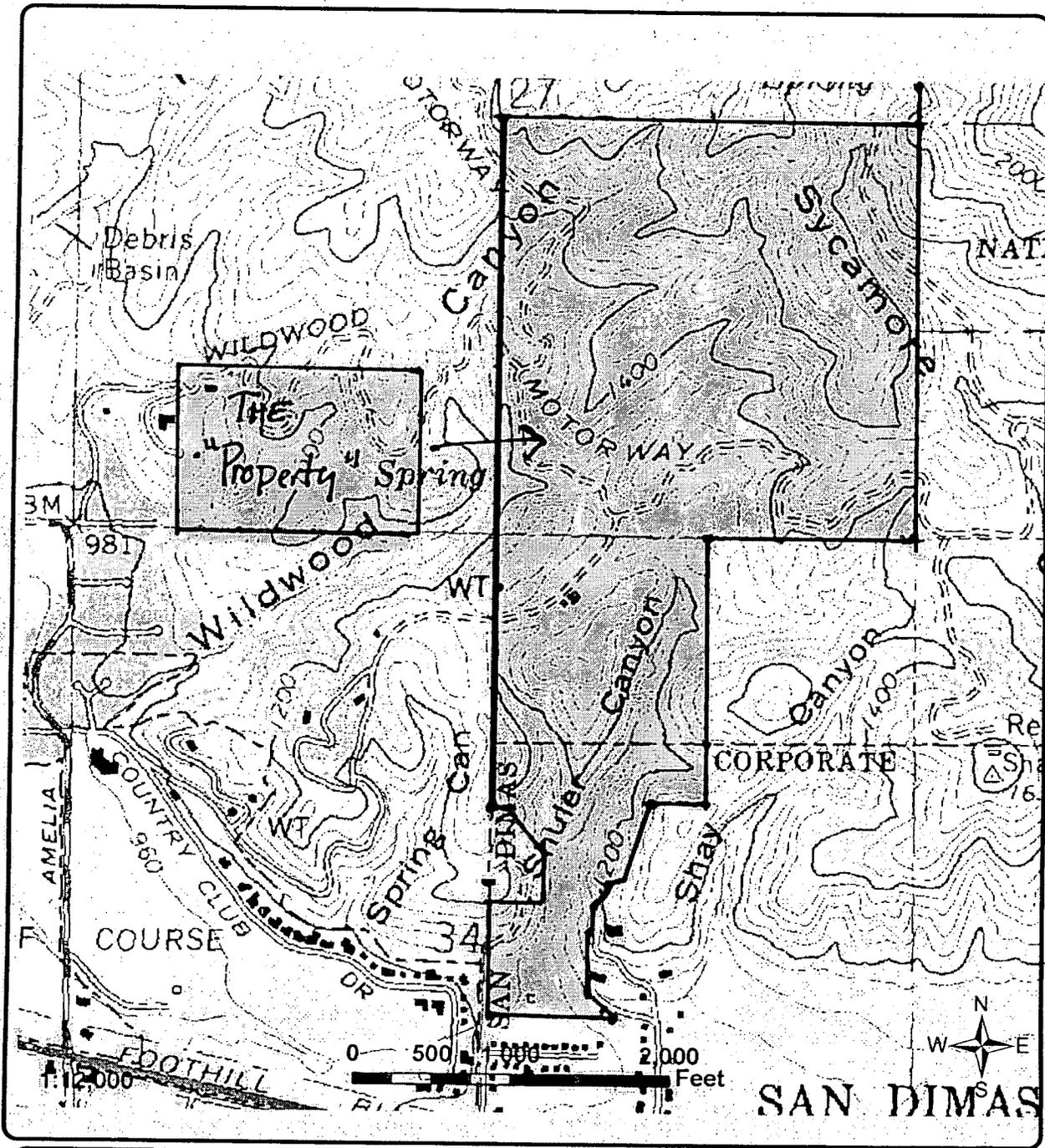
WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Description of the Property**

**EXHIBIT B**  
**Location Map**



Development Agreement

Exhibit "A"

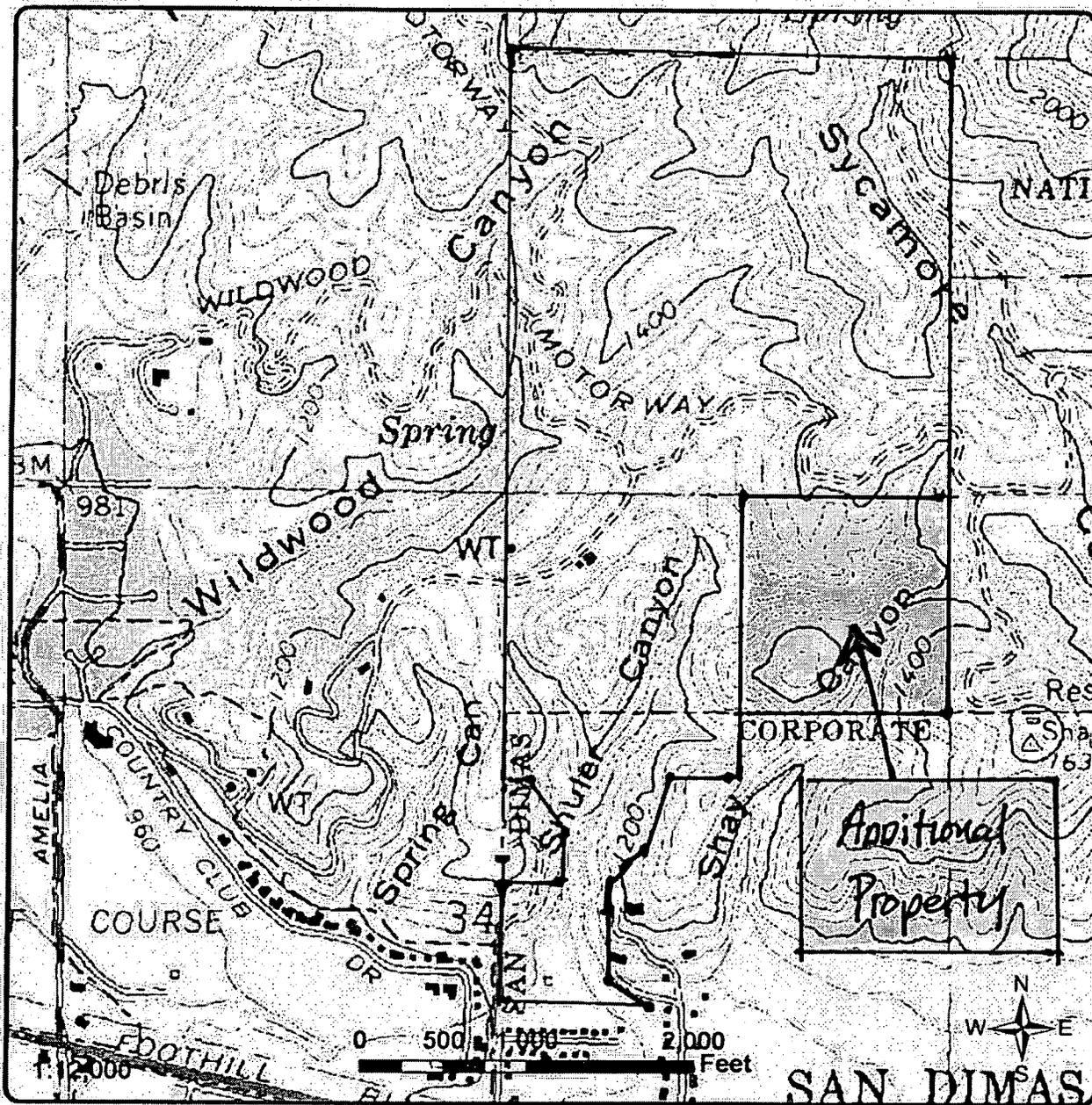
Project Location Map

(USGS Glendora [1972] quadrangle)

City of San Dimas  
County of Los Angeles, California

**EXHIBIT B-1**

**Location of Additional Property**



**Development Agreement**

**Exhibit B-1**

**Project Location Map**

(USGS Glendora [1972] quadrangle)

*City of San Dimas  
County of Los Angeles, California*

**EXHIBIT B-2**

**Description of Additional Property**

Legal Description of the Additional Property

PARCEL 1: APN 8665-001-004 & 005

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 9 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF SAN DIMAS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO FREDERICK H. NUSBICKEL BY DEED RECORDED IN BOOK 6706, PAGE 226 OF DEEDS, CONVEYING A STRIP OFF OF THE SOUTH END OF SAID LAND, 120.2 FEET WIDE ON THE EAST END THEREOF AND 96.9 FEET WIDE ON THE WEST END THEREOF, THE SOUTH AND NORTH SIDES OF SAID STRIP BEING STRAIGHT.

PARCEL 2:

AN EASEMENT FOR UTILITY PURPOSES, SAID EASEMENT OVER A STRIP OF LAND OF VARYING WIDTH IN THE IN THE CITY OF SAN DIMAS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING A PORTION OF LOT 49, TRACT NO. 33731, AS SHOWN ON MAP RECORDED IN BOOK 894, PAGES 49 TO 53 INCLUSIVE OF MAPS, RECORDS OF LOS ANGELES COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A STRIP OF LAND 12 FEET IN WIDTH, THE SOUTHWESTERLY LINE OF SAID STRIP BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 49; THENCE NORTHWESTERLY NORTH 43°21'13" WEST, 271.24 FEET; THENCE A STRIP OF LAND 20 FEET IN WIDTH, NORTH 00°05'03" EAST, 134.00 FEET; THENCE NORTH 89°27'27" WEST, 67.27 FEET; THENCE NORTH 00°36'33" EAST, 87.08 FEET TO THE NORTHERLY LINE OF SAID LOT 49.

THE NORTHEASTERLY LINE OF SAID STRIP OF LAND SHALL BE PROLONGED OR SHORTENED SO AS TO TERMINATE IN THE SOUTHERLY LINE OF SAID LOT 49 AND IN THE NORTHERLY LINE OF SAID LOT 49.

**EXHIBIT C**

**Developer Fees as of Effective Date**

# CITY OF SAN DIMAS DEVELOPMENT IMPACT FEES

DESCRIPTION	WHERE APPLICABLE?	PER UNIT	AMOUNT	x	QUANTITY	=	TOTAL FEE AMOUNT	
<b>Park, Recreation &amp; Open Space Development (San Dimas Municipal Code Chapter 3.26 and Council Resolution No. 90-8)</b> <i>Purpose is to finance development of facilities to reduce the impacts of increased use caused by new development</i>	All Residential Zones	1 bedroom home	\$400				\$0.00	
	All Residential Zones	2 bedroom home	\$500				\$0.00	
	All Residential Zones	3 bedroom home	\$600				\$0.00	
	All Residential Zones	4 bedroom home	\$700				\$0.00	
	All Residential Zones	5 bedroom home	\$800				\$0.00	
	All Residential Zones	6 bedroom home	\$900				\$0.00	
<b>Quimby Act (San Dimas Municipal Code Chapter 17.36) - Either dedication of park land OR in-lieu fee OR combination thereof, as decided by City Council.</b> <i>Purpose is to develop new or rehabilitate existing park and recreational facilities to serve future residents of such subdivision.</i>				AMOUNT OF LAND TO BE DEDICATED	x	# UNITS	=	TOTAL DEDICATION
	All subdivisions	Single-family home		643 sf				0.00
	All subdivisions	Multiple-family home		457 sf				0.00
<b>IN-LIEU FEE OPTION</b> Land Value is the fair-market value of land (assessed value at the time of filing the final map), modified to equal market value in accordance with current practices of county assessor.	All subdivisions - on subdivisions of 50 lots or less, only the payment of in-lieu fees shall be required.	Fee paid based upon entire subdivision.		AMOUNT OF LAND TO BE DEDICATED	x	LAND VALUE (per sq ft)	=	FEE
		Single-family home		0.00				\$0.00
		Multiple-family home		0.00				\$0.00
<b>Property Development Tax (San Dimas Municipal Code Chapter 3.24)</b> <i>Purpose is to enable new development to pay its appropriate share of the cost of maintaining and improving the environmental quality of our community.</i>	All Residential Zones	1 bedroom home	\$275.00				\$0.00	
	All Residential Zones	2 bedroom home	\$350.00				\$0.00	
	All Residential Zones	3 bedroom home	\$425.00				\$0.00	
	All Residential Zones	4 bedroom home	\$500.00				\$0.00	
	All Residential Zones	5 bedroom home	\$575.00				\$0.00	
	All Residential Zones	6 bedroom home	\$650.00				\$0.00	
<b>Sewer (San Dimas Municipal Code Chapter 14.12)</b> <i>Purpose is to provide for construction and expansion of sanitary sewer system and to assure said costs are borne by those who receive the benefits thereof</i>	All Residential Zones	Dwelling unit	\$160.00				\$0.00	
	All Residential Zones	Dwelling unit per frontage (in feet) of lot	\$12.00				\$0.00	
	Commercial	Frontage length (in feet) of lot	\$12.00				\$0.00	
	Commercial	Plumbing fixture	\$50.00				\$0.00	
		Trap	\$75.00				\$0.00	
LA County Sanitation	Call (562) 699-7411 for amount							
<b>School (State law - payable directly to Bonita Unified School District)</b> <i>Purpose is to enable new development to pay its appropriate share of the cost of construction of new schools to serve future residents of said development</i>	All Residential Zones	Dwelling unit	\$2.97				\$0.00	

**EXHIBIT D**

**Enabling Resolution**

RESOLUTION NO. 2010-62

**A RESOLUTION OF THE CITY OF SAN DIMAS  
ESTABLISHING PROVISIONS FOR THE PROCESSING OF  
DEVELOPMENT AGREEMENTS**

WHEREAS, an application for development of property in the foothills has been received, and the applicant has requested that in conjunction therewith the City approve a development agreement; and

WHEREAS, Government Code Section 65864 et. seq. provides for the approval of development agreements; and

WHEREAS, the City desires to establish procedures and requirements for consideration of development agreements.

NOW, THEREFORE, the San Dimas City Council does hereby find, determine and declare as follows:

PURPOSE

(1) This Resolution is adopted to establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of property owners or other persons having a legal or equitable interest in the property proposed to be subject to the agreement. In this regard, it is intended that the provisions of this chapter should be fully consistent, and in full compliance, with the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 (commencing with Section 65864) of the California Government Code, and shall be so construed.

(2) In construing the provisions of any development agreement entered into pursuant to this chapter, those provisions shall be read to fully effectuate, and to be consistent with, the language of this chapter, Article 2.5 of the California Government Code, cited above, and the agreement itself. Should any apparent discrepancies between the meaning of these documents arise, then the documents shall control in construing the development agreement in the following order of priority:

1. The plain terms of the development agreement itself;
2. The provisions of this chapter, and
3. The provisions of Article 2.5 of the California Government Code, cited above.

## **Section 2. Applications.**

A. Any owner of real property or other person having a legal or equitable interest in the property may request and apply through the director of planning for the city to enter into a development agreement provided that:

1. The property proposed to be subject to the agreement shall be not less than five acres in size;
2. The status of the applicant as an owner of, or holder of legal or equitable interest in, the property is established to the satisfaction of the director; and

3. The applicant agrees to pay the fees incurred by the City in preparation of the development agreement and provide all other required documents, materials and information.

B. The director of planning shall review, process and prepare, together with his recommendations, for planning commission and city council consideration, as applicable, all applications for development agreements. Other departments of the city shall assist in a timely manner.

C. Processing fees, as established by resolution of the city council, shall be charged for any application for a development agreement made pursuant to the provisions of this chapter, and shall also be so established and charged for periodic reviews as required.

### **Section 3. Public Hearings.**

A. When an application for a development agreement is deemed complete by the director of planning, the application shall be set for public hearing, together with his recommendations relating to it, before the planning commission. Following conclusion of public hearing by the commission, the commission may recommend to the city council that it approve, conditionally approve, or disapprove the application.

B. After the planning commission action, the city clerk shall set the application for public hearing before the city council. Following conclusion of the public hearing by the city council, the city council shall approve, conditionally approve or deny the application.

C. Notice of the hearings set forth in Subsections A and B of this Section shall be given in the form of a notice of intention to consider adoption of a development agreement as required by Section 65867 of the California Government Code.

D. The City Council's approval of the development agreement shall be confirmed by Ordinance.

E. The ordinance shall set forth findings, and the facts supporting them, that the development agreement is consistent with the San Dimas General Plan and any and all specific plans and that it will promote the welfare and public interest of the city of San Dimas.

F. The ordinance maybe subject to referendum in the manner provided bylaw.

#### **Section 4. Content of Development Agreement.**

A. Mandatory contents. A development agreement entered into pursuant to this chapter must contain provisions that:

1. Specify the duration of the agreement;
2. Specify the permitted uses of the property;
3. Specify the density or intensity of use;
4. Set forth the maximum height and size of proposed buildings; and

5. Set forth provisions, if any, for reservation or dedication of land for public purposes.

B. Permissive contents. A development agreement entered into pursuant to this chapter may:

1. Include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement;

2. Provide that construction shall be commenced within a specified time and that the project or any phase thereof be completed within a specified time;

3. Include such other terms, conditions and requirements as the city council may deem necessary and proper, including, but not limited to, a requirement for assuring, to the satisfaction of the city, performance of all provisions of the agreement in a timely fashion by the applicant/contracting party.

**Section 5. Execution and Recordation.**

A. The city shall not execute any development agreement until on or after the date upon which the ordinance approving the agreement becomes effective.

B. An executed development agreement shall be recorded in the office of the recorder of the county of Los Angeles no later than ten (10) days after it is entered into.

**Section 6. Environmental Review.**

The approval or conditional approval of a development agreement pursuant to this Resolution shall be consistent with provisions of the California environmental quality act.

**Section 7. Periodic Review.**

A. Every development agreement approved and executed pursuant to this chapter shall be periodically reviewed during the term of the agreement every year following the date of its execution.

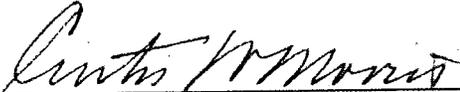
B. The purpose of the reviews conducted pursuant to this section shall be to determine whether the applicant/contracting party or its successor in interest has complied in good faith with the terms of the development agreement. The burden shall be on the applicant/contracting party or its successor to demonstrate such compliance to the full satisfaction of, and in a manner as prescribed by the city.

C. If, as a result of periodic review pursuant to this section, the city council finds and determines, on the basis of substantial evidence, that the applicant/contracting party or its successor in interest has not complied in good faith with terms or conditions of the agreement, the city council may order, after hearing, that the agreement be terminated or modified.

**Section 8. Effect of Development Agreement.**

Unless otherwise provided by the development agreement, rules, regulations and official policies governing permitted uses of the land, governing density, and governing design, improvement and construction standards and specifications, applicable to development of the property subject to a development agreement, are the rules, regulations and official policies in force at the time of execution of the agreement. A development agreement does not prevent the city, in subsequent actions applicable to the property, from applying new rules, regulations and policies which do not conflict with those rules, regulations and policies applicable to the property under the development agreement, nor does a development agreement prevent the city from denying or conditionally approving any subsequent development project application on the basis of such existing or new rules, regulations and policies.

Passed, Approved and Adopted this 23<sup>rd</sup> day of November, 2010.

  
Curtis W. Morris, Mayor of the City of San Dimas

Attest

  
Ina Rios, CMC, City Clerk

I, INA RIOS, CITY CLERK of the City of San Dimas, do hereby certify that Resolution 2010-62 was passed at the regular meeting of the City Council held on November 23, 2010 by the following vote:

AYES: Councilmembers Badar, Bertone, Ebiner, Templeman, Morris  
NOES: None  
ABSTAIN: None  
ABSENT: None



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Ina Rios, CMC, City Clerk

**EXHIBIT E**

**Trail Areas**

— approximate trail locations on "south 40" of McHenry

— approximate trail locations on project site

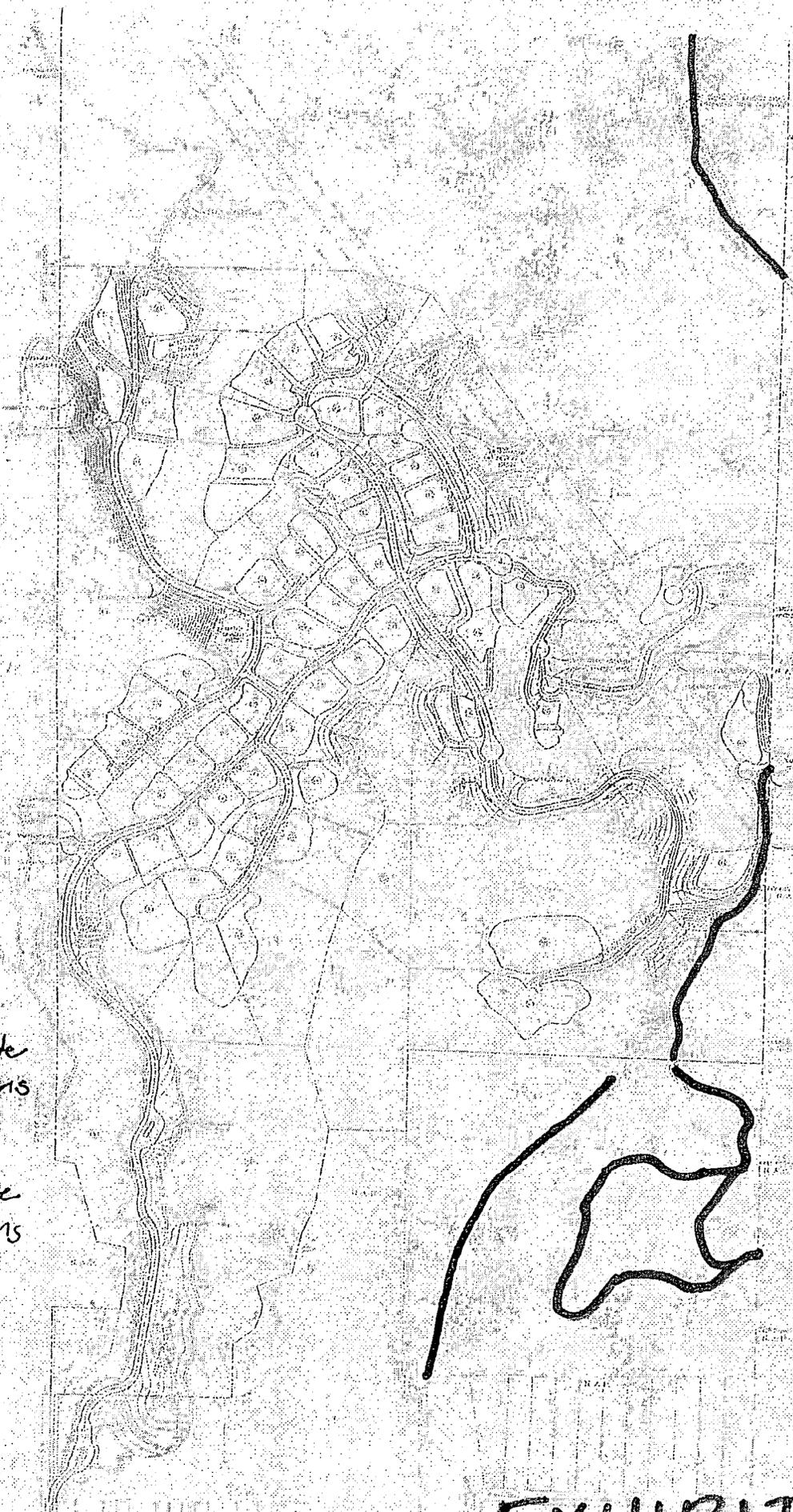


EXHIBIT E

## **DEVELOPMENT AGREEMENT**

This Development Agreement (“Agreement” or “Development Agreement”) is made and entered into as of \_\_\_\_\_, 2010, January 25, 2011, by and between the CITY OF SAN DIMAS, a general law city and municipal corporation (“City”), and NJD, LTD., a Texas limited partnership (“Developer”) pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, Sections 65864 through 65869.5 of the California Government Code. The City and Developer are individually referred to herein as a “Party” and collectively referred to as the “Parties.”

### **RECITALS**

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement:

(a) Developer is the owner of certain real property which is located in the City, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference and is shown on the location map attached hereto as Exhibit B (hereafter “Property”); and

(b) Developer has contractual rights to acquire approximately 76.7 acres of property in the City adjacent to the Property, commonly known as Assessor’s Parcel Numbers (“APN”) 8665-001-004 and 8165-001-005, which property is depicted on Exhibit B-1 and more particularly described in Exhibit B-2 attached hereto and incorporated herein by reference (the “Additional Property”). Developer’s rights to acquire the Additional Property are established by that certain Option Agreement and Right of First Refusal, as amended (“Option Agreement”), as evidenced by that recorded Amendment to Memorandum of Option Agreement and Right of First Refusal recorded as Instrument No. 2008-1872650 in Los Angeles County, California. County Official Records on October 21, 2008. As provided by Sections 4.3 and 4.4 of that Option Agreement, Developer is entitled to seek Project-related approvals and the current fee owner is obligated to cooperate in seeking such approvals. At such time that Developer becomes fee owner of the Additional Property an approximately 40-acre portion of the Additional Property, as depicted on Exhibit B-1, shall become part of the “Property” for purposes of this Agreement. The Parties agree that this is a sufficient beneficial interest for an approximately 40 acre portion of the Additional Property to be included in this Agreement.

(c) Developer desires to construct a Project (as hereinafter defined) on the Property consisting, among other improvements and amenities, of sixty-one (61) single family homes and approximately eighty-four (84) acres of open space; and

(d) Developer and City are also parties to that certain Settlement Agreement & Release dated as of December 21, 2004 (the “Settlement Agreement”), pursuant to which the current Project is being processed; and

(e) Concurrently with or prior to approval of this Agreement, City has approved and/or adopted the General Plan Amendment, the Specific Plan Amendment, the TTM, and the other Project Approvals (as all of the foregoing terms are hereinafter defined) applicable to the Project; and

(f) The Project is fully described in the FEIR (as hereinafter defined) and the Project Approvals, which are on file with the City; and

(g) Developer's TTM and other Project Approvals allowing construction of the Project have been conditionally approved concurrently herewith, and the Conditions of Approval (as hereinafter defined) applicable thereto have been accepted by the Developer as being lawfully imposed thereon; and

(h) Developer has applied to the City for approval of this Agreement pursuant to the provisions of the Development Agreement Act (as hereinafter defined), the Enabling Resolution (as hereinafter defined), and other applicable laws; and

(i) The City is authorized pursuant to the Development Agreement Act and other applicable laws to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the development of property as therein described; and

(j) The City desires to obtain the binding agreement of the Developer for the development of the Project in accordance with the provisions of this Agreement; and

(k) Developer desires to obtain the vested right from the City to allow Developer to develop the Project in accordance with the provisions and requirements of this Agreement, the Project Approvals, the Conditions of Approval and the Applicable Rules (as hereinafter defined), including only those modifications, changes or additions to those Applicable Rules permitted or required by this Agreement; and

(l) The Planning Commission and the City Council of the City have each conducted a duly noticed public hearing to consider the approval of this Agreement pursuant to Government Code Section 65867 and each has found that the provisions of this Agreement are consistent with the City's adopted plans and policies, the General Plan (as hereinafter defined), and the Specific Plan; and

(m) An environmental review has been conducted and completed with regard to the Project and a FEIR was certified by the City Council on December 14, 2010, in accordance with CEQA (as hereinafter defined), including all State and local guidelines, which FEIR contemplates a development agreement and its execution by the Parties as one component of the Project; and

(n) This Agreement is in furtherance of the public health, safety and welfare of the residents of the City and the surrounding region, and will serve the public interest, convenience and necessity of the City and its residents and the surrounding region; and

(o) The City Council has specifically considered and approved the impact and benefits of the Project upon the welfare of the City and the region; and

(p) This Agreement will serve to eliminate uncertainty in planning and will provide for the orderly development of the Project in a manner consistent with the Applicable Rules and the General Plan and Specific Plan; and

(q) This Agreement will provide Developer with the assurance that it can complete the Project and that the Project will not be changed, delayed or modified after the Effective Date (as hereinafter defined) of this Agreement, except pursuant to the provisions of this Agreement; and

(r) The Project will provide substantial benefit to the City by providing, without limitation, increased tax and other revenues, the construction and dedication of public improvements, the offer for dedication to permanent public open space of approximately eighty-four (84) acres, the provision for dedication and improvement of equestrian trails connecting Horse Thief Canyon Park and the Sycamore Canyon trail system, and the creation of job opportunities for residents of the City.

### AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and the Enabling Resolution, and in consideration of the premises and mutual promises and covenants herein contained, and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

Section 1. Incorporation of Recitals.

The foregoing recitals are hereby acknowledged and affirmed by the Parties and are incorporated herein as a substantive term of this Agreement.

Section 2. Definitions.

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as set forth below:

2.1 "Applicable Rules" means, as provided in Government Code Section 65866, the rules, regulations, and official policies, including but not limited to those contained in the City's General Plan (as Amended by the Project Approvals), Municipal Code (as Amended by the Project Approvals), Specific Plan No. 25 (as amended by the Project Approvals) and Zoning Regulations (defined below), governing permitted uses of the land, governing density, and governing design, improvement, and construction standards and specifications applicable to development of the Property, whether adopted by the City Council or the voters in an initiative, which are in force as of the Effective Date of this Agreement. During the term of this Agreement and except as otherwise expressly provided herein, (1) the permitted uses of the Property; (2) the density or intensity of that use; (3) the maximum height and size of proposed buildings on the Property; and (4) the provisions for reservation or dedication of land for public purposes applicable to the Property shall be those provided by the "Project Approvals" (as defined below), including, without limitation, the "General Plan" (as defined below), the "Specific Plan" (as defined below), and the TTM. Applicable Rules shall also mean and include all Developer Fees (as hereinafter defined) and Processing Fees (as hereinafter defined) in effect from time to time during the term of this Agreement and there shall be no limit upon the Developer Fees and the Processing Fees payable with respect to the Project by virtue of this Agreement; provided that, as further provided in this Agreement below, so long as this

Agreement remains in effect, no new Development Fees other than those shown on Exhibit C attached hereto shall be imposed upon the Project in connection with its development. Notwithstanding anything above contained in the definition of the Applicable Rules which appears to be to the contrary, (i) this Agreement shall not prevent the City, in subsequent actions applicable to the Property, from applying new rules, regulations and policies which do not conflict with the Project Approvals or Applicable Rules applicable to the Property as set forth herein ("New Rules"), nor prevent the City from denying or conditionally approving any subsequent development project application on the basis of such New Rules (except this shall not apply to Minor Modifications), (ii) this Agreement shall not prevent the City from imposing reasonable conditions or restrictions on future tentative subdivision or parcel maps and/or conditional use permits where such conditions or restrictions are necessary to avoid putting the residents of the Project or the area immediately surrounding the Project in a condition which would adversely impact their health or safety, or both, based on objective and identified health and safety standards, and (iii) this Agreement shall not prevent the City from requiring that the Project meet all applicable requirements of the Los Angeles County Flood Control District. Notwithstanding anything above to the contrary, the term "Applicable Rules" shall not limit the application to the Project of new rules, regulations, and official policies of the City governing design, improvement and construction standards and specifications (each a "Design Rule") if (i) such change is a citywide change applying uniformly throughout the City, and (ii) except for update or adoption of uniform codes pursuant to the next sentence (which shall apply to the Project in any event), such change does not impose a material adverse financial impact upon the overall Project or the development thereof as contemplated by this Agreement and the Project Approvals; provided, further, that the additional time, if any, necessary to comply with a change in a Design Rule (as opposed to the additional cost or expense of compliance) shall not, in itself, constitute a material adverse financial impact. Notwithstanding anything herein to the contrary, the Developer Parties specifically acknowledge and agree that the construction of the Project shall be subject to (i) any adoption or update of building, electrical, mechanical, fire, pool or other similar uniform codes of citywide scope which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including all applicable California Building Standards Codes (as defined below) and (ii) all City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called "sustainability" or "green building" laws, regulations or ordinances). Nothing in this Agreement deprives Developer of any rights it may have under Government Code Section 66474.2(a) and nothing in this Agreement constitutes a waiver by Developer of such rights.

2.2 "California Building Standards Codes" means those building, electrical, mechanical, fire, pool and other similar regulations, which are mandated by state law and which become applicable throughout the City, including, but not limited to, the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code (including those amendments to the promulgated California codes which reflect local modification to implement requirements justified by local conditions, as allowed by state law, and which are applicable City-wide).

2.3 "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000, et seq.) (the "Act") and the guidelines promulgated by the Governor's Office of Planning and Research in accordance with said Act (the "Guidelines"), as they now exist or may hereafter be amended.

2.4 “City Manager” shall mean the City Manager of the City, or his designee.

2.5 “Conditions of Approval” shall mean those conditions of approval imposed by the City upon the Project Approvals as of the date hereof, as they may be amended or modified by the City upon NJD’S application prior to recording of the Final Map in order to comply with the requirements of other approving agencies (e.g., without limit, USFWS, CDFG, Division of Dam Safety) including all requirements of any applicable Mitigation Monitoring Program, and any additional conditions of approval hereafter imposed on the Project consistent with Section 5.1.2 below.

2.6 “Developer Fees” mean those fees established and adopted by City with respect to development and its impacts pursuant to applicable governmental requirements, including Section 66000, *et seq.*, of the Government Code of the State of California, including impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on or in connection with new development by the City. Developer Fees does not mean or include Processing Fees or any third party fees imposed by other agencies or jurisdictions even if collected by the City on behalf of those entities, such as, Regional Congestion Mitigation Fees, (if approved) Regional Water Quality Control Board fees, school fees and similar third party fees. The Developer Fees in effect as of the Effective Date of this Agreement are listed on Exhibit C, which is incorporated into this Agreement by this reference. The Developer Fees listed on Exhibit C are the only Developer Fees that the City may impose or levy on the Project and no new Developer Fees first adopted by the City after the Effective Date of this Agreement shall be applicable to the Project during the Term of this Agreement; provided, that nothing herein shall be construed or applied to limit any increases in the Developer Fees and the Project shall be subject to any properly adopted increase in those existing Developer Fees after the date of this Agreement.

2.7 “Development Agreement” or “Agreement” means this Agreement.

2.8 “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

2.9 “Discretionary Action(s)” or “Discretionary Approval(s)” means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Permit or Ministerial Approval.

2.10 “Effective Date” shall mean the date this Agreement, fully executed, is recorded in the Office of the Recorder of Los Angeles County.

2.11 “Enabling Resolution” means Resolution No. 2010-62 adopted by the City Council on November 23, 2010 (Exhibit D hereto).

2.12 “FEIR” shall mean that certain Final Environmental Impact Report (FEIR) (SCH#2010051020) which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA. “Mitigation Monitoring Program” shall mean the

mitigation measures imposed upon the Project pursuant to the FEIR and the Conditions of Approval.

2.13 “General Plan” means the General Plan of the City, as amended by the City prior to or concurrent with this Agreement.

2.14 “General Plan Amendment” means that certain General Plan Amendment approved by the City Council by Resolution No. 2010-68.

2.15 “Ministerial Permit(s)” or “Ministerial Approval(s)” mean a permit or approval including, but not limited to, building permits, grading permits, zone clearances and certificates of occupancy, which require the City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, conditions of approval and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

2.16 “Mortgagee” means a mortgagee of a mortgage or a beneficiary under a deed of trust encumbering all or a portion of the Property.

2.17 “Phase” shall mean any discrete portion or part of the Project developed by the Developer or any successor in interest thereto.

2.18 “Processing Fees” means all processing fees and charges required by the City including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, subdivision or parcel maps, inspection fees and certificates of occupancy. Processing Fees shall not mean or include Developer Fees.

2.19 “Project” means the project as described in the General Plan Amendment, the Specific Plan Amendment, the TTM and the other Project Approvals.

2.20 “Project Approvals” shall mean, collectively, the Specific Plan Amendment, the General Plan Amendment, the TTM, this Agreement and any other plans, maps, permits and entitlements of every kind and nature specifically applicable to the Project, and shall also include any subsequent project specific approvals obtained by the Developer. To the extent that any of the Project Approvals are amended, from time to time, “Project Approvals” shall include, if Developer and City agree in writing, such matters as so amended. If this Agreement is required by law to be amended in order for “Project Approvals” to include any such amendments, then “Project Approvals” shall not include such amendments unless and until this Agreement is so amended.

2.21 “Property” means the real property described on Exhibit A and shown on the Location Map attached as Exhibit B. Upon Developer obtaining fee title to the Additional Property, the approximately 40-acre northern portion of the Additional Property, as depicted on Exhibit B-1 and described on Exhibit B-2, shall be deemed part of the “Property” for the purpose of this Agreement.

2.22 “Reserved Powers” means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date with respect to development or use of the Project that may be in conflict with the Applicable Rules, but are: (1) necessary to prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety based on objective and identified health and safety standards; (2) necessary to implement California Building Standards Codes; (3) necessary to comply with state or federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; (4) Design Rule changes described in Section 2.1 above; (5) agreed to or consented to by Developer; (6) are City-wide fees or charges of general applicability other than new Developer Fees which are inapplicable to the Project in accordance with the provisions of this Agreement; or (7) are City-wide laws, regulations or ordinances relating to energy and/or resource conservation (so-called “sustainability” or “green building” laws, regulations, or ordinances).

2.23 “Specific Plan” means Specific Plan No. 25, as amended, as approved by the City prior to or concurrent with this Agreement pursuant to Ordinance No. 1201.

2.24 “Specific Plan Amendment” means the amendment to Specific Plan No. 25 resulting from and as approved by Ordinance No. 1201.

2.25 “Term” means the term of this Agreement, which shall commence on the Effective Date of this Agreement and shall terminate fourteen (14) years from and after the Effective Date of this Agreement unless modified or extended as set forth in this Agreement or by mutual written consent of the Parties hereto. If any party other than Developer initiates litigation that challenges the Project or the Existing Project Approvals, then Developer will have the right to toll commencement of the Term. The tolling shall commence upon receipt by the City of written notice from Developer invoking this right to tolling. The tolling shall terminate when (1) a final order is issued in said litigation that upholds the Project and the Project Approvals or (2) the litigation is dismissed with prejudice by all parties; whichever occurs first; provided that any tolling shall not exceed twenty-four (24) months unless the City consents thereto.

2.26 “TTM” means that certain Tentative Tract Map No. 70583, dated October 27, 2010, for the subdivision of the Property and a portion of the Additional Property into 61 residential lots, lettered common area lots, and related improvements, approved by the City Council pursuant to Resolution No. 2010-69.

2.27 “Zoning Regulations” shall mean the official zoning regulations of the City.

### Section 3. Recitals of Premises, Purpose and Intent.

3.1 State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act

which authorized any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

“(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

“(b) Assurance to the applicant for a development project that upon approval of the project the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.”

3.2 Intentionally Omitted

3.3 Property Ownership. The Developer is the owner of the Property and has a legal and equitable interest in the Additional Property and thus is qualified to enter into and be a party to this Agreement. Upon becoming fee title owner of the Additional Property, an approximately 40 acre portion of such property generally depicted on Exhibit B-1 shall be deemed part of the Property. The remainder of the Additional Property shall not be governed by or encumbered by this Agreement or the Project Approvals. After approval of the TTM, the parties shall execute such documents as necessary to cause this Agreement to be removed from record title to the remainder of the Additional Property.

3.4 Development of the Property. It is the Parties’ understanding that Developer intends to develop the Property as described in the Project Approvals. The Parties hereby agree that, for the Term of this Agreement, the Developer shall have a vested right to develop the Property and the Project in accordance with, and to the extent of, the Project Approvals, the Applicable Rules, the Conditions of Approval and this Agreement.

3.5 Public Objectives. In accordance with the legislative findings set forth in Section 65864 of the Development Agreement Act, City wishes to attain certain public objectives that will be furthered by this Agreement. Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the Applicable Rules and the Project Approvals in a manner which is consistent with the surrounding community. Moreover, this Agreement will eliminate uncertainty in planning for and will secure orderly development of the Project, assure installation of necessary improvements, and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted.

Section 4. Project Development.

4.1 Project Development; Entitlement to Develop. Developer may develop the Property or any portion thereof with a development of lesser height or density than that currently approved, provided that such development otherwise complies with the Applicable Rules, the Project Approvals, the Conditions of Approval and this Agreement.

The City has determined that the Project is consistent with the General Plan (as amended) and the Specific Plan (as amended). Notwithstanding anything herein to the contrary, including anything contained in Section 4.2 below, as a condition to the continued effectiveness of this Agreement, (i) Developer shall have recorded a final subdivision map with respect to at least forty-four percent (44%) of the residential lots contained in the Project (and shall have entered into all required subdivision improvement agreements and posted all required subdivision bonds in connection therewith) prior to the tenth anniversary of the Effective Date of this Agreement (“First Phase Map Condition Precedent”), and (ii) prior to the twelfth anniversary of the Effective Date, Developer shall substantially complete all subdivision improvements that are required to be constructed as a result of that map recordation, including the backbone road (identified as Brasada Lane on the TTM), equestrian trails (except that, with the approval of the City Manager, trails on non-backbone roads may be completed to a less finished form as agreed to by the City), backbone infrastructure and other like public improvements (“First Phase Improvement Condition Precedent”). At the time of completing those first phase improvements, Developer shall also complete the dedication and improvement of the equestrian trails described in Section 4.6 below if that dedication and improvement has not previously occurred. If Developer fails to record that map or complete those improvements by the outside dates set forth above, City may, at any time prior to completion of those actions, terminate this Agreement upon written notice to the Developer; provided that the City’s only remedy for Developer’s failure to timely record that map or complete those improvements by those outside dates set forth above shall be such termination and City shall not have the right to compel Developer to complete those actions by an action for specific performance.

4.2 Timing of Development and Allotment. The Project may be developed incrementally or in Phases and, except as otherwise specifically provided in this Agreement, Developer is under no obligation to commence or complete the Project in any particular timeframe or at all. The Parties acknowledge that the Developer cannot at this time predict when or the rate at which the Project would be developed and they acknowledge that the actual rate of development will depend upon numerous factors which are not all within the control of the Developer, such as market orientation and demand, interest rates, absorption, completion, availability of financing and other similar factors. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the intent of the Developer and City to hereby cure that defect by acknowledging and providing that, except as otherwise provided by the Project Approvals, Applicable Rules or this Agreement, including Section 4.1 above, the Developer shall have the right to develop the Property in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its sole and subjective business judgment. City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement. This Agreement shall immediately vest the right to develop the Property with the permitted uses of land and the density and intensity of uses specifically set forth in the Project Approvals, subject only to the requirements

of the Applicable Rules, the Project Approvals, the Conditions of Approval and the terms of this Agreement.

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

4.4 City Services. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals, Conditions of Approval, Applicable Rules and any subsequent additional Discretionary Approvals, if any, sought by Developer to implement the Project under any New Rules or Design Rules, City has determined and hereby finds that it will have sufficient capacity in its infrastructure, services and utility systems, including, as applicable, traffic circulation, storm drainage, sewer collection, sewer treatment, sanitation service and water supply, treatment, distribution and service, to accommodate the Project. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project.

4.5 Partial Termination. Developer shall have the right to request that the City approve a partial termination of this Agreement to release a portion(s) of the Property from the Agreement's obligations and benefits ("Partial Termination"). A Partial Termination may be approved by the City if Developer demonstrates to the City's satisfaction, in its sole and independent judgment, that the portion of the Property to be released from the Agreement obligations is not needed to satisfy any of the obligations established in the Agreement. If the City makes such a determination, such released Property shall not be subject to any of the obligations created in this Agreement, and similarly, will not receive any of the benefits created in this Agreement. Notwithstanding anything in this Agreement, the obligations of Developer in this Agreement are not intended to and shall not encumber any portion of the Property that has been finally subdivided, constructed and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user as a residential lot. Upon any such sale or lease, the residential lot shall be automatically and without further need for approval by the Parties be released from the duties and obligations of the Developer under this Agreement. Despite the intention of the Parties for this paragraph to be self-executing, the City shall execute a recordable instrument sufficient to release the Developer's obligations in this Agreement from a residential lot within thirty (30) days of a written request by Developer or any person with ownership rights to such residential lot. No such owner of an individual lot shall have the right to assert any rights of Developer under this Agreement, and Developer shall remain the responsible party for purposes of exercising any of those rights.

#### 4.6 Equestrian Trails.

4.6.1 ~~Unless such requirement is waived by the City, acting in its sole discretion, within thirty (30) days after~~Upon the later of (i) the approval of this Agreement and the expiration of any period for bringing a legal challenge to the Project Approvals with no challenge being filed, or, if such a challenge is timely filed, upon the resolution of that challenge in a manner that upholds the Project Approvals (the foregoing event is referred to herein as the "Closure of the Challenge Period"), ~~the Developer shall provide to the City, for the benefit and use of the public, a temporary irrevocable license (subject to those terms and conditions contained in the license) for the use and maintenance of the existing service or access trails or roads through the Property which are known as the motorways and are located generally as shown on Exhibit E attached hereto. In addition, following the later of (i) the Closure of the Challenge Period, or (ii) the sixtieth (60<sup>th</sup>) day after Developer closes escrow for the acquisition of the Additional Property, the Developer shall, upon the City's written request, provide to the City, for the benefit and use of the public, a temporary irrevocable license (subject to the terms and conditions contained in the license) for the use and maintenance of the existing service or access trails or roads traversing north-south through the Property and the Additional Property and the contiguous property to the south as are generally shown on Exhibit E attached hereto (or such portion thereof) that the City and the Developer, mutually and reasonably determines, determine~~ are appropriate for equestrian use. The City shall bear all costs and all risk associated with the use of such license(s) and any maintenance required as a result of such use. Such license shall provide that, in the event of a subsequent termination of this Agreement prior to satisfaction of the First Phase Map Condition Precedent, such license may be relocated as reasonably necessary to accommodate any alternative development the City may subsequently approve after such termination. Subject to the terms of the license, including the obligation of City, ~~or its designee,~~ to maintain those license areas, such license(s) shall continue until superseded by the dedication of the permanent equestrian trails serving the same area. Such license(s) shall be in a form acceptable to both Parties; provided that agreement upon the form of that license upon the request of either Party and the prompt execution and delivery of that license upon the occurrence of the ~~applicable~~ trigger date set forth above shall constitute conditions to the continued effectiveness of this Agreement, and, if those requirements are not met, either Party shall have the right to terminate this Agreement upon thirty (30) days written notice to the other Party until such requirements are met. The City shall have no right to assign or designate a designee for receipt of the license(s) or otherwise transfer its rights in the license(s) described above in this Section without obtaining the Developer's prior written consent, which consent shall not may be unreasonably granted or withheld in Developer's sole discretion.

4.6.2 In addition to the temporary license described above, concurrent with satisfaction of the First Phase Map Condition Precedent (and without limitation of the requirements of the Conditions of Approval and the Project Approvals), the Developer shall (i) offer for dedication (or convey to a third party designated by the City if the City so elects), and (ii) improve, consistent with the TTM and the Conditions of Approval, a permanent equestrian trail(s) within the Property in accordance with the requirements of the Project Approvals and the Conditions of Approval applicable thereto. The Developer shall have no obligation to maintain these trails following improvement by the Developer, and such maintenance shall be performed by either the City or a third party designated by the City following dedication or transfer thereof as provided above; provided, however, that if the City elects to designate a third party to

maintain the trails, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. The permanent equestrian trails shall meet all requirements of the Project Approvals and all Conditions of Approval applicable thereto.

4.6.3 In addition to performance of the above obligations and as additional consideration to the City for its execution of this Agreement, within the later of (i) thirty (30) days after the Closure of the Challenge Period or (ii) the Developer's acquisition of the Additional Property, but, in any event not later than the termination of this Agreement for any reason other than the City's breach, the Developer shall deliver to the City readily available funds in the amount of \$8000, which the City shall retain and deposit into a City trust account and which the City, with input from the City's equestrian committee, shall thereafter use for equestrian trail maintenance anywhere in the City, as determined by the City in its sole discretion.

4.7 Dedication or Transfer of Open Space Parcel. At such time as City shall direct following the Closure satisfaction of the Challenge Period First Phase Map Condition Precedent (as defined above) ~~but in no event later than the expiration of the Term~~, Developer shall convey to the City for use by the public (or convey to a third party designated by the City if the City so elects) an approximately eighty-four (84) acre tract of undeveloped property as permanent public open space area (the "Open Space Parcel"). If the City elects to designate a third party to receive conveyance of the Open Space Parcel, the City shall first obtain the Developer's written consent to the identity and qualifications of the third party, which consent shall not be unreasonably withheld. If, prior to the City's request that the Developer transfer the Open Space Parcel pursuant to this Section, the Developer has delivered a notice of default to the City and the City is not contesting, in good faith, the existence of such alleged default and any actual default has not been cured, then the Developer shall not be required to complete the conveyance of the Open Space Parcel until such default is cured. Any dedication or conveyance by Developer pursuant to this Section shall be free of all monetary liens or encumbrances but shall be subject to a Section 1542 waiver and release for Developer's benefit with respect to all disclosed or unknown conditions. The City or approved third party designee shall take title subject to, and Developer shall have a right to record prior to conveyance, a deed restriction on the Open Space Parcel restricting the uses of this parcel from development that would materially impair the successful development, marketing, sale and use of the Project. Such deed restriction shall include, without limitation, restrictions prohibiting the operation of motorized recreational or passenger vehicles, open space use restrictions, easements for the benefit of the Property for access and such other matters as the Parties may agree to. The Parties shall not unreasonably withhold, delay or condition their consent to the form of the deed restriction. Agreement upon the form of the deed restriction shall be a condition to the continued effectiveness of this Agreement and if the Parties are unable to agree upon the form of that restriction, then either Party may terminate this Agreement upon thirty (30) days written notice to the other until agreement upon the form of that restriction is achieved. The approximate location of the Open Space Parcel is shown on Exhibit B attached hereto. City shall not have any obligation to issue certificates of occupancy with respect to any improvements constructed on the Property until this condition has been satisfied or the City elects, in its sole and absolute discretion, to waive or defer that requirement; provided, however, if Developer is otherwise entitled to certificates of occupancy and City has not yet tendered its direction to Developer to offer the Open Space

Parcel for dedication, then City shall have thirty (30) days from Developer's request for certificates of occupancy to do so. If a written request for dedication is not delivered to Developer within such thirty (30) day period then the condition requiring dedication prior to the issuance of those requested certificates of occupancy shall be waived; provided, however, that such Open Space Parcel's dedication obligation shall continue as otherwise provided in this Agreement and shall apply prior to the issuance of any further certificates of occupancy; provided further that if additional certificates of occupancy are sought then the previous sentence concerning the final thirty (30) day window for demanding transfer of the Open Space Parcel shall likewise apply to such certificates of occupancy. If the City has not directed Developer in writing to complete such conveyance prior to expiration of the Term, then Developer shall provide the City with written notice thereof, and if the City does not direct Developer to make such conveyance within thirty (30) days thereafter, the obligation of Developer in this Section 4.7 shall be deemed waived.

Section 5. Changes.

5.1 Nonapplication of Changes; Additional Conditions of Approval and Other Exceptions.

5.1.1 Nonapplication of Changes to Applicable Rules Without Developer Consent. The adoption of any change in the Applicable Rules, adopted or becoming effective after the Effective Date of this Agreement, shall not be applied to the Project, unless the Developer gives written notice to the City of its election to have such change in the Applicable Rules applied to the Project, which it may grant or withhold in Developer's sole and absolute discretion, or unless such change in the Applicable Rules constitutes a lawful exercise of the City's Reserved Powers or is otherwise expressly authorized by this Agreement.

5.1.2 Additional Conditions of Approval. Although no additional conditions or dedications shall be imposed by the City on the development of the Project, the Parties acknowledge and agree that, in approving any tentative subdivision maps with respect to the Property filed after the date of this Agreement, the City reserves its right to impose normal and customary dedications pursuant to the Applicable Rules for rights of way or easements for public access, utilities, water, sewers, and drainage necessary for the Property. In addition, nothing in this Section 5.1 shall preclude the City from requiring further conditional use permits, planned unit development permits, site plan reviews, architectural review, precise plan grading review and other approvals required by Specific Plan No. 25 as amended, and other development permits and Discretionary Approvals with respect to the Project that are provided for by the Applicable Rules.

5.1.3 Changes in Building Codes. As set forth above in Section 2.1, notwithstanding any provision of this Agreement to the contrary, any Project improvements that are not yet issued building permits shall be subject to changes occurring from time to time resulting from the City's adoption of building regulations based on the recommendations of a multi-state professional organization and which become applicable throughout the City, including, but not limited to, the California Building Standards Codes and other similar or related uniform codes.

5.1.4 Changes Mandated by Federal or State Laws or Regulations. In the event that any Federal, State, County or multi-jurisdictional laws or regulations (collectively "Federal or State law or regulation") enacted after the Effective Date but prior to the issuance of a building permit for the applicable improvements prevents or precludes compliance with one or more of the provisions of this Agreement or the Applicable Rules, such provisions of this Agreement or the Applicable Rules shall be modified or changed as necessary to comply with such Federal or State law or regulation in a manner that minimizes, so far as reasonably possible, the adverse impact to the Project. In the event City has discretion to do so, the City shall interpret and implement a Federal, State, County or multi-jurisdictional law or regulation in a manner that minimizes, so far as reasonably possible, the adverse impact to the Developer's rights in the Project Approvals or under this Agreement. Where City or Developer believes that such modification or change is required, that Party shall take the following actions:

(a) Notice and Copies. The Party which believes a change or addition is required shall provide the other Party hereto with a copy of such State or Federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement.

(b) Modification Conferences. The Parties shall, within ten (10) days, meet and confer in good faith and engage in a reasonable attempt to modify this Agreement to comply with such Federal or State law or regulation consistent with the provisions of Section 5.1.4 above. In such discussions, the City and the Developer agree to preserve the terms of this Agreement and the rights of the Developer and the City derived from this Agreement to the maximum feasible extent while resolving the conflict.

(c) Council Hearings. Thereafter, if the representatives of the Parties are unable to reach agreement on the effect of such Federal or State law or regulation and the change in this Agreement or the Applicable Rules necessitated thereby, or if the required change which is agreed to by the Parties requires, in the judgment of the City Manager and the City Attorney, a hearing before and/or approval by the City Council, then, the matter shall be scheduled for hearing before the City Council by the City Clerk, at its next most convenient meeting. At least ten (10) days' written notice of the time and place of such hearing shall be given by the City Clerk to the representative of Developer and the City Manager. The City Council, at such hearing, or at a continuation of such hearing, shall determine the exact modification which is necessitated by such Federal or State law or regulation. Developer, and any other interested person, shall have the right to offer oral and written testimony at the hearing. The determination of the City Council shall be final and conclusive, except for judicial review thereof.

5.1.5 Cooperation in Securing Permits. Upon Developer's request, the City shall cooperate in good faith with Developer, at no cost or expense to the City, in the securing of any permits or approvals of other governmental agencies having jurisdiction over the Project required for the development of the Project, including, without limitation, any permits or approvals required as a result of a modification pursuant to Section 5.1.4 above.

5.1.6 Changes in Processing Fees and Developer Fees. Notwithstanding anything herein to the contrary, development of the Property and construction of the Project shall

be subject to payment of all applicable Processing Fees and Developer Fees which may be in effect from time to time and which are then applicable to the Project in accordance with the terms thereof; provided, that the Developer Fees listed on Exhibit C are the only categories of Developer Fees that the City may impose or levy on the Project during the Term of this Agreement, as such Developer Fees may be adjusted from time to time subject to City's compliance with any applicable laws relating to the enactment of fee increases.

5.1.7 Developer's Right to Contest New or Increased Fees, Charges or Assessments. Nothing in this Agreement shall prevent Developer from contesting, in any appropriate forum, the imposition or the amount of any Processing Fees, Developer Fees, or other fees, charges or assessments, or any increase therein. Such right of protest shall not extend to the existence or current amount of any Developer Fees identified on Exhibit C, or any Processing Fees in effect as of the Effective Date of this Agreement, and the Developer hereby agrees to cause to be paid the same pursuant to City's normal fee payment schedule without objection thereto. Notwithstanding any pending good faith contest of such new or increased fees, charges or assessments, City shall proceed with issuance of all required Ministerial Approvals with respect to the Project and shall not withhold or delay issuance of those Ministerial Approvals based upon any pending protest or appeal with respect to such fee, charges or assessments; provided any contested amount has been paid to City under protest with a reservation of rights.

5.1.8 Ministerial Permits. The City shall not require Developer to obtain any Ministerial Permits for the development of the Project in accordance with this Agreement other than those required by the Applicable Rules or by agencies unrelated to the City. Any Ministerial Permit required under the Applicable Rules shall be governed by the Applicable Rules.

5.1.9 Discretionary Approvals. Any approval involving a Discretionary Action or Discretionary Approval and required or needed after the Effective Date in order to commence or complete the approved Project, which does not materially change, modify or alter the Project, shall be governed by the Applicable Rules. Any subsequent Discretionary Action or Discretionary Approval sought by Developer in connection with a modification which materially changes, modifies or alters the Project shall be subject to all then applicable governmental rules, regulations and requirements without limitation to the Applicable Rules. Notwithstanding anything to the contrary contained herein, no subsequent Discretionary Action or Discretionary Approval shall require further CEQA review unless the City finds, based on substantial evidence, that such further CEQA review is required in order to comply with CEQA.

5.1.10 Timely City Actions. The City agrees to timely consider and act upon any matter which is reasonably required, necessary or desirable to accomplish the intent, purpose and understanding of the Parties in entering into this Agreement, including, without limitation, processing of any Ministerial Permit or Ministerial Approval or any request for a Discretionary Action or Discretionary Approval implementing the approved Project. City's obligations in this Section 5.1.10 are conditioned upon Developer satisfactorily complying with all preliminary procedures, actions, payments of applicable Processing and Developer Fees, and criteria generally required of developers by the City for processing applications for such Discretionary Actions or Discretionary Approvals or Ministerial Permits/Ministerial Approvals.

If the City fails to timely act in the manner specified above, then upon written notice by Developer of such unreasonable delay and the identification of the specific cause(s) thereof and continuing so long as such delay continues, Developer's rights under this Agreement shall be extended on a day-for-day basis from the date of such notice until the delay has been remedied.

5.1.11 Interim Uses. City agrees that, until development of the Project, the Developer may continue the present use and operation of the Property.

5.1.12 Additional Staffing. If standard City staffing fails to result in processing of any permits or approvals as promptly as reasonably required for timely development of the Project by Developer, then the City agrees, upon request of Developer, to reasonably cooperate with Developer in hiring additional staff or consultants as City determines appropriate to process required Ministerial Permits and Approvals or Discretionary Actions and Approvals. The Developer shall reimburse the City for all direct and indirect costs of such additional staff or consultants, and any required training thereof, and all direct and indirect costs of the existing City staff in the supervision, review and coordination of such additional staff or consultants, within thirty (30) days after Developer receives an invoice identifying such reimbursable expenses; provided, the Developer shall have the right to audit such costs, at its expense, upon request. The City shall not charge a surcharge for such staffing in addition to such actual direct and indirect costs of City staff and such additional staff and consultants, nor shall the City charge any other separate fee for such additional staffing.

5.1.13 Term of Project Approvals. As provided in California Government Code Sections 66452.6 and 65863.9, the term of any tentative, vesting tentative or parcel map hereafter approved with respect to the Project and the term of each of the Project Approvals shall remain in effect and be valid through the scheduled termination date of this Agreement as set forth in Section 2.22 above.

5.1.14 Minor Modifications. It is contemplated that Developer may in the future desire to change or modify the Project based on, without limitation, precise planning, precise grading, structure siting on lots, road or trail configuration, drainage patterns or drainage needs and infrastructure, changes in market demand, or other factors in a manner that will not lead to a material increase in the severity of environmental impacts or materially change the Project as approved ("Minor Modifications"). Such Minor Modifications are contemplated by City and Developer as being within the scope of this Agreement as long as they are consistent with the Applicable Rules and shall, upon approval by City, continue to constitute the "Project Approvals" as referenced herein. The Parties agree that such Minor Modifications in Project Approvals that do not materially alter the Project may be agreed to in writing by the City Manager and the Developer. All Minor Modifications will require approval in accordance with the Applicable Rules. The Parties agree that any such Minor Modifications shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

## Section 6. Default Provisions.

6.1 Default by Developer. In the event the Developer does not perform its obligations under this Agreement ("Defaults") in a timely manner, the City shall have all rights and remedies provided herein or under applicable law, which shall include, but not be limited to,

compelling the specific performance of the material obligations of Developer under this Agreement, or modifying or terminating this Agreement, provided that (i) except for recovery of any amounts, including attorneys' fees, owed to City under the terms of any indemnities in Sections 7.10 and 7.23 for the benefit of the City, the City hereby knowingly, willingly and intelligently waives any right to seek monetary damages from Developer for such breach, including any monetary damages for the failure to start or complete the Project and (ii) with respect to any remedy the City has first complied with the following procedure:

(1) Notice of Default. The City shall give to Developer written notice of default identifying with specificity Developer's alleged Default(s).

(2) Period to Cure Non-Compliance. Twenty (20) days after service of the notice of default, Developer shall forthwith commence to cure the identified Default(s), and Developer shall complete the cure of such Default(s) within a reasonable period of time not to exceed sixty (60) days thereafter ("Developer Cure Period"). If a Default cannot be reasonably cured within sixty (60) days, the Developer Cure Period shall be extended for the period necessary to complete the cure so long as Developer has timely commenced to cure such Default(s) and continues to diligently pursue curing such Default(s) to completion within not more than one hundred twenty (120) days after service of the notice.

(3) Failure to Cure Default. If, after the Developer Cure Period (or any extension thereof) has elapsed, the City Council finds and determines that Developer remains in Default, the City Council may terminate or modify this Agreement, after compliance with the provisions of Section 65864 et seq. of the Government Code. Before ordering the termination of this Agreement, the City Manger shall have the matter set for hearing at its next most convenient meeting, and shall give not less than ten (10) days written notice of the time and place of such hearing to the Developer. The City Council shall conduct a public hearing to determine whether this Agreement should be terminated as authorized by Section 65864 et seq. of the Government Code and the provisions of this Agreement. The decision of the City Council to terminate or modify this Agreement shall be final and conclusive subject only to judicial review.

(4) Termination; City Remedies. If the City Council terminates this Agreement, after a final determination is made by City Council that the Developer is in Default and has not cured the Default within the Developer Cure Period, such termination of this Agreement shall not affect any right or duty of either party arising from entitlements or approvals, including the Projects Approvals, on the Property approved prior to the effective date of the City Council's order of termination. Notwithstanding termination of this Agreement, City shall have the right (i) to compel Developer by an action for specific performance to complete any public improvements which have been commenced and are partially completed as of the date of termination, including, without limitation, bringing an action against any bonds posted to secure the construction of those improvements, and (ii) to require Developer to dedicate any property required for public improvements and complete any public improvements which are required by the Project Approvals to be dedicated and/or completed prior to occupancy of those Project improvements in fact constructed on the Property pursuant to this Agreement, and (iii) so long as such termination is not due to a City default, to compel Developer by an action for specific performance to complete the dedication and improvement of the equestrian trail

easements contemplated in Section 4.6 and the open space dedication or conveyance contemplated in Section 4.7.

6.2 Default by the City; Notice of Default. In the event the City does not timely accept, process, or render a decision on necessary development permits, entitlements, or other land or building approvals for use of the Property as provided in this Agreement or by the Project Approvals under the Applicable Rules, or if the City otherwise fails to perform its obligations under this Agreement in a timely fashion, Developer shall have the right to specifically enforce the City's obligations hereunder, provided that Developer shall first serve on City a written notice of default stating with specificity those obligations which it believes City has not performed. The City shall commence to cure the identified default(s) within twenty (20) days after receipt of the notice of default and shall complete the cure of any default within sixty (60) days after receipt of the notice of default ("City Cure Period"). If a Default cannot be reasonably cured within sixty (60) days, the City Cure Period shall be extended for the period necessary to complete the cure so long as City has timely commenced to cure such Default(s) and continues to diligently pursue curing such Default(s) to completion within not more than one hundred twenty (120) days after service of the notice. Where the City fails to cure a default within the City Cure Period, Developer may, in addition to the specific performance remedy provided for above, forthwith terminate this Agreement and all further rights and obligations of the Parties hereunder; provided such termination shall not affect or release any obligations of a Party that have accrued as of the date of such termination. The Parties agree that Developer's obligations in Sections 4.6 and 4.7 shall not be deemed to be "accrued" for the purpose of the prior sentence if the Agreement is being terminated because of the City's uncured default. As a result, if Developer exercises its rights to terminate this Agreement upon an uncured City default and if the City has not yet accepted dedication or conveyance of the property in Sections 4.6 and 4.7 prior to such termination, then Developer's termination of this Agreement shall terminate any remaining obligations or rights in Sections 4.6 or 4.7; provided, that such termination of this Agreement shall not waive or limit any Conditions of Approval or the Developer's obligation to comply therewith in connection with any further development of the Property pursuant to the Project Approvals. If, prior to Developer's recordation of the first final map with respect to the Project, the City defaults and fails to cure such default after the Open Space Parcel has been conveyed to the City or a third party designee pursuant to Section 4.7 or after the temporary license for equestrian trails has been conveyed to the City or a third party designee pursuant to Section 4.6.1, then, upon such subsequent default and failure to cure, the temporary equestrian trail license shall automatically and without any further need for action by the Parties terminate and the Open Space Parcel shall without any need for further action revert in fee title to Developer's ownership. If a termination or reversion described in the previous sentence occurs, the City shall take any action reasonably necessary to provide Developer clear title to the Open Space Parcel and equestrian trails (including without limitation execution of quitclaim deeds and removal of any liens occurring after the date of such conveyance to City and caused by the actions of the City); provided, that such termination or reversion shall not waive or limit any Conditions of Approval or the Developer's obligation to comply therewith in connection with any further development of the Property pursuant to the Project Approvals. Notwithstanding anything to the contrary in the Applicable Rules or otherwise, as provided in California Government Code Sections 66452.6 and 65863.9, the term of any tentative, vesting tentative or parcel map hereafter approved with respect to the Project and the term of each of the Project Approvals shall remain in effect and be valid through the scheduled termination date of this

Agreement as set forth in Section 2.24 above or the date such approval would otherwise be in effect under applicable law, whichever is later. In connection with the statement of the Developer's remedies in this Section, Developer acknowledges, and hereby knowingly, willingly and intelligently waives any right to seek monetary damages against the City for the City's default under this Agreement.

Section 7. General Provisions.

7.1 Termination. Upon the expiration of the Term, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect any right or duty of a Party hereto, arising out of any Project Approval or the provisions of this Agreement, in effect on or prior to the effective date of such termination. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from the occurrence of any of the events set forth in Section 7.2 below, provided that the extension of the Agreement pursuant to this sentence shall not cumulatively exceed a period of five (5) years.

7.2 Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time is designated within which a Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including, without limitation, war; terrorist acts; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs, such as an annual review); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs, such as the annual review); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; extraordinary unavailability of goods or materials necessary for the Project or similar bases for excused performance which are not within the reasonable control of the Party to be excused. Economic constraints, or lack of available funding or financing, shall not constitute grounds for extension under this Section 7.2. Any Party wishing to obtain an extension under this Section 7.2 shall notify the other Party of the cause for that extension within ten (10) days of the Party's actual knowledge of the force majeure event, and the period of extension shall be from the delivery of that notice until the cessation of that specified event.

7.3 Developer's Right to Terminate upon Specified Events. Notwithstanding any other provisions of this Agreement to the contrary, the Developer retains the right to terminate this Agreement upon thirty (30) days written notice to the City in the event that the Developer reasonably determines that continued development of the Project has become economically infeasible due to changed market conditions, increased development costs, or burdens imposed, consistent with this Agreement, by the City or another governmental entity as conditions to subsequent project approvals. In the event the Developer exercises this right, it shall nonetheless be responsible for mitigation of impacts to City resulting from development that may have occurred on the Property prior to the notice of termination, on a fair share or nexus

basis, and within the thirty (30) day notice period City and the Developer shall meet to identify any such mitigation obligation that may remain to be satisfied. If the Parties are in disagreement at the end of the (30) day notice period, the Agreement shall be terminated as to all matters except for the remaining mitigation obligation in dispute. Notwithstanding anything herein to the contrary, if at any time during the term of this Agreement the Developer elects to abandon development of the portion of the Project located on the Property it owns or terminate this Agreement as provided in this Section 7.3, the Developer shall nevertheless be obligated to execute and deliver the offers of dedication and/or conveyance required under Sections 4.6 and 4.7 above with respect to the equestrian trail easements and open space dedication or conveyance described therein if such obligations have accrued in accordance with the terms of those sections as of the date of such termination. The preceding sentence is not applicable in cases of a termination of this Agreement due to a City default as provided in Section 6.2 above.

7.4 Venue. Any legal action arising out of this Agreement must be filed in the Los Angeles County Superior Court.

7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed in the State of California.

7.6 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement and in accordance with all applicable laws.

7.7 Assignment. In executing this Agreement, City has relied upon the financial capabilities of Developer to construct and operate the Project. Accordingly, except for transfers to an affiliate, parent, or subsidiary entity of Developer or its partners which is controlled by Developer or such partners (which shall not require any consent from the City but which Developer shall notify City of in writing concurrent therewith), the rights and obligations of Developer under this Agreement may not be transferred or assigned in whole or in part by Developer (collectively an "Assignment") without the prior consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The Parties agree that any sale or lease of residential lots as provided in Section 4.5 shall not constitute an Assignment that requires City consent. City shall respond to such request in writing within ten (10) days after receipt and, in the event of any disapproval, set forth the reasons therefor. If City fails to respond within said ten (10) day period, the proposed assignment shall be deemed disapproved. The City Manager is hereby authorized to act upon any request for approval under the foregoing provision, and any approval granted by the City Manager shall constitute the action of and be binding upon the City.

7.8 Release of Transferring Owner. Upon any Assignment of the entirety of this Agreement or the rights hereunder approved by the City, the transferor shall be released of all obligations under this Agreement that relate to the Property or portion thereof being transferred to the extent arising from and after the date of the Assignment, and, thereafter, City shall look solely to such transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the Property or portion thereof acquired by such transferee. Except as otherwise provided in Section 4.5, in connection with each transfer of any

portion of the Property or portion thereof, transferor shall require the transferee to assume in writing all of the obligations under this Agreement that relate to the portion of the Property or portion thereof being transferred. Notwithstanding anything above to the contrary (except as provided in Section 4.5), the rights and obligations under this Agreement are non-severable and if any buyer, transferee or assignee Defaults under this Agreement, such Default shall constitute a Default by the owner of each other portion of the Property and shall entitle City to terminate this Agreement in its entirety if such Default is not timely cured. Each transferee shall be responsible for the reporting and annual review requirements relating to the portion of the property owned by such transferee.

7.9 Covenants. Until expiration of the Term, the provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property. All provisions of the Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with respect to development of the Property: (i) is for the benefit of and is a burden upon the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

7.10 Cooperation and Implementation.

(1) Processing. Upon Developer's completion of all required preliminary actions and the tender of payment (whether under protest or not) of appropriate Processing Fees, including the fee for processing this Agreement, the City shall promptly commence and thereafter diligently process all required steps necessary for the implementation of this Agreement. Developer shall, in a timely manner, provide the City with all documents, plans and other information required under the Applicable Rules which are necessary for the City to carry out its processing obligations. The provisions of this Agreement require a close degree of cooperation between City and Developer and the refinement and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character as to require an amendment hereof. The City Manager may execute any operating memoranda hereunder without Council or Planning Commission action.

(2) Other Governmental Permits. Developer shall apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project in connection with the development of, or provision of services to, the Project. The City shall cooperate, communicate and coordinate in good faith with Developer and any such third party agencies in connection with Developer's endeavors to obtain such permits.



WITH A COPY TO: McKenna Long & Aldridge LLP  
300 South Grand Avenue, Suite 1400  
Los Angeles, CA 90071-3124  
Attn: J. Kenneth Brown, Esq.  
Facsimile: (213) 687-2149

DEVELOPER: NJD, LTD., a Texas limited partnership  
3300 East First Avenue, Suite 510  
Denver, CO 80206  
Facsimile: (303) 399-3929

WITH A COPY TO: Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626  
Attn: Michael R. W. Houston, Esq.  
Facsimile: (714) 546-9035

Notices shall be deemed, for all purposes, to have been given and received on the date of (i) personal service or (ii) three (3) consecutive calendar days following the deposit of the same in the United States mail as provided above or (iii) the next business day after deposit with the overnight courier or (iv) upon receipt of a electronic transmittal confirmation, provided such transmittal occurs on a business day before 5:00 p.m. at the location of the Party receiving notice, otherwise such transmittal shall be deemed to occur at 9:00 a.m. the following business day., and provided such electronic transmittal is followed by a notice sent within forty-eight (48) hours thereafter by one of the methods provided above.

7.13 Recordation. As provided in Government Code Section 65868.5, the City shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by both Parties. Developer shall reimburse the City for all costs of such recording, if any.

7.14 Severability. If any provision of this Agreement is determined by a court to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to any applicable law which becomes effective after the Effective Date of this Agreement, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

7.15 Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

7.16 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in respect to any other occurrence or event.

7.17 No Third Party Beneficiaries. The only Parties to this Agreement are the City and Developer and their respective successors-in-interest. There are no third party

beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever.\*

7.18 Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties with respect to the subject matter expressly contained in this Agreement. The Parties specifically acknowledge that this Agreement and the Project Approvals are intended to implement and satisfy, in full, the City's responsibilities and obligations under Sections 2 and 5 of the Settlement Agreement. Upon the Closure of the Challenge Period, the NJD Release set forth in Section 6a of the Settlement Agreement shall be deemed reaffirmed and extended to any claims for compensation for any interest in real or personal property, improvements to the realty, fixtures, equipment, inventory, lost business goodwill, relocation benefits, severance damage, precondemnation damages, litigation expenses, (including attorneys' fees and costs), or any other compensation or damage resulting from any acts, omissions, events or circumstances occurring on or before the Effective Date of this Agreement. The Parties agree however that this Section does not affect the rights of the Parties relative to the allocation of costs that may be subject to the provisions of the Settlement Agreement as well as those costs provided in Sections 10 (2) and (3) of the Developer Reimbursement Agreement dated June 11, 2010.

7.19 Advice; Neutral Interpretation. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against either of the Parties in its capacity as draftsman, but in accordance with its fair meaning.

7.20 Certificate of Compliance. At any time during the term of this Agreement, any lender or Party may request the other Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults, and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other Party within ten (10) business days of receipt of the written request therefor.

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

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

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

(3) If the City timely receives a request from a Mortgagee requesting a copy of any notice of default or notice of non-compliance given to Developer under the terms of this Agreement, the City shall provide a copy of that notice to the Mortgagee within ten (10) calendar days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed Developer under this Agreement, or (ii) sixty (60) days from delivery of the notice to Mortgagee.

(4) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement, provided, however, in no event shall such Mortgagee or its successors and assigns be (a) liable for any monetary defaults of Developer under the Agreement arising prior to acquisition of title to the Property, or portion thereof, by such Mortgagee, or (b) obligated to complete construction of the Project or any component thereof, except as expressly provided in Section 7.3 above; provided, however, if such Mortgagee does not elect to cure any such default, the City shall have the rights and remedies set forth in this Agreement, including the right to terminate this Agreement. In the event any Mortgagee seeks to develop or use portion of the Property acquired by such Mortgagee, such Mortgagee shall strictly comply with all of any the terms, conditions and requirements of this Agreement and the Project Approvals applicable to the Property or such part thereof acquired by the Mortgagee.

7.22 Processing of Modification. The Developer shall reimburse the City for its actual costs incurred in connection with any modification to this Agreement initiated by Developer or its Mortgagee.

7.23 Indemnity.

7.23.1 General. Developer shall indemnify the City, its officers, employees, and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "Claims or Liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, subcontractors, or invitees, hereunder, upon the Property, except to the extent such claims are excepted as provided below in Section 7.23.2.

(a) Developer will defend any action or actions filed in connection with any of said Claims or Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Developer will promptly pay any final judgment (subject to Developer's or City's rights to appeal from such final judgment) rendered against the City, its officers, agents, or employees for any such Claims or Liabilities arising out of or in connection with the indemnity in this Section 7.23.1, and Developer agrees to save and hold the City, its officers, agents, and employees harmless therefrom.

(c) In the event the City, its officers, agents, or employees is made a party to an action or proceeding filed or prosecuted for Claims or Liabilities described in the indemnity in this Section 7.23.1, the City shall promptly tender its defense to Developer, who pursuant to (a) above will defend the City, its officers, agents, or employees with attorneys selected by Developer and reasonably approved by City; Developer shall bear any and all costs and expenses in such action or proceeding, including but not limited to legal costs and attorneys' fees incurred in defending the City.

7.23.2 Exceptions. The foregoing indemnity shall not include Claims or Liabilities arising solely from the gross negligence or willful misconduct of the City, its officers, agents, or employees.

7.23.3 Loss and Damage. Except as provided in Section 7.23.2, City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. Except as provided in Section 7.23.2, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature.

7.23.4 Period of Indemnification. The obligations for indemnity under this Section 7.23 shall begin upon the Effective Date of this Agreement and shall terminate upon termination of this Agreement; provided, that any obligations that have accrued as of the date of such termination shall survive that termination and remain enforceable by the City.

7.23.5 Waiver of Subrogation. Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any Claims or Liabilities to Developer or any other person or property, except as specifically provided in this Agreement and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents and employees.

## 7.24 Insurance.

### 7.24.1 Types of Insurance.

(a) Public Liability Insurance. Prior to commencement and until completion of construction by Developer on the Property, Developer shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of City and Developer broad form commercial general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage, providing protection of a least Three Million Dollars (\$3,000,000) per occurrence for bodily injury, death or property damage combined for any one accident or occurrence, which limits shall be subject to increases in amount as City may reasonably require from time to time.

(b) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (1) any loss shall be payable notwithstanding any act of negligence (but not willful or intentional violations of law) of City or Developer that might otherwise result in the forfeiture of the insurance, (2) the insurer waives the right of subrogation against City and against City's agents and representatives; (3) the policies are primary and noncontributing with any insurance that may be carried by City; and (4) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. The City's Risk Manager acknowledges and agrees that the insurance requirements above have been established based on contemplated use and activities on the Property.

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

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

(b) For any renewal or replacement of a policy already in existence, at least thirty (30) days prior to expiration of the existing policy.

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

7.25 Consideration. The City and Developer acknowledge and agree that there is good, sufficient and valuable consideration flowing to the City and to Developer pursuant to

this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

7.26 Periodic Reviews.

(1) Annual Reviews. City shall conduct annual reviews to determine whether Developer is acting in good faith compliance with the provisions of this Agreement as provided in the Enabling Resolution (“Annual Review(s)”). The cost of each annual review conducted during the term of this Agreement shall be reimbursed to City by Developer. The annual review fee will initially be \$2500 per year, payable in advance by Developer prior to initiation of the review. The annual fee shall be increased after five years by the percentage increase in the Consumer Price Index for Los Angeles/Long Beach/Anaheim between the date of this Agreement and the month prior to the commencement of the applicable sixth year review. In addition, if the annual review results in a finding of default or breach by the Developer, the Developer shall reimburse the City upon demand for all actual and documented direct and indirect costs of staff or consultants attributable to such annual review to the extent those costs exceed the base annual review fee paid by Developer for that year.

(2) Special Reviews. In addition, the City Council of the City may order a special periodic review of Developer’s compliance with this Agreement at any time (“Special Review(s)”). The cost of such Special Reviews shall be borne by the City, unless the City Council determines as a result of such Special Review that Developer is not acting in good faith compliance with the material provisions of this Agreement. In such cases, Developer shall reimburse City for all actual and reasonable costs, direct and indirect, incurred in conjunction with such a Special Review.

(3) Conduct of Reviews. The City Manager shall cause the Annual and Special Reviews to be conducted; provided, that the City’s failure to timely conduct any Annual review shall not constitute or be construed as a breach or default under this Agreement. Any review by a party other than the City Council shall be provided to the City Council. A review concluding the Developer has complied with the terms of this Agreement may be considered by the City Council as a consent calendar item. Any review that recommends a finding that the Developer has not acted in good faith compliance with the provisions of this Agreement shall require City Council ratification and adoption at a public meeting at which the Developer shall be entitled to appear.

7.27 Record of Applicable Rules. Upon the Developer’s written request to the City delivered within one hundred and twenty (120) days after the Effective Date of this Agreement, and at the Developer’s sole cost and expense, City and Developer shall use reasonable efforts to identify two identical sets of the Applicable Rules, one set for City and one set for Developer, so that if it becomes necessary in the future to refer to any of the Applicable Rules, there will be a common set of the Applicable Rules available to both Parties.

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

7.29 Binding Effect. All of the terms, covenants and conditions of this Agreement shall be binding upon and shall inure to the benefit of the City and Developer, and any lawful successor in interest of the Parties. Whenever the term "Developer" is used herein, such term shall include any other lawfully approved successor in interest of Developer. Nothing in this Section shall limit or waive the restrictions in Section 7.7 above.

7.30 Conflicts of Interest. The City represents and warrants that, to the actual knowledge of the City Manager, no member, official or employee of the City has any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested.

7.31 Counterparts. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original, but all of which shall constitute one and the same Agreement.

*[SIGNATURES FOLLOW ON NEXT PAGE]*

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

McKenna Long & Aldridge LLP

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

CITY:

CITY OF SAN DIMAS,  
a municipal corporation

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

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

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

DEVELOPER:

NJD, LTD., a Texas limited partnership

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

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

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

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Description of the Property**

**EXHIBIT B**

**Location Map**

**EXHIBIT B-1**

**Location of Additional Property**

**EXHIBIT B-2**

**Description of Additional Property**

**EXHIBIT C**

**Developer Fees as of Effective Date**

**EXHIBIT D**  
**Enabling Resolution**

**EXHIBIT E**

**Equestrian-Trail LocationAreas**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of San Dimas  
245 East Bonita Avenue  
San Dimas, California 91773  
Attn: City Clerk

No Recording Fee (Government Code Section 6103)

---

(Space above for recorder's use)

**Agreement No. 2010-**  
**DEVELOPMENT AGREEMENT**  
by and between  
**CITY OF SAN DIMAS,**  
a general law city and municipal corporation  
and  
**NJD, LTD.,**  
a Texas limited partnership

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~~4.6.2—In addition to the temporary license described above, concurrent with satisfaction of the First Phase Map Condition Precedent (and without limitation of the requirements of the Conditions of Approval and the Project Approvals), the Developer shall (i) offer for dedication (or convey to a third party designated by the City if the City so elects), and (ii) improve, consistent with the TTM and the Conditions of Approval, a permanent equestrian trail(s) within the Property in accordance with the requirements of the Project Approvals and the Conditions of Approval applicable thereto..... 11~~

~~4.6.3—In addition to performance of the above obligations and as additional consideration to the City for its execution of this Agreement, within thirty (30) days after the Closure of the Challenge Period, the Developer shall deliver to the City readily available funds in the amount of \$8000, which the City shall retain and deposit into a City trust account and which the City shall thereafter use for equestrian trail maintenance anywhere in the City, as determined by the City in its sole discretion ..... 12~~

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## EXHIBITS

- Exhibit A Description of the Property
- Exhibit B Location Map
- Exhibit B-1 Location of Additional Property
- Exhibit B-2 Description of Additional Property
- Exhibit C Developer Fees as of Effective Date
- Exhibit D Enabling Resolution
- Exhibit E ~~Equestrian Trail Location~~ Areas

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# Agenda Item Staff Report

**TO:** Honorable Mayor and Members of City Council  
*For the Meeting of January 25, 2011*

**FROM:** Blaine Michaelis, City Manager

**INITIATED BY:** Larry Stevens, Assistant City Manager

**SUBJECT:** MOU adoption to complete Energy Efficiency Activities through the Southern California Edison (SCE) California Long-term Energy Efficiency Strategic Plan (CEESP) Grant.

---

## **BACKGROUND**

This year, SCE released a Request for Proposal (RFP) for local jurisdictions currently participating in Local Government Partnerships to fund activities that support California's Long-Term Energy Efficiency Strategic Plan. Through the COG's partnership with SCE, known as the San Gabriel Valley Energy Wise Partnership (SGVEWP), the COG and 28 cities submitted a proposal and were awarded funding to complete the following two activities:

### **1) Energy Efficiency Portion of Climate Action Plans/Energy Action Plans (\$3,207,728)**

Participating cities will have the opportunity to complete inventories of energy usage both for municipal facilities and community-wide. This will help cities save money, and demonstrate their leadership in becoming more energy efficient. Building off of the inventories, cities can then develop and adopt an energy-efficiency (EE) chapter of their climate action plan (CAP) or develop a standalone energy action plan. This activity will help cities develop a road map for decreasing energy usage, increasing financial savings, and implementing AB 32 requirements.

Over the two year grant program, approximately \$2,472,065 will be used to fund consultants that will develop each of the 28 participating cities' EE CAPs. These consultants will be selected through a competitive bidding process and with the input of the cities. An additional \$529,480 will be paid out to cities as reimbursement for their staff labor spent on this effort. The COG will receive \$191,883 for staff time spent managing this work plan element.

MA

## 2) Procurement and Implementation Strategy for City Facility Energy Management System (\$1,468,500)

The County of Los Angeles has purchased an unlimited license for an online Enterprise Energy Management Information System (EEMIS), whereby for a fee, cities can opt-in to track and monitor energy usage in their facilities. This will allow cities to strategize cost effective measures that significantly impact building efficiency.

Under this proposal, cities will be able to procure this program through the County at a significantly reduced cost and develop an implementation strategy for ongoing management. Of the total funding for this activity, approximately \$150,980 will be kept by the SGVCOG to administer and manage this program, \$567,840 will be returned to the cities as a reimbursement for staff time spent on this effort, and the remaining \$675,664 will be used to cover other expenses including a share of the software license fee and purchasing of energy data.

Because of the anticipated effort associated with cities' participation in this grant program, the SGVCOG's proposed budget includes approximately \$1.1 million in funding for cities to reimburse staff time spent working on the two identified work plan elements. Based on the final budget, the funding reimbursement per city will be capped at \$18,910 for the EE CAP Chapter task and \$20,280 for the Energy Management System task, for a total of \$38,000.

Because of the complexity of the proposed work plan and the procedures associated with it, SGVCOG staff has developed an MOU that would be between the SGVCOG and each participating city. The purpose of this MOU is to identify roles, responsibilities and procedures. The MOU has been reviewed and approved by SGVCOG General Counsel and is included as an Attachment.

**In reviewing the MOU please keep in mind the following:**

**Minimum Requirements of Participation:** We will need to participate in the development of a city-specific program management plan **for each of the two tasks** (EE CAP Chapter and Utility Manager). This process will determine whether or not we will move forward in fully completing each task, and, if not, what barriers (i.e. political, financial, staffing capacity) prevent completion or if the task would be duplicative of existing efforts.

**Project Steering Committee:** We will be responsible for designating a single staff member to participate on the Project Steering Committee.

**Tasks and Maximum reimbursement: (per participating city)**

<b>TASKS</b>		<b>Maximum Reimbursement</b>
<b><u>Utility Manager Task:</u></b>		
Task A.1:	Work with County staff to identify opportunities and constraints related to installation of EEMIS	\$720
Task A.2:	Work with County staff to develop EEMIS planning report	\$1,110
Task A.3:	Coordinate procurement of EEMIS with County staff	\$720
Task A.4:	Work with County staff to install EEMIS and report back to SGVCOG	\$12,300
Task A.5:	Participate in EEMIS trainings and develop EEMIS maintenance plan with County staff	\$4,880
Task A.6:	Report back on actions taken resulting from the benchmarking analysis	\$550
<b>Subtotal:</b>		<b>\$20,280</b>
<b><u>EE CAP Chapter Task:</u></b>		
Task B.1	Participate on Project Steering Committee	\$4,760
Task B.3:	Plan for the development of the energy efficiency chapters	\$1,200
Task B.5:	Review and provide input on technical memo on baseline and long-term forecasts	\$3,741
Task B.7:	Review and provide comment on draft energy efficiency chapters	\$8,729
Task B.9:	Review final energy efficiency chapters and report back on implementation of recommendations	\$480
<b>Subtotal:</b>		<b>\$18,910</b>

**RECOMMENDATION**

Adopt MOU for participation in the Southern California Edison (SCE) California Long-term Energy Efficiency Strategic Plan (CEESP) Grant.

Respectfully Submitted,

Larry Stevens, Assistant City Manager for Community Development

Attachments: SGVCOG MOU

## **Memorandum of Understanding**

### THE CALIFORNIA LONG-TERM ENERGY EFFICIENCY STRATEGIC PLAN (CEESP) MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS AND THE CITY OF SAN DIMAS

This Memorandum of Understanding (MOU) is entered into by and between the San Gabriel Valley Council of Governments (SGVCOG) and the City of San Dimas (CITY).

WHEREAS, the SGVCOG was established to have a unified voice to maximize resources and advocate for regional and member interests to improve the quality of life in the San Gabriel Valley by the member cities and other local governmental agencies; and

WHEREAS, Southern California Edison (SCE) has awarded funding to the SGVCOG to implement activities that achieve the goals set forth in the California Long-Term Energy Efficiency Strategic Plan (CEESP); and

WHEREAS, the CITY submitted a letter of participation to the SGVCOG requesting to be included in the SGVCOG's proposed work plan for this solicitation; and

WHEREAS, the SCE agreement (Agreement) with the SGVCOG attached as Exhibit A provides for funding for two activities: 1) the development of energy-efficiency chapters of Climate Action Plans (EE CAP Chapter) and 2) the implementation of an online municipal facility utility manager (Utility Manager); and

WHEREAS, the SGVCOG and the CITY desire to set forth the terms of their collaboration with respect to the CEESP in this MOU.

NOW, THEREFORE, the Parties agree to the following:

#### I. General Conditions

- A. The Parties to this MOU are the San Gabriel Valley Council of Governments and the City of San Dimas.
- B. The Parties agree that all work contemplated under this MOU must be consistent with the terms of the Agreement between Southern California Edison and the San Gabriel Valley Council of Governments attached hereto as Exhibit A.
- C. The term of this MOU shall commence upon receipt by the SGVCOG of a Notice to Proceed from SCE pursuant to the Agreement and continue through October 31, 2012. The term may be extended by mutual agreement of both Parties.

#### II. Responsibilities of each of the Parties

##### A. SGVCOG

1. Coordinate and manage consultants, including contract management
2. Review and process all billing and reports to SCE
3. Perform all responsibilities required under the SCE agreement except those responsibilities assumed by the CITY as specified in this MOU
4. Provide reimbursement to the CITY for eligible work completed by CITY staff upon approval of invoices and receipt of payments from SCE.

## B. CITY

1. Provide a point of contact to SGVCOG for both tasks (EE CAP Chapter and Utility Manager) as follows:
  - EE CAP Chapter  
Name: Ann Frances Garcia  
Title: Administrative Aide  
Phone: (909) 394-6282  
Email: [agarcia@ci.san-dimas.ca.us](mailto:agarcia@ci.san-dimas.ca.us)
  - Utility Manager  
Name: Ann Frances Garcia  
Title: Administrative Aide  
Phone: (909) 394-6282  
Email: [agarcia@ci.san-dimas.ca.us](mailto:agarcia@ci.san-dimas.ca.us)
2. Provide requested data to SGVCOG and consultants regarding municipal energy usage and facilities (including number, type and usage of facilities)
3. Participate, at a minimum, in the development of a "Program Management Plan" (PMP) for both the EE CAP Chapter and the Utility Manager tasks. This is intended to assess the feasibility of completing both tasks' workplans. Additionally, the CITY may participate in and be reimbursed for the following subtasks:

### EE CAP Chapters:

- Participating in the Project Steering Committee
- Participating in the consultant selection and review process
- Providing data to the consultant regarding municipal and community-wide energy usage as well as planned or existing projects and programs relevant to the City's EE CAP Chapter
- Coordinating with the consultant and participating in the municipal and community-wide EE CAP Chapter goal setting workshops
- Reviewing and commenting on the draft EE CAP Chapter
- Participating in the planning and execution of the San Gabriel Valley Climate Change Information Sharing Session

### Utility Manager:

- Coordinating with staff from the County of Los Angeles on the installation of Utility Manager software, including networking of facilities as needed to connect to the Utility Manager
  - Participating in trainings by the County of Los Angeles on the use of EEMIS to analyze energy consumption data, identify energy savings opportunities, benchmark facility usage and operations, and sustain project saving
  - Developing an EEMIS maintenance plan
4. Submit invoices to the SGVCOG for any billable hours by the fifth (5th) calendar day of the month for work completed the prior month, unless otherwise agreed to in writing by the SGVCOG. All invoices must be in the format provided by the SGVCOG and include the following information: subtask, title/position of staff, hourly rate by staff position, number of hours worked, date of hours worked, and description of work completed. All invoices are subject to review and verification by the SGVCOG and CEESP consultants. Reimbursements will be capped by a not to exceed maximum per deliverable as indicated in Table 1 below. Due to the nature of the funding allocations, a late invoice may not be eligible for reimbursement.

Subtask	Maximum Reimbursement
<b>Utility Manager Task</b>	
Task A.1: Work with County staff to identify opportunities and constraints related to installation of EEMIS	\$ 720
Task A.2: Work with County staff to develop EEMIS planning report	\$ 1,110
Task A.3: Coordinate procurement of EEMIS with County staff	\$ 720
Task A.4: Work with County staff to install EEMIS and report back to SGVCOG	\$ 12,300
Task A.5: Participate in EEMIS trainings and develop EEMIS maintenance plan with County staff	\$ 4,880
Task A.6: Report back on actions taken resulting from the benchmarking analysis	\$ 550
<b>Subtotal</b>	<b>\$ 20,280</b>
<b>EE CAP Chapter Task</b>	
Task B.1: Participate on Project Steering Committee	\$ 4,760
Task B.3: Plan for the development of the energy efficiency chapters	\$ 1,200
Task B.5: Review and provide input on technical memo on baseline and long-term forecasts	\$ 3,741
Task B.7: Review and provide comment on draft energy efficiency chapters	\$ 8,729
Task B.9: Review final energy efficiency chapters and report back on implementation of recommendations	\$ 480
<b>Subtotal</b>	<b>\$ 18,910</b>

**Table 1. Maximum Reimbursement by Subtask**

5. Maintain official timesheets and other records that support hours billed to the CEESP program for a ten year period following the completion of the project.
6. Warrants and represents as follows:
  - a. Understands and agrees that for the purposes of the foregoing, any requirements imposed upon SGVCOG by SCE are hereby passed-through and adopted as obligations of the CITY to the maximum extent allowable by law;
  - b. Agrees to strictly comply with the scope of any and all authorizations, limitations, exclusions, and/or exceptions for use of CPUC funds;
  - c. Shall not cause SGVCOG to be in violation of the Agreement, whether by act or omission; and
  - d. Shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, now existing and as such may change from time-to-time. Any such laws, rules, regulations, ordinances, and directives required thereby to be included in this MOU are incorporated herein by reference.
7. Notwithstanding any provision to the contrary, whether expressly or by implication, the CITY agrees to indemnify, defend, and hold harmless SGVCOG, its elected and appointed officers, employees, and agents from and against any and all liability resulting from the CITY'S negligent and wrongful act(s) and/or omission(s) arising from and/or relating to the Agreement and as such would be imposed in the absence of Government Code section 895.2. Without limiting the scope above, such liability includes but is not limited to the following: any funding disallowance; audits; demands; claims; actions; liabilities; damages; fines; fees, costs, and expenses, including attorney, auditor, and/or expert witness fees.

8. The CITY understands and agrees that it is solely responsible for any and all incurred amounts found by SCE to be ineligible under the Agreement. Immediately upon the request of SGVCOG or SCE, the CITY shall return any funds that have been disbursed to the extent that their use has been disallowed.

For the San Gabriel Valley Council of Governments

Signed: \_\_\_\_\_

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

For the City of \_\_\_\_\_

Signed: \_\_\_\_\_

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



# Agenda Item Staff Report

**To:** Honorable Mayor and Members of the City Council  
*For the Meeting of **January 25, 2011***

**From:** Krishna Patel, Director of Public Works *KMP*

**Subject:** **Introduction of Ordinance No. 1203, Amending the San Dimas Municipal Code by Amending Section 10.06 Thereto Designating Speed Limits on Certain Streets in the City of San Dimas**

---

## **BACKGROUND**

The California Vehicle Code, Sections 22357 and 22358, permits local authorities, by ordinance, to establish speed limits based upon the basis of an engineering and traffic survey. Section 40802 further states that for any speed limit set pursuant to Section 22357, and if enforcement involves the use of radar or other electronic device that measures the speed of moving vehicles, the speed limit must be justified by an engineering and traffic survey. Setting a speed limit without the benefit of a supporting traffic speed survey constitutes a "speed trap" and is considered illegal. A survey must be conducted every five years to be enforceable or if conditions have not changed significantly, this survey can be extended up to seven years with Traffic Engineer's approval. As there were no significant changes in the City's traffic patterns in the five years following the previous 2004 report, the update to the Speed Zone study was extended to seven years.

Recently, our Traffic Engineer prepared a new study. The study involves reviewing previous radar surveys, recent traffic counts, a two-year traffic accident history, and other contributing factors, such as street improvements, and the 85<sup>th</sup> percentile speed. The 85<sup>th</sup> percentile speed is the speed which 85% of the observed vehicles are not exceeding. In looking at 85 street segments in San Dimas in 2010, some locations are affected by a new state guideline change as to how speed limits are set. In the past, speed limits could be set at the five-miles per hour below the 85<sup>th</sup> percentile speed without justification. Recent guideline changes require speed limits to be set at the five-miles per hour increment nearest the 85<sup>th</sup> percentile speed. In most cases there is no change. Guidelines also give the Traffic Engineer authority to adjust speed limits based on accident rate or conditions not readily apparent to a motorist (not hills or curves), the presence of a school, or pedestrian safety.

## **ANALYSIS**

Two streets are warranted for increase. No decrease in limits or posting of new speed signs are proposed.

<b><i>Proposed Increases</i></b>	<b><i>Comment/Warrant</i></b>
1. Arrow Hwy, from 40 to 45 mph- San Dimas Ave to Walnut Ave	85% driving at 43 mph.
2. Badillo St, from 40 to 45 mph- West City Limit to Valley Center Ave	85% driving at 47 mph.

The survey was reviewed and approved the Traffic Safety Committee at its November 17th meeting. A map and table with all existing and proposed limits is attached for your review (Attachment 2).

*76(1)*

**RECOMMENDATIONS**

Staff recommends that City Council:

1. Introduce Ordinance No. 1203 at this meeting.
2. Adopt Ordinance No. 1203 at February 8th meeting.

Respectfully Submitted,



Krishna Patel  
Director of Public Works

- Attachments:
- 1) Ordinance 1203, Amending San Dimas Municipal Code by Amending Section 10.06, Designating Speed Limits on Certain San Dimas City Streets
  - 2) Existing and Proposed Speed Limits and City Map of Recommended Speed Limits

kp/ra/01-11-18

**ORDINANCE NO. 1203**

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS  
AMENDING THE SAN DIMAS MUNICIPAL CODE BY AMENDING THE  
SECTION 10.06 THERETO DESIGNATING SPEED LIMITS ON CERTAIN  
STREETS IN THE CITY OF SAN DIMAS.

THE COUNCIL OF THE CITY OF SAN DIMAS DOES ORDAIN AS FOLLOWS:

SECTION 1: Section 10.06.100 of the San Dimas Municipal Code is hereby amended to read as follows:

Section 10.06.100. In accordance with the provisions of Section 22357 and Section 22358 of the Vehicle Code of the State of California, the City of San Dimas hereby determines that the speed limits on certain streets are necessary for the orderly and safe movement of traffic in the City of San Dimas. Based on the engineering and traffic surveys of Warren Siecke and Associates presented to it, as required by Section 22358 of the Vehicle Code of the State of California, the City Council finds and determines that the speed limit set forth below are those most appropriate to facilitate the orderly movement of traffic and are responsible and safe and shall be the prima facie speed limits for the areas identified herein.

<u>STREET NAME</u>	<u>LIMIT</u>	<u>RECOMMENDED MPH SPEED LIMIT</u>
ALLEN AVENUE	Amelia Avenue to San Dimas Canyon Road	35
ARROW HIGHWAY	Valley Center Avenue to San Dimas Avenue	40
<b>ARROW HIGHWAY</b>	<b>San Dimas Avenue to Walnut Avenue</b>	<b>45</b>
ARROW HIGHWAY	Walnut Avenue to East City Limit	40
<b>BADILLO STREET</b>	<b>West City Limit to Valley Center Avenue</b>	<b>45</b>
BADILLO STREET	Valley Center Avenue to Covina Boulevard	40
BONITA AVENUE	Arrow Highway to Cataract Avenue	35
BONITA AVENUE	Cataract Avenue to San Dimas Avenue	25
BONITA AVENUE	San Dimas Avenue to Walnut Avenue	30
BONITA AVENUE	Walnut Avenue to East City Limits	40
CATARACT AVENUE	Arrow Highway to Covina Boulevard	40
CIENEGA AVENUE	Valley Center Avenue to Arrow Highway	40
CLIFFSIDE DRIVE	Terrace Drive to Southerly Terminus	30
COVINA BOULEVARD	Valley Center Avenue to Badillo Street	35
COVINA BOULEVARD	Badillo Street to Cataract Avenue	40
CYPRESS STREET	West City Limits to Lone Hill Avenue	40
CYPRESS STREET	Lone Hill Avenue to 550' E/O Danecroft Avenue	35
CYPRESS STREET	550' E/O Danecroft to East End	25
EUCLA STREET	Bonita Avenue to Arrow Highway	30
FOOTHILL BOULEVARD	West City Limits to East City Limits	45
GLADSTONE STREET	Lone Hill Avenue to San Dimas Canyon Road	35
LONE HILL AVENUE	Gladstone Street to Cienega Avenue	40

<u>STREET NAME</u>	<u>LIMIT</u>	<u>RECOMMENDED MPH SPEED LIMIT</u>
LONE HILL AVENUE	Gladstone Street to Cienega Avenue	40
LONE HILL AVENUE	Cienega Avenue to Cypress Street	35
PUDDINGSTONE DRIVE	San Dimas Avenue to East City Limits	30
PUENTE STREET	West City Limits to Via Verde	45
PUENTE STREET	Via Verde to Via Amadeo	30
SAN DIMAS AVENUE	Foothill Boulevard to Gladstone Street	40
SAN DIMAS AVENUE	Gladstone Street to Arrow Highway	35
SAN DIMAS AVENUE	Arrow Highway to 1000' S/O Puddingstone Drive	40
SAN DIMAS AVENUE	1000' S/O Puddingstone Drive to Avenida Loma Vista	55
SAN DIMAS AVENUE	Avenida Loma Vista to Via Verde	50
SAN DIMAS AVENUE	Via Verde to Avenida Melisenda	35
SAN DIMAS AVENUE	Avenida Melisenda to San Dimas Avenue (Loop Junction)	35
SAN DIMAS CANYON ROAD	Terrebonne Avenue to Foothill Boulevard	35
SAN DIMAS CANYON ROAD	Foothill Boulevard to Allen Avenue	40
SAN DIMAS CANYON ROAD	Allen Avenue to Arrow Highway	40
SYCAMORE CANYON ROAD	San Dimas Canyon Road to North City Limits	25
VALLEY CENTER AVENUE	Badillo Street to Gainsborough Road	40
VIA VERDE	Covina Hills Road to I-57 Freeway	45
WALNUT AVENUE	Foothill Boulevard to Cannon Avenue	30
WALNUT AVENUE	Teague Drive to Cannon Avenue	25
WALNUT AVENUE	Cannon Avenue to Puddingstone Drive	30

SECTION 2. This ordinance shall take effect thirty (30) days after its final passage, and within fifteen (15) days after its passage, the City Clerk shall cause it to be published in a local newspaper of general circulation hereby designated for that purpose.

SECTION 3. This ordinance supersedes Ordinance No. 1142.

PASSED AND APPROVED THIS \_\_\_\_\_ day of January, 2011.

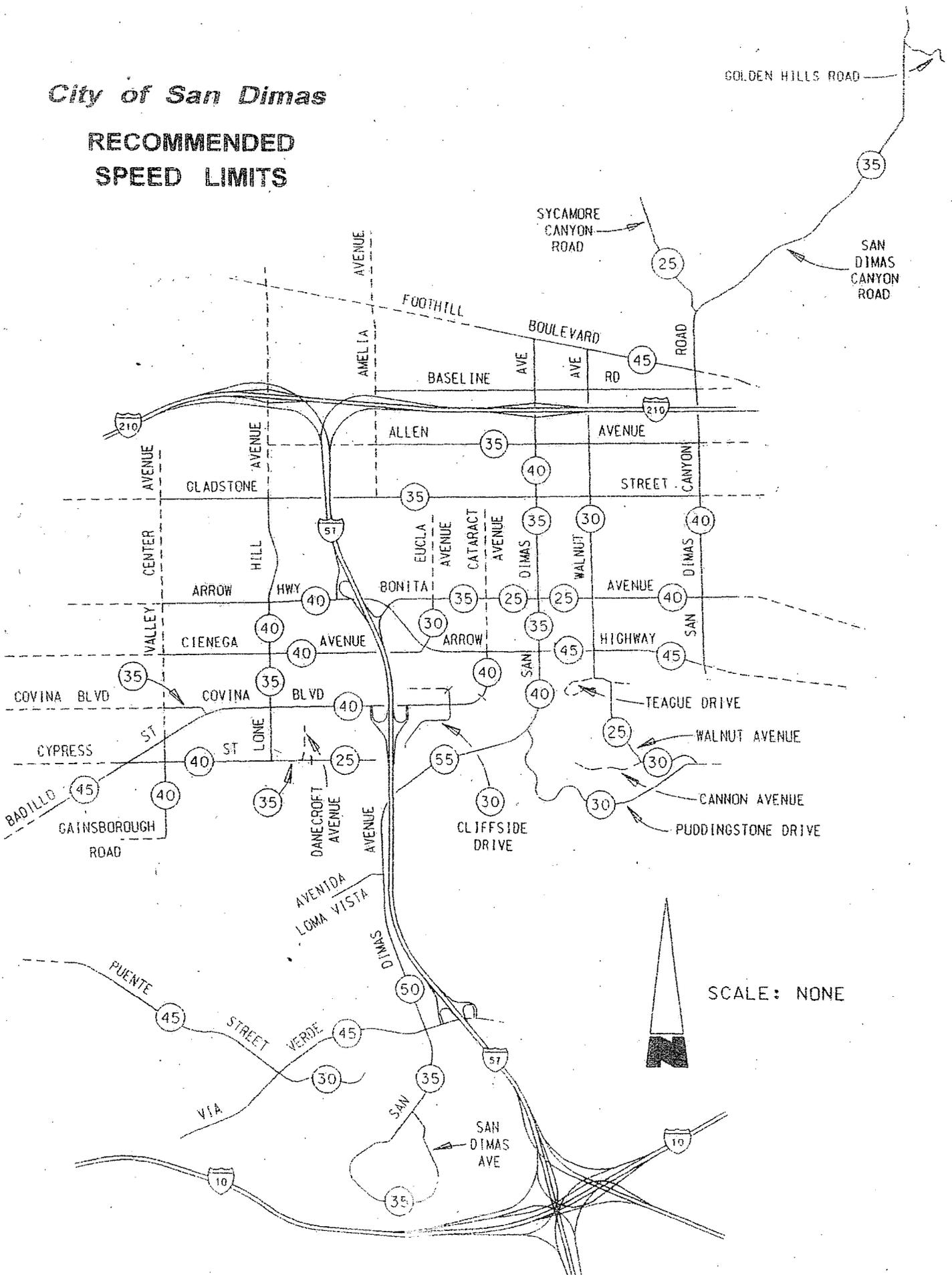
\_\_\_\_\_  
Mayor, City of San Dimas

ATTEST:

\_\_\_\_\_  
CITY CLERK

# City of San Dimas

## RECOMMENDED SPEED LIMITS



# EXISTING AND PROPOSED SPEED LIMITS

STREET	LIMITS	EXISTING SPEED LIMIT	PROPOSED SPEED LIMIT
Allen Avenue	Amelia Avenue to San Dimas Canyon Road	35	35 NC
Arrow Highway	Valley Center Avenue to San Dimas Avenue	40	40 NC
Arrow Highway	San Dimas Avenue to Walnut Avenue	40	45 I
Arrow Highway	Walnut Avenue to East City Limit	45	45 NC
Badillo Street	West City Limit to Valley Center Avenue	40	45 I
Badillo Street	Valley Center Avenue to Covina Boulevard	40	40 NC
Baseline Road	Amelia Avenue to San Dimas Canyon Road	35	35 NC
Bonita Avenue	Arrow Highway to Cataract Avenue	35	35 NC
Bonita Avenue	Cataract Avenue to Walnut Avenue	25	25 NC
Bonita Avenue	Walnut Avenue to East City Limit	40	40 NC
Cataract Avenue	Arrow Highway to Covina Boulevard	40	40 NC
Cienega Avenue	Valley Center Avenue to Arrow Highway	40	40 NC
Cliffside Drive	Terrace Drive to Southerly Terminus	30	30 NC
Covina Boulevard	Valley Center Avenue to Badillo Street	35	35 NC
Covina Boulevard	Badillo Street to Cataract Avenue	40	40 NC
Cypress Street	West City Limit to Lone Hill Avenue	40	40 NC
Cypress Street	Lone Hill Avenue to 550' east of Danecroft Avenue	35	35 NC
Cypress Street	550' east of Danecroft Avenue to east end	25	25 NC
Eucla Avenue	Bonita Avenue to Arrow Highway	30	30 NC
Foothill Boulevard	West City Limit to East City Limit	45	45 NC
Gladstone Street	Lone Hill Avenue to San Dimas Canyon Road	35	35 NC
Lone Hill Avenue	Gladstone Street to Cienega Avenue	40	40 NC
Lone Hill Avenue	Cienega Avenue to Cypress Street	35	35 NC
Puddingstone Drive	San Dimas Avenue to East City Limit	30	30 NC
Puente Street	West City Limit to Via Verde	45	45 NC
Puente Street	Via Verde to Via Amadeo	30	30 NC
San Dimas Avenue	Foothill Boulevard to Gladstone Street	40	40 NC
San Dimas Avenue	Gladstone Street to Arrow Highway	35	35 NC
San Dimas Avenue	Arrow Highway to Via Vaquero	40	40 NC
San Dimas Avenue	Via Vaquero to 1000' south of Puddingstone Drive	40	40 NC
San Dimas Avenue	1000' s/o Puddingstone Drive to Avenida Loma Vista	50	50 NC
San Dimas Avenue	Avenida Loma Vista to Via Verde	50	50 NC
San Dimas Avenue	Via Verde to Avenida Melisinda	35	35 NC
San Dimas Avenue	Avenida Melisinda to San Dimas Avenue Junction	30	30 NC
San Dimas Canyon Road	Golden Hills Road to Ramola Avenue	35	35 NC

ABBREVIATIONS: NC = No Change, I = Increase, D = Decrease, NP = Not Posted

## EXISTING AND PROPOSED SPEED LIMITS (Continued)

STREET	LIMITS	EXISTING SPEED LIMIT	PROPOSED SPEED LIMIT
San Dimas Canyon Road	Ramola Avenue to Foothill Boulevard	35	35 NC
San Dimas Canyon Road	Foothill Boulevard to Arrow Highway	40	40 NC
Sycamore Canyon Road	West City Limit to San Dimas Canyon Road	25	25 NC
Valley Center Avenue	Badillo Street to Gainsborough Road	40	40 NC
Via Verde	Covina Hills Road to 1-210 Freeway	45	45 NC
Walnut Avenue	Foothill Boulevard to Allen Avenue	30	30 NC
Walnut Avenue	Allen Avenue to Gladstone Street	30	30 NC
Walnut Avenue	Gladstone Street to Teague Drive	30	30 NC
Walnut Avenue	Teague Drive to Cannon Avenue	25	25 NC
Walnut Avenue	Cannon Avenue to Puddingstone Drive	30	30 NC

ABBREVIATIONS: NC = No Change, I = Increase, D = Decrease, NP = Not Posted



# Agenda Item Staff Report

**To:** Honorable Mayor and Members of the City Council  
*For the meeting of January 25, 2011*

**From:** Blaine Michaelis, City Manager

**Initiated By:** Theresa Bruns, Director of Parks and Recreation

**Subject:** 2011 Farmer's Market

## Summary

Advocates for Healthy Living is requesting approval to conduct the 2011 Farmer's Market on Wednesdays, April 6 through September 28, on First Street and Iglesia Street from 5:00 – 9:00 p.m..

## BACKGROUND

Advocates for Healthy Living, led by Maurice Cuellar, have operated the San Dimas Farmer's Market for the past four summers, 2007 - 2010, on Bonita Avenue from Walnut Avenue to Iglesia Street from 5:00-9:00 p.m. The program has included: certified agricultural producers; prepared food producers; commercial food vendors; arts and crafts vendors; nonprofit organizations; health and beauty vendors; youth oriented vendors; performing artists and sponsor booths. The event has been successful each year.

Prior to each season, Mr. Cuellar has presented a request to conduct a Farmer's Market and has received City approval for its operation. At the conclusion of each market season, staff has met with Mr. Cuellar to evaluate that season. Each subsequent season has then reflected the adjustments as recommended from the previous market season.

This year, Advocates for Health Living has requested approval to conduct the Farmer's Market on Wednesday evenings, April 6 through September 28, 2011, 5:00 – 9:00 p.m. on First Street and Iglesia Street adjacent to Civic Center Park. Mr. Cuellar is requesting the closure of First Street at Iglesia Street to the east end of First Street, and Iglesia Street from First Street to Second Street. He would also like consideration for the use of the southerly portion of Civic Center Park, per the attached site plan.

Mr. Cuellar has requested the street closure to begin at 3:00 p.m. each Wednesday, which is one hour earlier than the Bonita Avenue closure last year. Earlier access is requested to accommodate the set up of vendors that will not be able to keep their vehicles adjacent to their booths due to the narrower street width. Staff recommends a 4:00 p.m. closure due to the impacts on Civic Center operations.

Mr. Cuellar is also requesting approval to place directional signage on Bonita Avenue on Farmer's Market event days, to promote the new location.

7C

Mr. Cuellar is aware that the Music in the Park and Movies in the Park programs will run concurrent to the Farmer's Market for the months of June through August, and that he will not facilitate entertainment during the weeks of those programs.

Renewal of Advocates for Healthy Living Temporary Use Permit for operation of a 2011 Farmers Market will be subjected to all conditions defined in that permit. All other conditions required for operation of the Farmer's Market event will remain standard, as indicated in the Conditions of Approval (attached). Required submittals include: an updated site plan; current Certificates of Insurance; current operating permits; request for traffic detour plan approval; security plan approved by the Sheriff's Department; and proof of California non-profit status.

Should the event be approved and the permit be renewed, Advocates for Healthy Living weekly responsibilities will include, but not be limited to: complete traffic control set up and tear down; compliance with all NPDES fluid discharge standards; all appropriate accessible route signage; complete event clean up with trash to be disposed of in the dumpsters located in the Civic Center public parking lot; communication and cooperation with City staff; and resolution of any public safety incident. Staff will work with Advocates for Healthy Living for oversight of traffic control set up, but request the organization provide the required number of staff or volunteers to complete the set up. City staff will also work with Mr. Cuellar for the use of City operated electricity and restrooms.

### RECOMMENDATION

Staff recommends that City Council authorize renewal of the temporary use permit for Advocates for Healthy Living to operate a 2011 Farmers' Market event in the public right of way, including approval of street closure on First Street east from Iglesia Street, and on Iglesia Street north from First Street to Second Street, from 4:00 p.m. to 10:00 p.m. each Wednesday evening from April 6, 2010 through September 28, 2010, subject to standards and conditions.

Respectfully submitted,

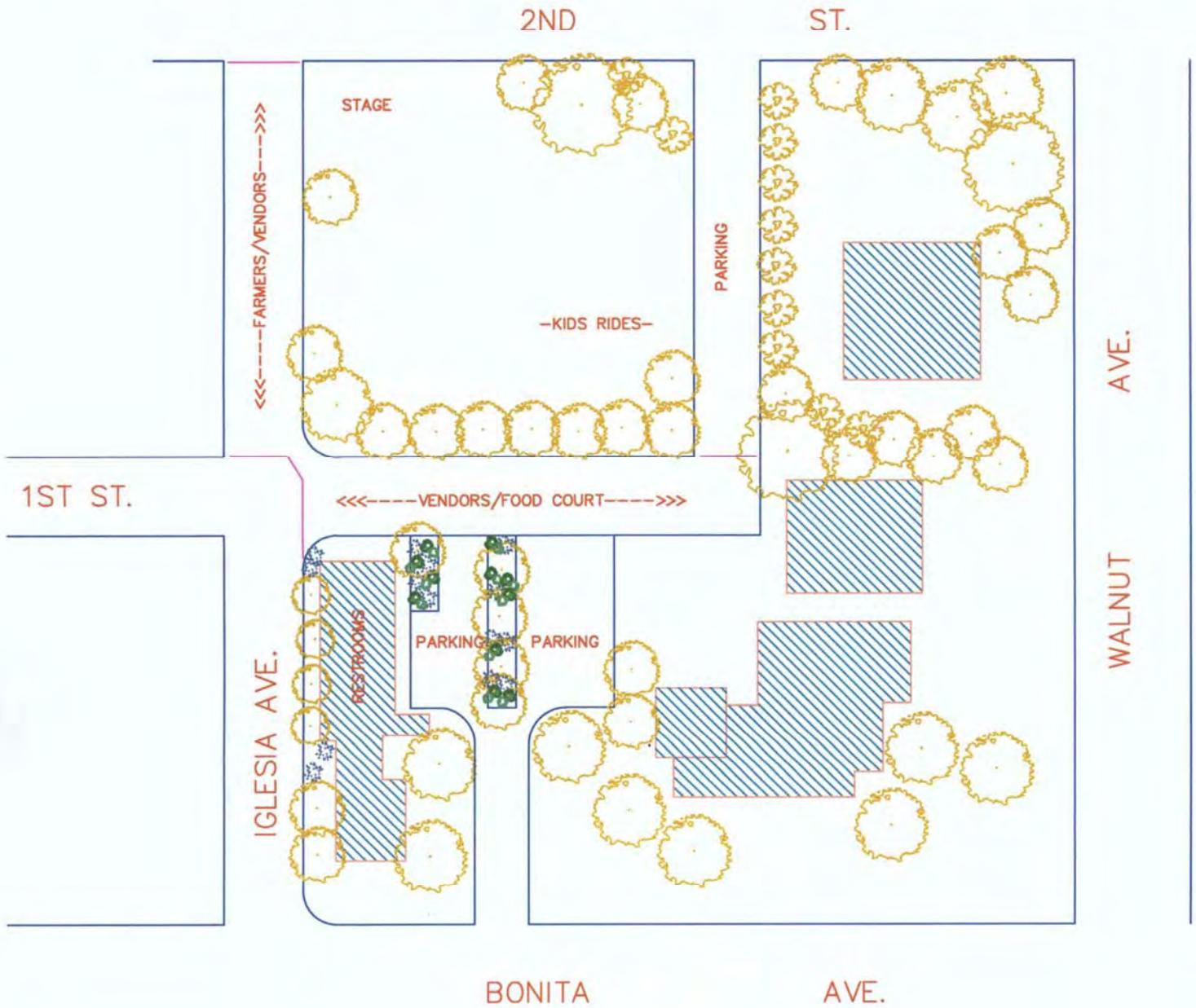


Theresa Bruns  
Director of Parks and Recreation

### Attachments:

- Farmers' Market Site Plan
- Conditions of Approval

2011 SAN DIMAS FARMERS MARKET  
WEDNESDAYS 5-9PM, APRIL 6 - SEPTEMBER 28



## TEMPORARY USE PERMIT 11-XX

### Conditions of Approval

Temporary Use Permit 11-XX; the weekly operation of a Farmer's Market within the First and Iglesia Streets public right of way is approved subject to the following conditions:

1. This permit is valid for the term of April 6, 2011 – September 28, 2011. Said Temporary Use Permit shall be subject to renewal on an annual basis thereafter.
2. T.U.P. 11-XX shall authorize the weekly use of the First Street and Iglesia Street public right of way, each Wednesday from 5:00 p.m. to 9:00 p.m. for a weekly Farmer's Market.
3. The Farmer's Market shall be operated in the location pursuant to the submitted site plan on file with the Department of Development Services. Site plan shall indicate the placement of all booths, canopies, platforms, restrooms, activities and other improvements. Accessible routes shall be indicated on the plan.
4. The applicant shall submit plans to the Building Division to determine whether a blanket seasonal permit is required for the installation of multiple membrane structures (temporary canopies) used by vendors. Plans shall include a general site plan of proposed structures as well as specific membrane structure issues such as; size ranges of individual structures, separation/attachment of structures, and whether open or closed. The site will be subject to periodic inspection from the Building Division, and all deficiencies shall be promptly addressed.
5. The applicant shall provide and maintain appropriate access and services for persons with disabilities in conformance with all applicable state and federal laws.
6. The applicant shall be responsible for obtaining the appropriate Certificates of Insurance, as required by the City Manager's Office, naming the City of San Dimas as an additional insured, which shall remain in effect for the term of this event.
7. The applicant shall obtain a master business license for participating farmers and correlate the number of "employees" to the number of farmers participating in the Farmer's Market; and, shall work with the City to devise a business licensing program for the other vendors.
8. The applicant and vendors shall be responsible for obtaining all necessary operating permits and shall comply with the regulations of all applicable agencies, including but not limited to the Los Angeles County Department of Health Services, California Department of Food and Agriculture, Los Angeles County Fire Department, State of California Alcohol Beverage Control, and other agencies as applicable.
9. The traffic detour circulation plan adopted pursuant to the Traffic Safety Committee approval, shall be periodically evaluated during the duration of T.U.P. 11-XX. Such evaluation shall include analysis of the effectiveness of the traffic volumes and detour impacts. Alternative Farmer's Market site locations may be a component of the analysis.

10. The applicant shall be responsible for all traffic control during event, including set-up and tear-down of equipment needed for execution of traffic plan, such as traffic barricades. Applicant shall be responsible for the closing and opening of First Street and Iglesia Street for the operation of this event. Street closure shall be limited to the hours of 4:00 p.m. to 10:00 p.m.
11. Applicant must ensure that vendors do not occupy the public right of way prior to the authorized time of 4:00 p.m.
12. Applicant shall respond in a timely manner to all complaints and concerns, and shall take prompt and appropriate action to resolve such concerns.
13. Applicant shall be authorized for use of City electrical sources, and shall be responsible for the repair of any damage to City property which may occur as a result of the Farmer's Market event. Any electrical cords shall be located a minimum 10 feet above all walkways and 16 feet above all parking lot areas, or secured to the ground and covered on all walkway areas.
14. This permit shall allow the installation of a street banner to publicize the Farmer's Market. All temporary signs, banners, flags and pennants shall comply with the Sign Ordinance (Chapter 18.152 of the San Dimas Municipal Code). Application for a temporary banner shall be made on forms provided by the planning department.
15. The applicant shall provide sufficient waste receptacles for the duration of the Farmer's Market. The applicant shall provide containers for the collection of recyclable products.
16. The site shall be thoroughly cleared of all trash and material(s) associated with the temporary weekly event and returned to the original condition of the site at the conclusion of each Wednesday event. All waste generated from the event must be disposed of in the City dumpsters located in the Civic Center public parking lot.
17. Applicant shall be responsible for making all vendors aware of NPDES discharge requirements and responsibilities, and comply with City standards, including ensuring the street pavement inside each food vendor booth is covered with plastic tarp and/or cardboard to protect the pavement surface. Grease spatters and other spills shall be absorbed with rags or absorbent material before removing tarp. All soiled materials shall be disposed of properly.
18. The applicant shall be responsible for the repair of any damage to City property which may occur as a result of the Farmer's Market event.
19. Applicant shall obtain approval of a security plan from the Los Angeles County Sheriff and shall comply with any conditions established by the Sheriff and shall be subject to periodic review and updating.
20. Applicant must provide proof of California non-profit status.
21. This permit is subject to review, revision, or revocation if the applicant does not conform to the above operating conditions, and/or if the Farmer's Market operation is deemed a nuisance by the City Council.

22. Applicant is hereby informed that the Civic Center may be under construction during the period of the Farmer's Market. City Hall, Plummer Community Building, the plaza, and portions of the parking lot may be closed, posted and/or surrounded by a barrier.
23. Applicant may provide entertainment only during the weeks of the event when the Music in the Park and Movies in the Park Programs are not operating.
24. Copies of all written permits and/or conditions shall be maintained on site for reviewing by any public official.
25. Above conditions are final unless appealed, pursuant to Chapter 18.212 of the City of San Dimas Municipal Code.



# Agenda Item Staff Report

**To:** Honorable Mayor and Members of the City Council  
For the meeting of **January 25, 2011**

**From:** Krishna Patel, Public Works Director *KMP*

**Subject:** **Metro Gold Line Foothill Extension Azusa to Montclair –  
Environmental Impact Report/Environmental Impact Statement  
(EIS/EIR) Letter**

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## **BACKGROUND**

A Draft EIS/EIR for Gold Line Phase II Pasadena to Montclair Foothill Extension was issued on April 2004, after input from the public and cities along the alignment, the Metro Gold Line Foothill Extension Construction Authority Board approved a Locally Preferred Alternative (LPA) in August 2004 for the Pasadena to Azusa extension of the Gold Line Phase II Project. In March 2005, a Project Definition Report (PDR) was prepared to refine the station and parking lot locations, grade crossings, two rail grade separations, and traction power/substation locations. Following the Project Definition Report, the Construction Authority Board approved a Revised LPA in June 2005.

Subsequent to circulation of the 2004 DEIS/DEIR the Construction Authority decided to fund the Pasadena to Azusa extension of the Gold Line Phase II Project without Federal funding and the environmental impact assessment for Phase II no longer proceeded as a joint NEPA/CEQA document but as a CEQA document. The Pasadena to Azusa Extension project of the Gold Line Phase II Pasadena to Montclair Extension was certified under CEQA by the Construction Authority and a FEIR was completed in February 2007. Because the Construction Authority decided to fund the Pasadena to Azusa extension of the Gold Line Phase II Project without Federal funding, the FTA subsequently withdrew the Gold Line Phase II DEIS on June 25, 2010.

The Construction Authority will be seeking Federal funding for the Metro Gold Line Foothill Extension from Azusa to Montclair and an EIS will be prepared. To avoid confusion (the terminology used in the 2004 DEIS/EIR, e.g., Phase I; Phase II, Segments 1 and 2), the proposed project, which was previously named Gold Line Phase II, Segment 2, is now referred to as the Metro Gold Line Foothill Extension, Azusa to Montclair Project. (See Attachments A and B, *Metro Gold Line Foothill Extension Project Timeline and EIS/EIR Process*).

## **DISCUSSION**

The City of San Dimas, its residents and businesses along the railroad right-of-way corridor were invited to attend January 20, 2011 Public Scoping meeting at Ekstrand Elementary School to provide input about or suggest other project alternatives and to identify issues of environmental concerns to be addressed in the EIR/EIS for the Metro Gold Line Phase II Project.

*7d*

Based on previous DEIS/EIR for the project and the most likely Build Alternative would be to keep the light rail (LRT) system that would begin at current terminus of the Metro Gold Line at the Azusa–Citrus Station continuing east to Montclair. Attached is a draft letter from the Mayor to the Construction Authority that outlines the issues and concerns that need to be addressed and analyzed in the preparation of the EIR/EIS for the Phase II Project. However, if the Council desires to add comments or other issues to be addressed in the EIR, then Council's comments can be added to the Mayor's draft letter and forwarded to the Construction Authority by the due date of February 2, 2011.

### **RECOMMENDATION**

Staff requests City Council authorization to forward the attached Mayor's draft letter of comments, concerns and issues, including any additional comments and issues raised at the January 20<sup>th</sup> Public Scoping meeting for the Metro Gold Line Foothill Extension Azusa to Montclair project.

Respectfully Submitted,

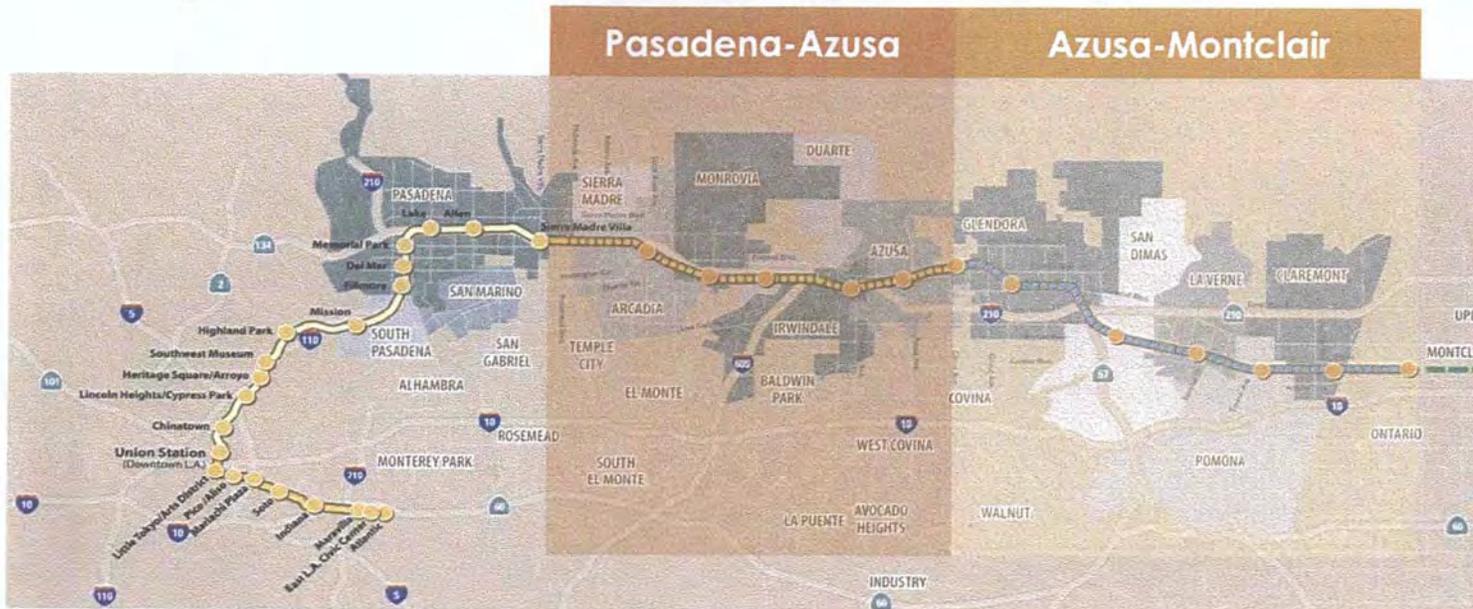


Krishna Patel  
Director of Public Works

Attachments:

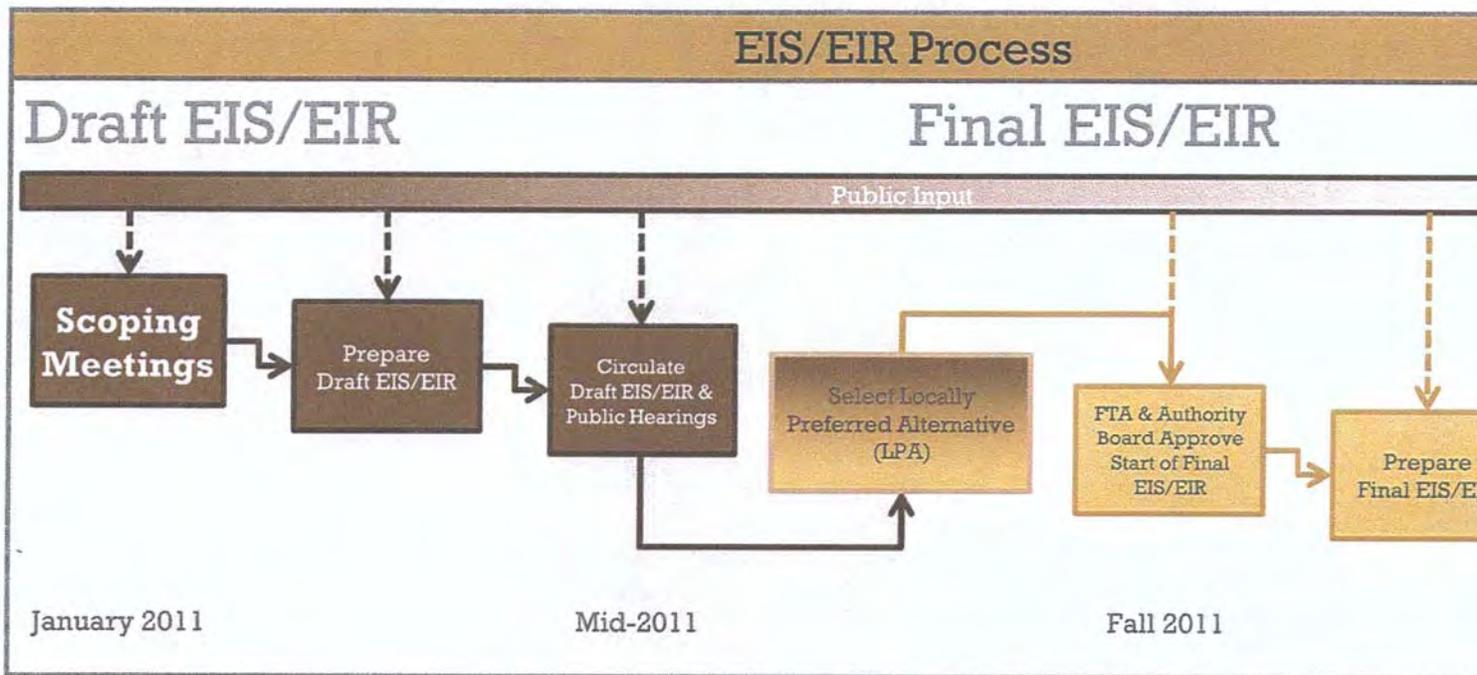
- 1) Attachment A: *Metro Gold Line Foothill Extension Project Timeline*
- 2) Attachment B: *Metro Gold Line Foothill Extension EIS/EIR Process*
- 3) Attachment C: Draft Letter from Mayor Curtis Morris

# Project Timeline



- **1999:** Creation of the Metro Gold Line Foothill Extension Construction Authority
- **2003:** Initiation of Foothill Extension from Pasadena to Montclair Alternatives Analysis (AA) and Board Locally Preferred Alternative (LPA)
- **2004:** Circulation of Pasadena to Montclair Draft Environmental Impact Report/Environmental Impact Statement (EIS)
- **2005:** Board selection of revised LPA
- **2007:** Board decision not to pursue federal funds for Pasadena to Azusa Extension; completion of Final Environmental Impact Report (FEIR)
- **2008:** Measure R approved, partial funding for Azusa to Montclair Extension
- **2009:** Reactivation of Azusa to Montclair Extension Environmental Clearance
- **2010-11:** 'Fresh' Environmental Impact Statement/Environmental Impact Review Process for Azusa to Montclair Extension

# Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) Process



## EIS/EIR Purpose

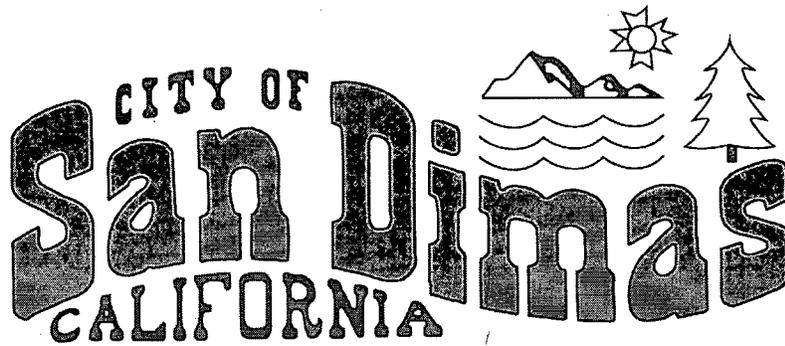
- Establish the Purpose and Need of the project
- Describe alternatives
- Study potential environmental benefits/impacts of alternatives
- Evaluate measures to avoid, minimize and mitigate impacts

City Council  
CURTIS W. MORRIS, Mayor  
DENIS BERTONE, Mayor Pro Tem  
EMMETT BADAR  
JEFF TEMPLEMAN  
JOHN EBINER

City Manager  
BLAINE M. MICHAELIS

Assistant City Manager / Treasurer  
KENNETH J. DURAN

City Attorney  
J. KENNETH BROWN



Assistant City Manager of  
Community Development  
LAWRENCE STEVENS

Director of Public Works  
KRISHNA PATEL

Director of Development  
Services  
DAN COLEMAN

Director of Parks  
and Recreation  
THERESA BRUNS

City Clerk  
INA RIOS

## DRAFT

January 20, 2011

Ms. Lisa Levy Buch, Director of Public Affairs  
Metro Gold Line Foothill Extension Construction Authority  
406 E Huntington Drive, Suite 202  
Monrovia, California 91016

**SUBJECT:** Metro Gold Line Foothill Extension Azusa to Montclair -  
Environmental Impact Report

Dear Ms. Levy Buch:

Following the January 20, 2011 Public Scoping Meeting for Phase II of the Pasadena to Montclair Extension held at Ekstrand Elementary, the City of San Dimas has the following issues and concerns that need to be addressed and analyzed in the preparation of the Environmental Impact Report (EIR) for Phase II of the Project.

### 1) Traffic

Since the rail line at Bonita Avenue/Cataract Avenue crosses the intersection in a diagonal entry from the northwest corner and crossing to the southwest corner, considering the (approximately 300 foot) long diagonal rail crossing and its intersection geometry. It is the City's belief this intersection will be experiencing almost 40 to 50 seconds delays of closure every 5 minutes when considering the estimated train frequency of 12 trains per hour in both directions. Therefore in addition to signal stoppage delays, the intersection would most likely result in all automobile operations being stopped during the Light Rail Transit (LRT) crossing every 5 minutes. This delay or closure would significantly impact traffic operations and adversely impact traffic in the heart of downtown San Dimas. The City requests the authority conduct a detailed grade crossing analysis that evaluates the feasibility of a grade separation in order to mitigate the traffic concerns, together with a study of aesthetics and a visual impact plan for this intersection and other LRT crossing intersections in the City.

### 2) Aesthetics

The equipment and the necessary housing of a power traction system to operate the LRT has the potential of creating negative aesthetic impacts throughout the City, but especially the City's Frontier Village area. In addition, the poles and the overhead wiring system, along the entire length of the rail right-of-way will have an adverse impact to the community.

3) Traffic/Land Use

Impacts associated with the development of an intermodal station in the City located between San Dimas Avenue and Walnut Avenue, including parking structures that is limited to 2 levels of parking with a maximum of 400 parking spaces as per the attached letter dated 12/17/2008

4) Hydrology

The EIR should address and analyze the impact created on existing undersized and aging storm drains and culvert system crossing the proposed project.

5) Noise and Vibration

Noise and vibration will be a significant issue. All feasible mitigation measures should be addressed including mitigation measures that consider landscaping within the railroad right-of-way.

6) Miscellaneous

The EIR should analyze the following:

- 1) The feasibility of relocating the existing abandoned spur/siding line located at the southwest corner of Bonita Avenue and Cataract Avenue.
- 2) The project mitigation should consider the viability of expanding bus services, bikeways, pedestrian and vehicular areas at the station as well as other parts of the City.

Should you wish to discuss this matter further, please Mr. Krishna Patel, Director of Public Works at (909) 394-6245 or Mr. Larry Stevens, Assistant City Manager for Community Development at (909) 394-6281.

Sincerely,

Curtis Morris  
Mayor

Attachment:

kp/jam/01-11-17

cc: Krishna Patel, Director of Public Works  
Larry Stevens, Assistant to City Manager for Community Development  
Blaine Michaelis, City Manager

City Council  
CURTIS W. MORRIS, Mayor  
EMMETT BADAR, Mayor Pro Tem  
DENIS BERTONE  
JOHN EBINER  
JEFF TEMPLEMAN

City Manager  
BLAINE M. MICHAELIS

Assistant City Manager / Treasurer  
KENNETH J. DURAN

City Attorney  
J. KENNETH BROWN

# San Dimas

Assistant City Manager of  
Community Development  
LAWRENCE STEVENS

Director of Public Works  
KRISHNA PATEL

Director of Development  
Services  
DAN COLEMAN

Director of Parks  
and Recreation  
THERESA BRUNS

City Clerk  
INA RIOS, CMC

December 17, 2008

Habib F. Balian  
Chief Executive Officer  
Metro Gold Line Foothill Extension Authority  
406 E. Huntington Drive, Suite 202  
Monrovia, CA 91016-3633

RE: Gold Line Station – City of San Dimas

Dear Mr. Balian:

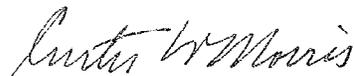
At its meeting of December 9, 2008, the San Dimas City Council determined that it would support a Gold Line Station in San Dimas pursuant to the following criteria:

- Station to be located in area bounded by San Dimas Avenue on the west, Arrow Highway on the south, Walnut Avenue on the east and the railroad tracks on the north.
- Parking to support that station to be limited to a maximum of 400 parking spaces.

The City will be evaluating zoning in this area as part of its Downtown Specific Plan review tentatively scheduled for hearings in Spring 2009. We look forward to working with the Authority on a site meeting these criteria as you progress through environmental and funding reviews in the upcoming months.

Please contact Larry Stevens, Assistant City Manager for Community Development, if you have questions or require additional assistance in these upcoming reviews.

Sincerely,



Curtis W. Morris,  
Mayor

cc: San Dimas City Council  
Blaine Michaelis, City Manager  
Larry Stevens, Assistant City Manager for Community Development



CITY OF SAN DIMAS  
MINUTES  
SAN DIMAS REDEVELOPMENT AGENCY MEETING  
TUESDAY, JANUARY 11, 2011  
SENIOR CITIZEN/COMMUNITY CENTER  
MULTIPURPOSE ROOM, 201 E. BONITA AVENUE

---

**PRESENT:**

Chairman Curtis W. Morris  
Vice Chairman John Ebner  
Mr. Emmett G. Badar  
Mr. Denis Bertone  
Mr. Jeffrey W. Templeman  
Executive Director Blaine Michaelis  
Agency Attorney Ken Brown  
Secretary Ina Rios  
Assistant City Manager of Community Development Larry Stevens  
Assistant City Manager Ken Duran  
Director of Development Services Dan Coleman  
Director of Public Works Krishna Patel  
Director of Parks and Recreation Theresa Bruns

**CALL TO ORDER**

Chairman Morris called the meeting to order at 11:20 p.m.

**ORAL COMMUNICATIONS** (This is the time set aside for members of the audience to address the Board. Speakers are limited to three minutes.)

There were no comments.

**APPROVAL OF MINUTES**

It was moved by Mr. Bertone, seconded by Mr. Templeman, to approve the minutes of the December 14, 2010 meeting. The motion carried unanimously.

**EXECUTIVE DIRECTOR**

- 1) Project status update.

Executive Director Michaelis reported that the Governor's budget proposal could have a significant impact on Redevelopment Agencies. He stated the proposal would provide for existing projects, however, the intent is to ultimately phase out redevelopment in California. Staff will continue to monitor this impact.

**MEMBERS OF THE AGENCY**

There were no comments.

**ADJOURNMENT**

Chairman Morris adjourned the meeting at 11:23 p.m.

Respectfully submitted,

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Ina Rios, Secretary

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# Agenda Item Staff Report

**TO:** Honorable Mayor and Members of City Council  
*For the Meeting of January 25, 2011*

**FROM:** Blaine Michaelis, City Manager *BM*

**SUBJECT:** Request from the Sheriff's Booster Club for the city to appoint a representative to serve as an Ex-Officio non-voting member of their board.

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## **SUMMARY**

*We received the attached request from the Boosters for the city to appoint a representative to serve as an Ex-Officio non-voting member of their board.*

## **RECOMMENDATION**

Council pleasure.

Attachment  
Letter from the Boosters Club

*ad(1)*



*San Dimas*  
**SHERIFF'S BOOSTER  
CLUB**

P. O. Box 712 ~ San Dimas, CA 91773 ~ (909) 450-2763

December, 2010

**BOARD OF DIRECTORS**

Sylvia Chapman, *President*  
Gary Enderle, *Vice President*  
Scott Dille, *Treasurer*  
Dawna Marshall, *Secretary*

Daily Baise  
Theresa Contreras  
Karol Curtis  
Shorty Feldbush  
Tony Garcia, III  
Susan Hutchinson  
Pat Meyers  
Mike Montes  
Annette Ousterhout  
Don Story  
Bob Tunstall

*Reserve Coordinator*  
Sgt. Dave Smail

*Community Relations*  
Chris Mackenzic

*Station Commander*  
Capt. Joseph Hartshorne

Mr. Blaine Michaelis  
City Manager  
c/o Temporary City Hall  
186 Village Court  
San Dimas, CA 91773

Dear Mr. Michaelis,

The purpose of this letter is to inform you that the San Dimas Sheriff's Booster Club has made a change to its bylaws regarding the qualifications and classification for two members of the Board of Directors. These two members shall be classified as Ex Officio members of the Corporation and shall be appointed as non-voting directors on the Board.

We would like to invite the City to appoint an individual to serve as the City's representative on our Board to fill one of these two Ex-Officio non-voting director positions. The other position will be filled by the Captain of the Station or his/her appointed representative.

As always, any member of the City staff is more than welcome to attend any of our monthly Board meetings as a guest to observe the proceedings. Our meetings are held the first Wednesday of each month at 8AM in the Community Meeting Room.

We look forward to the City's participation in this important community group. If you have any questions, please feel free to contact me.

Sincerely,

Sylvia E. Chapman  
President