

CITY MANAGER – Marlene Best
CITY ATTORNEY – Shawn D. Hagerty
CITY CLERK – Annette Ortiz

STAFF:
ASSISTANT TO THE CITY MANAGER
Kathy Valverde
COMMUNITY SERVICES DIRECTOR
Bill Maertz
DEVELOPMENT SERVICES DIRECTOR
Melanie Kush
FINANCE DIRECTOR/TREASURER
Tim McDermott
FIRE & LIFE SAFETY DIRECTOR/FIRE CHIEF
Richard Smith
HUMAN RESOURCES DIRECTOR
Jessie Bishop
LAW ENFORCEMENT
Captain Daniel Brislin



CITY COUNCIL

Mayor John W. Minto
Vice Mayor Rob McNelis
Council Member Ronn Hall
Council Member Stephen Houlahan
Council Member Brian W. Jones

**City of Santee
Regular Meeting Agenda
Santee City Council**

**Wednesday, October 24, 2018
7:00 PM**

**Council Chambers – Building 2
10601 Magnolia Avenue, Santee, CA 92071**

Regular City Council Meeting – 7:00 p.m.

ROLL CALL: Mayor John W. Minto
Vice Mayor Rob McNelis
Council Members Ronn Hall, Stephen Houlahan and Brian W. Jones

LEGISLATIVE INVOCATION: Pastor Phil Herrington, Pathway Community Church

PLEDGE OF ALLEGIANCE:

PROCLAMATION: Red Ribbon Week

PRESENTATION: United States Census – Road to 2020

CONSENT CALENDAR:

Consent Calendar items are considered routine and will be approved by one motion, with no separate discussion prior to voting. Council Members, staff or public may request specific items be removed from the Consent Calendar for separate discussion or action. Speaker slips for this category must be presented to the City Clerk at the start of the meeting. Speakers are limited to 3 minutes.

- (1) Approval of reading by title only and waiver of reading in full of Ordinances and Resolutions on the agenda.**
- (2) Approval of Meeting Minutes of the Santee City Council for the September 26, 2018, and the October 10, 2018, Regular Meetings. (City Clerk – Ortiz)**
- (3) Approval of Payment of Demands as presented. (Finance – McDermott)**

- (4) Approval of the expenditure of \$86,733.69 for September 2018 Legal Services and related costs. (Finance – McDermott)
- (5) Authorization for the City Manager to execute a Memorandum of Understanding with the San Diego Metropolitan Transit System regarding transit stop shelters and benches. (Development Services – Kush)
- (6) Adoption of a Resolution authorizing the City Manager to execute a two-year extension of the Professional Services Agreement with Dokken Engineering for “as needed” Engineering Services on Capital Improvement and Land Development Projects not to exceed \$800,000.00 per fiscal year and authorizing the Director of Development Services to negotiate and issue task orders to complete the desired work. (Development Services – Kush)
- (7) Adoption of a Resolution accepting the Town Center Community Park HVAC Upgrades (CIP 2018-46) Design-Build Project as complete. (Development Services – Kush)
- (8) Adoption of a Resolution authorizing the purchase and installation of updated Alerting Systems and related equipment for Fire Station 4 and Fire Station 5 from Westnet, Inc. for a total amount of \$88,998.59, per utilization of Houston-Galveston Area Council Cooperative Purchasing Program Contract No. ECO7-18, and declaring certain items as surplus. (Fire – Smith)

NEW BUSINESS:

- (9) Resolution finding that the public interest and convenience require the sale of certain real property, declaring its intent to sell such property, and setting a Public Hearing. (City Manager – Best)

Recommendation:

Adopt the Resolution finding that the public interest and convenience require the sale of certain real property, declaring its intent to sell such property, and setting a Public Hearing.

NON-AGENDA PUBLIC COMMENT:

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

CITY COUNCIL REPORTS:**CITY MANAGER REPORTS:**

CITY ATTORNEY REPORTS:

CLOSED SESSION:

(10) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

(Government Code Section 54956.9(d)(4))

Initiation of litigation (one case): John Rovaneck, 11129 Summit Ave

ADJOURNMENT:



Oct	04	SPARC Meeting Cancelled	Civic Center Building 7
Oct	08	Community Oriented Policing Committee	Council Chamber
Oct	10	City Council Meeting	Council Chamber
Oct	24	City Council Meeting	Council Chamber
Nov	01	SPARC	Civic Center Building 7
Nov	12	Community Oriented Policing Committee	Council Chamber
Nov	14	City Council Meeting	Council Chamber

The Santee City Council welcomes you and encourages your continued interest and involvement in the City’s decision-making process.

For your convenience, a complete Agenda Packet is available for public review at City Hall and on the City’s website at www.CityofSanteeCA.gov.

The City of Santee complies with the Americans with Disabilities Act. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities, as required by Section 12132 of the American with Disabilities Act of 1990 (42 USC § 12132). Any person with a disability who requires a modification or accommodation in order to participate in a meeting should direct such request to the City Clerk’s Office at (619) 258-4100, ext. 112 at least 48 hours before the meeting, if possible.

AFFIDAVIT OF POSTING AGENDA

State of California	}	
County of San Diego	} ss.	
City of Santee	}	

I, Annette Ortiz, City Clerk of the City of Santee, hereby declare, under penalty of perjury, that a copy of this Agenda was posted in accordance with the Brown Act and Santee Resolution 61-2003 on October 19, 2018, at 4:00 p.m.

_____ Signature	10/19/18 Date
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City of Santee
COUNCIL AGENDA STATEMENT

PROC

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE **PROCLAMATION: RED RIBBON WEEK**

DIRECTOR/DEPARTMENT John W. Minto, Mayor

SUMMARY

Red Ribbon Week is a way for people and communities to unite and take a visible stand against drugs.

The Red Ribbon Campaign was started when drug traffickers in Mexico City murdered DEA agent Kiki Camarena in 1985. This began the continuing tradition of displaying Red Ribbons as a symbol of intolerance towards the use of drugs. The mission of the Red Ribbon Campaign is to present a unified and visible commitment towards the creation of a Drug-Free America.

A theme unifies each year's campaign and helps to broadcast one message, creating a tipping point to change behavior. The 2018 National Red Ribbon Week theme is: **Life Is Your Journey, Travel Drug Free™**.

As the nation's largest and oldest drug prevention campaign, Red Ribbon Week reaches over 80 million people each year throughout the United States. A proclamation has been prepared in support of Red Ribbon Week in the City of Santee.

CITY ATTORNEY REVIEW N/A Completed

FINANCIAL STATEMENT N/A

RECOMMENDATION ^{MDB} Note and file.

ATTACHMENTS (Listed Below)

Proclamation.

City of Santee, California

Proclamation

WHEREAS, alcohol and drug abuse in this Nation have reached epidemic stages; and

WHEREAS, it is imperative that visible, unified prevention education efforts by community members be launched to eliminate the demand for drugs; and

WHEREAS, the National Red Ribbon Campaign offers citizens the opportunity to demonstrate their commitment to drug-free lifestyles (no use of illegal drugs, no illegal use of legal drugs); and

WHEREAS, the National Red Ribbon Campaign will be celebrated in every community in America during Red Ribbon Week, October 23-31; and

WHEREAS, business, Government, parents, law enforcement, media, medical institutions, religious institutions, schools, senior citizens, service organizations, and youth will demonstrate their commitment to healthy, drug-free lifestyles by wearing and displaying red ribbons during this week-long campaign.

NOW, THEREFORE, I, John W. Minto, Mayor of the City of Santee, on behalf of the City Council, do hereby proclaim October 23-31, 2018, as

“NATIONAL RED RIBBON WEEK”

in the City of Santee and encourage all citizens to participate in drug prevention education activities, not only during Red Ribbon Week, but all year long, making a visible statement that we are strongly committed to a drug-free Santee.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, two thousand eighteen, and have caused the Official Seal of the City of Santee to be affixed.

Mayor John W. Minto



City of Santee
COUNCIL AGENDA STATEMENT

PRES

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE UNITED STATES CENSUS – ROAD TO 2020

DIRECTOR/DEPARTMENT Marlene Best, City Manager

SUMMARY

The City of Santee recognizes the importance of conducting a complete and accurate count of all United States residents and supports the U. S. Census bureau in meeting this goal.

An accurate census is essential for the allocation of representation within the legislative bodies of the U.S. House of Representatives, the California State Legislature and within California City and County voting districts. Billions of dollars each year in intergovernmental funding for health, education, transportation, child and elder care, emergency preparation and response, public works and social support programs of all kinds depends on complete and accurate age, population, and other ethnic and demographic information gathered every ten years.

Citizens should assist the U.S. Census Bureau in every way possible, and complete the census questionnaire promptly and accurately, either online, by phone, or by mail.

Alejandro Aguilar, 2020 Census Partnership Specialist, U.S. Census Bureau, San Diego County, will give a brief presentation about the road to the 2020 census and how Santee can make a difference and raise awareness to encourage participation.

ENVIROMENTAL REVIEW N/A

FINANCIAL STATEMENT N/A

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION *MAB* Hear report.

ATTACHMENTS

None.

City of Santee
COUNCIL AGENDA STATEMENT

1

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE **APPROVAL OF READING BY TITLE ONLY AND WAIVER OF READING
IN FULL OF ORDINANCES AND RESOLUTIONS ON THE AGENDA.**

DIRECTOR/DEPARTMENT Annette Ortiz, City Clerk 

SUMMARY

This item allows the City Council to approve Ordinances and Resolutions on the Consent Calendar without reading the item in full. Upon approval of this item, all Resolutions included in the motion shall be approved. Resolutions removed from the Consent Calendar and considered under separate action may also be approved without reading of the full text.

FINANCIAL STATEMENT

N/A

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION

It is recommended that the Council waive the reading of all Ordinances and Resolutions in their entirety and read by title only.

ATTACHMENTS

None

City of Santee
COUNCIL AGENDA STATEMENT

2

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE APPROVAL OF MEETING MINUTES OF THE SANTEE CITY COUNCIL FOR THE SEPTEMBER 26, 2018, AND OCTOBER 10, 2018, REGULAR MEETINGS.

DIRECTOR/DEPARTMENT Annette Ortiz, City Clerk 

SUMMARY

Submitted for your consideration and approval are the minutes of the above meetings.

FINANCIAL STATEMENT N/A

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION

Approve Minutes as presented.

ATTACHMENT

September 26, 2018 Regular Meeting Minutes
October 10, 2018 Regular Meeting Minutes

**Minutes
Santee City Council
Council Chamber – Building 2
10601 Magnolia Avenue
Santee, California
September 26, 2018**

DRAFT

This Regular Meeting of the Santee City Council was called to order by Mayor John W. Minto at 7:01 p.m.

ROLL CALL: Present: Mayor John W. Minto, Vice Mayor Rob McNelis and Council Members Ronn Hall, Stephen Houlahan and Brian W. Jones – 5.

Officers present: City Manager Marlene Best, City Attorney Shawn Hagerty and City Clerk Annette Ortiz.

The **INVOCATION** was given by Pastor Gary Lawton of Calvary Church of Santee and the **PLEDGE OF ALLEGIANCE** was led by Ernest J. Dronenburg, Jr., County of San Diego Assessor/Recorder/County Clerk.

PROCLAMATION: Metropolitan Transit System Free Ride Day October 2, 2018

Council Member Hall read the Proclamation in honor of Metropolitan Transit System Free Ride Day.

PROCLAMATION: October as Dysautonomia Awareness Month

Mayor Minto read the Proclamation in honor of Dysautonomia Awareness Month.

CONSENT CALENDAR:

AGENDA CHANGES:

City Clerk Ortiz provided correspondence relating to Item 11 for Council's consideration. Mayor Minto requested Item 10 be reordered to be heard after the Consent Calendar.

- (1) **Approval of reading by title only and waiver of reading in full of Ordinances and Resolutions on the agenda. (City Clerk – Ortiz)**
- (2) **Approval of Payment of Demands as presented. (Finance – McDermott)**
- (3) **Approval of the expenditure of \$88,733.80 for August 2018 legal services and related costs. (Finance – McDermott)**
- (4) **Adoption of a Resolution Awarding the Construction Contract for the Internally Illuminated Street Name Sign Lighting Replacement Project (CIP2018-03) to Lekos Electric, Inc. for a total amount of \$103,078.00 and determining a Categorical Exemption pursuant to Section 15301(c) of the California Environmental Quality Act. (Development Services – Kush) (Reso 113-2018)**

- (5) Adoption of a Resolution amending the City's Conflict of Interest Code. (City Clerk – Ortiz) (Reso 114-2018)
- (6) Adoption of a Resolution delegating certain Government Claims Responsibilities to the City Manager or his or her Designee, which may be the City's third-party claims administrator, to coordinate with City staff and act on the City Council's behalf, to process, accept, or return as insufficient or untimely, any government claims against the City, and to provide notices including but not limited to, notices of rejection, insufficiency, and untimeliness, on behalf of the City. (Human Resources – Bishop) (Reso 115-2018)
- (7) Award of Contract for Plumbing Repairs and Maintenance Services to HSW RR Incorporated, dba Roto Rooter Plumbing and Service Company, per Bid #18/19-20036 for an amount not to exceed \$29,320.00 for the remainder of Fiscal Year 2018-19 (October 1, 2018 through June 30, 2019), authorization for the City Manager to approve three (3) additional 12-month options to renew, one (1) 90-day extension along with the corresponding purchase orders and approve annual change orders up to ten percent (10%) of the then-current contract amount; and authorization for the Director of Community Services to execute a Notice of Completion and the City Clerk to file said Notice of Completion upon satisfactory completion of work for each contract term. (Community Services – Maertz)

ACTION: Vice Mayor McNelis moved approval of the Consent Calendar and Agenda as amended.

Council Member Hall seconded the motion which carried by the following vote: Ayes: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

Item reordered:
NEW BUSINESS:

- (10) Update on new County of San Diego Assessor/Recorder/County Clerk East County Office and Archives Building in the City of Santee. (Development Services – Kush)

Director of Development Services Kush introduced the item and County of San Diego Assessor/Recorder/County Clerk Ernest J. Dronenburg, Jr. and his staff gave a brief presentation.

PUBLIC SPEAKERS:

- Rudy Reyes

CONTINUED BUSINESS:

- (8) Santee Hotel Market Analysis Presentation (Continued from December 13, 2017). (City Manager – Best)

Economic Development Manager White introduced the item and Susan Mellen of HVS Consulting and Valuation gave a brief presentation.

PUBLIC SPEAKERS:

- Rudy Reyes

(9) Report on Initial Public Meeting of the Highway 52 Coalition (Continued from July 25, 2018). (City Manager – Best)

City Manager Best provided an update from the Highway 52 Coalition meeting held on September 19th.

NEW BUSINESS:

(10) Reordered to follow Consent Calendar.

(11) Second Workshop and Update on the draft “Sustainable Santee Action Plan” (Climate Action Plan). (Development Services – Kush) (Received Correspondence)

Director of Development Services Kush introduced the item and Principal Planner O’Donnell gave a brief presentation. Consultant Michael Hendrix of LSA Associates responded to Council questions.

PUBLIC SPEAKERS:

- Michelle Perchez
- Sophie Wolfram
- Van Collinsworth

Council Members gave brief comments regarding what should be considered in the plan.

(12) Resolution Awarding the Construction Contract for the Mast Park Improvements (CIP 2008-53) to 3-D Enterprises, Inc. and appropriation of funds. (Development Services – Kush) (Reso 116-2018)

Director of Community Services Maertz and Principal Civil Engineer Schmitz gave a presentation and responded to Council questions.

ACTION: Council Member Hall moved approval of staff’s recommendation.

Council Member Houlahan seconded the motion which carried by the following vote: Ayes: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

(13) Resolution Appropriating Funds for the Citywide Corrugated Metal Pipe (CMP) Replacement Program and increasing Construction

Change Order Authorization on the Citywide CMP Lining and Rehabilitation Program (CIP 2017-20) Project. (Development Services – Kush) (Reso 117-2018)

Director of Development Services Kush introduced the item and Principal Civil Engineer Schmitz provided the staff report.

ACTION: Council Member Jones moved approval of staff's recommendation.

Vice Mayor McNelis seconded the motion which carried by the following vote: Ayes: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

- (14) Authorize Purchase of one New 2019 Ford F-150 4x4 Super Crew Pickup from Downtown Ford Sales per State of California Contract #1-18-23-20A and declare one vehicle surplus property. (Development Services – Kush)**

Director of Development Services Kush presented the staff report.

ACTION: Vice Mayor McNelis moved approval of staff's recommendation.

Council Member Houlahan seconded the motion which carried by the following vote: Ayes: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

NON-AGENDA PUBLIC COMMENT:

- (A) Victor Leyva commented on City street repairs in his neighborhood and City wide.

CITY COUNCIL REPORTS:

Council Member Houlahan gave a report about a recent CSA 69 meeting he attended.

CITY MANAGER REPORTS:

City Manager Best gave a brief report about the League of California Cities Annual Conference.

CITY ATTORNEY REPORTS:

- (15) Report on Comprehensive Municipal Code Update Process to Titles 6, 15 and 16. (City Attorney – Hagerty)**

City Attorney Hagerty made brief comments and responded to Council questions.

Council Members provided direction to staff.

Council Members recessed at 9:39 p.m. and convened in Closed Session at 9:45 p.m.

CLOSED SESSION:

(16) Liability Claim:

(Gov. Code section 54956.95)

Claimant: Lawrence Buquet

Agency Claimed Against: City of Santee

(17) Conference with Real Property Negotiators:

(Gov. Code section 54956.8)

Property: Parcel 3 of Parcel Map 20177 located north of Town Center Parkway between Cuyamaca Street and Riverview Parkway ("Theater Parcel").

City Negotiator: City Manager.

Negotiating Party: Studio Movie Grill.

Under negotiation: Price and terms of payment.

Council Members reconvened in Open Session at 10:02 p.m. Present: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

Mayor Minto reported for Item 16 direction was given to City Manager to resolve the issue and for Item 17 direction was given to extend the Exclusive Negotiating Agreement.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 10:03 p.m.

Date Approved:

Annette Ortiz, City Clerk

**Minutes
Santee City Council
Council Chamber – Building 2
10601 Magnolia Avenue
Santee, California
October 10, 2018**

DRAFT

This Regular Meeting of the Santee City Council was called to order by Mayor John W. Minto at 7:00 p.m.

ROLL CALL: Present: Mayor John W. Minto, Vice Mayor Rob McNelis and Council Members Ronn Hall, Stephen Houlahan and Brian W. Jones – 5.

Officers present: City Manager Marlene Best, City Attorney Shawn Hagerty and City Clerk Annette Ortiz.

The **INVOCATION** was given by Reverend Christian DeMent of Santee United Methodist Church and the **PLEDGE OF ALLEGIANCE** was led by State Senator Joel Anderson.

PRESENTATION: Senator Joel Anderson recognition of Mayor John Minto

Senator Anderson recognized Mayor Minto for all his hard work and dedication to the citizens of Santee.

ADJOURNMENT IN MEMORY: In Memory of Paul Jacob

Mayor Minto briefly spoke about Paul Jacob and his many contributions to the community.

CONSENT CALENDAR:

AGENDA CHANGES:

City Clerk Ortiz provided correspondence and a revised Resolution for Item 7 for Council's consideration.

- (1) **Approval of reading by title only and waiver of reading in full of Ordinances and Resolutions on the agenda.**
- (2) **Approval of Meeting Minutes of the Santee City Council for the August 22, 2018, Regular Meeting and the September 5, 2018, Special Meeting. (City Clerk – Ortiz)**
- (3) **Approval of Payment of Demands as presented. (Finance – McDermott)**
- (4) **Rejection of Claims against the City by Laurie Jean Tucker and Jaysin Christensen. (Human Resources – Bishop)**

- (5) **Adoption of a Resolution accepting the City Hall Wood Replacement – Repair project (CIP 2018-38) as complete. (Development Services – Kush) (Reso 118-2018)**

ACTION: Vice Mayor McNelis moved approval of the Consent Calendar and Agenda as amended.

Council Member Hall seconded the motion which carried by the following vote: Ayes: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

PUBLIC HEARING:

- (6) **Public Hearing for a Conditional Use Permit (P2017-2) to develop a 0.76-acre site with a Gas Station, Accessory Car Wash and a Commercial Building at 8617 Cuyamaca Street in the General Commercial (GC) Zone and finding the project Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15303 and 15332. Applicant: Chris Salem (Development Services – Kush) (Reso 119-2018)**

The Public Hearing was opened at 7:13 p.m.

Director of Development Services Kush introduced the item and Principal Planner O'Donnell gave a brief presentation and responded to Council questions.

PUBLIC SPEAKERS:

- Michelle Perchez
- Patti LaBouff
- John Olsen
- Chris Salem, applicant, available for questions
- Allen Sipe, applicant, available for questions

ACTION: Council Member Houlahan moved approval of staff's recommendation.

Vice Mayor McNelis seconded the motion, which carried by the following vote: Ayes: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

The Public Hearing was closed at 7:36 p.m.

- (7) **Public Hearing for a Conditional Use Permit (P2018-1) for a new Service Station, Commercial Building, and a Car Wash Expansion on a Developed 1.59-acre site at 7757 Mission Gorge Road in the General Commercial (GC) Zone and Finding the Project Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15332. Applicant: Karaki-Western States for Christopher Garmo (Development Services – Kush) (Reso 120-2018) (Revised Resolution)**

The Public Hearing was opened at 7:36 p.m.

Director of Development Services Kush introduced the item and Associate Planner Coyne gave a brief presentation and responded to Council questions.

PUBLIC SPEAKERS:

- Jennifer Wieder
- Don Adams
- Sarah Kirk
- John Olsen
- Kelly Nytes
- Michelle Perchez
- Joann Frasco, in opposition, not wishing to speak
- Derek Garmo, applicant
- Joseph Karaki, applicant

ACTION: Vice Mayor McNelis moved approval of staff's recommendation.

Council Member Jones seconded the motion, which carried by the following vote: Ayes: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

The Public Hearing was closed at 8:22 p.m.

NEW BUSINESS:

- (8) **Resolution approving the First Amendment to the Contract with West Coast Arborists Incorporated for Urban Forestry Maintenance Services. (Community Services Department – Maertz) (Reso 121-2018)**

Director of Community Services Maertz gave a brief presentation.

ACTION: Council Member Hall moved approval of staff's recommendation.

Council Member Jones seconded the motion, which carried by the following vote: Ayes: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

NON-AGENDA PUBLIC COMMENT:

- (A) Melissa Secody provided information regarding the Santee East County Optimist Club.

CITY COUNCIL REPORTS:

Mayor Minto stated that for the October 24th City Council Meeting he is authorizing Council and staff to wear Halloween costumes.

CITY MANAGER REPORTS:

City Manager Best discussed the new window display in the Council Chambers, announced the ground breaking for the new San Diego County Assessor/Recorder/County Clerk building on October 24th and congratulated Best Best and Krieger for their 25th year in business.

CITY ATTORNEY REPORTS: None

Council Members recessed at 8:28 p.m. and convened in Closed Session at 8:36 p.m.

CLOSED SESSION:

(9) CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Gov. Code section 54956.8)

Property: Parcel 3 of Parcel Map 20177 located north of Town Center Parkway between Cuyamaca Street and Riverview Parkway ("Theater Parcel"). City Negotiator: City Manager.

Negotiating Party: Studio Movie Grill.

Under negotiation: Price and terms of payment.

(10) PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Gov. Code section 54957(b))

Title: City Clerk

Council Members reconvened in Open Session at 9:37 p.m. Present: Mayor Minto, Vice Mayor McNelis and Council Members Hall, Houlahan and Jones – 5.

Mayor Minto reported for Item 9 direction was given on a real property deal and for Item 10 a performance evaluation was performed.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 9:38 p.m. in Memory of Paul Jacob.

Date Approved:

Annette Ortiz, City Clerk

City of Santee
COUNCIL AGENDA STATEMENT

3

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE PAYMENT OF DEMANDS

DIRECTOR/DEPARTMENT Tim K. McDermott, Finance *TM*

SUMMARY

A listing of checks that have been disbursed since the last Council meeting is submitted herewith for approval by the City Council.

FINANCIAL STATEMENT *TM*

Adequate budgeted funds are available for the payment of demands per the attached listing.

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION *MOB*

Approval of the payment of demands as presented.

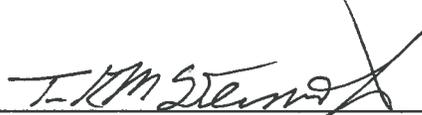
ATTACHMENTS (Listed Below)

- 1) Payment of Demands-Summary of Checks Issued
- 2) Disbursement Journal

Payment of Demands
Summary of Payments Issued

<u>Date</u>	<u>Description</u>	<u>Amount</u>
10/02/2018	Accounts Payable	\$ 104,699.13
10/04/2018	Accounts Payable	84,497.23
10/09/2018	Payroll	347,796.26
10/09/2018	Accounts Payable	22,295.22
10/10/2018	Accounts Payable	628,954.82
10/11/2018	Accounts Payable	<u>246,478.10</u>
	TOTAL	<u><u>\$1,434,720.76</u></u>

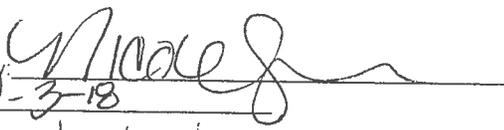
I hereby certify to the best of my knowledge and belief that the foregoing demands listing is correct, just, conforms to the approved budget, and funds are available to pay said demands.

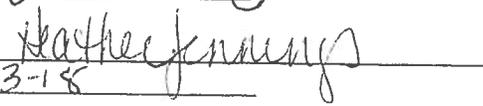


Tim K. McDermott, Director of Finance

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
9184	10/2/2018	10353 PERS	09 18 4		RETIREMENT PAYMENT	104,699.13
						Total : 104,699.13
1 Vouchers for bank code : ubgen						Bank total : 104,699.13
1 Vouchers in this report						Total vouchers : 104,699.13

Prepared by: 
Date: 10-3-18

Approved by: 
Date: 10-3-18

Voucher List
CITY OF SANTEE

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
119564	10/4/2018	10003 A & B SAW & LAWNMOWER SHOP	27983	52258	SMALL TOOL PARTS/REPAIRS	166.15
Total :						166.15
119565	10/4/2018	10010 ALLIANT INSURANCE SERVICES INC	918778		BLUEGRASS FESTIVAL	2,578.00
Total :						2,578.00
119566	10/4/2018	13018 BALD EAGLE SECURITY	12544	52128	SANTEE SALUTES	1,065.00
			12545	52128	SANTEE SUMMER CONCERTS	80.00
			12686	52128	SANTEE SUMMER CONCERTS	80.00
Total :						1,225.00
119567	10/4/2018	10021 BOUND TREE MEDICAL LLC	82973945	52163	EMS SUPPLIES	81.40
			82975521	52163	EMS SUPPLIES	51.28
			82975522	52163	EMS SUPPLIES	57.12
			82978439	52163	EMS SUPPLIES	7.13
			82978440	52163	EMS SUPPLIES	28.56
			82978441	52163	EMS SUPPLIES	272.29
			82978442	52163	EMS SUPPLIES	794.19
			82978443	52163	EMS SUPPLIES	59.36
			82979997	52163	EMS SUPPLIES	59.50
Total :						1,410.83
119568	10/4/2018	10023 BUILDERS FENCE COMPANY INC	1710686	52213	FENCING MATERIALS	169.39
Total :						169.39
119569	10/4/2018	10299 CARQUEST AUTO PARTS	11102-468297	52280	VEHICLE REPAIR PARTS	214.34
Total :						214.34
119570	10/4/2018	10032 CINTAS CORPORATION #694	4009653560	52207	UNIFORM/PARTS CLEANER RNTL	57.18
			4009705000	52207	STATION SUPPLIES	50.95
Total :						108.13
119571	10/4/2018	10033 CITY ELECTRIC SUPPLY COMPANY	STE/050980	52215	ELECTRICAL SUPPLIES	446.22
Total :						446.22
119572	10/4/2018	10979 CITY OF LA MESA	20256		LIVESCAN FINGERPRINTING	20.00

Voucher List
CITY OF SANTEE

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
119572	10/4/2018	10979 10979 CITY OF LA MESA	(Continued)			
					Total :	20.00
119573	10/4/2018	12153 CORODATA RECORDS	4432044	52299	DOCUMENT RETRIEVAL & STORAGE	518.32
					Total :	518.32
119574	10/4/2018	11862 CORODATA SHREDDING INC	DN1201404	52241	SECURE DESTRUCTION SERVICES	37.87
					Total :	37.87
119575	10/4/2018	10333 COX COMMUNICATIONS	063453006 112256001		9534 VIA ZAPADOR 9130 CARLTON OAKS DR	198.43 87.45
					Total :	285.88
119576	10/4/2018	11295 DOKKEN ENGINEERING	33726 33742	50583 50583	MAST PARK IMPROVEMENTS WOODSIDE ROUNDABOUT	1,922.06 2,550.00
					Total :	4,472.06
119577	10/4/2018	12970 DUDEK	09062018		RETENTION RELEASE	8,669.76
					Total :	8,669.76
119578	10/4/2018	10251 FEDERAL EXPRESS	6-314-15123		SHIPPING CHARGES	64.12
					Total :	64.12
119579	10/4/2018	10202 FURTADO, DANIEL	77100		WORK BOOTS	173.36
					Total :	173.36
119580	10/4/2018	10065 GLOBAL POWER GROUP INC	57394	52147	ELECTRICAL REPAIRS	627.24
					Total :	627.24
119581	10/4/2018	13072 GOVERNMENT TRAINING AGENCY	14924		CCMA ANNUAL FEES	1,500.00
					Total :	1,500.00
119582	10/4/2018	13145 HALSEY, DANIEL TRAVIS	21545		PARKING CITE OVERPAYMENT	20.00
					Total :	20.00
119583	10/4/2018	11196 HD SUPPLY FACILITIES	9166151897	52138	STATION SUPPLIES	806.02
					Total :	806.02
119584	10/4/2018	10600 HINDERLITER, DE LLAMAS & ASSOC	0029675-IN (B)		AUDIT SALES TAX JULY-SEPT 2018	1,384.40

Voucher List
CITY OF SANTEE

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
119584	10/4/2018	10600	10600 HINDERLITER, DE LLAMAS & ASSOC (Continued)				
					Total :	1,384.40	
119585	10/4/2018	10246	HUDSON SAFETY T LITE RENTALS	00055438	52242	TRAFFIC SIGNS	129.90
						Total :	129.90
119586	10/4/2018	10199	KEYSER MARSTON ASSOCIATES INC	0032573	52112	FANITA RANCH ANALYSIS REVIEW	5,354.38
						Total :	5,354.38
119587	10/4/2018	10174	LN CURTIS AND SONS	INV215166	52267	FIREFIGHTING SUPPLIES	1,680.25
						Total :	1,680.25
119588	10/4/2018	13136	MANNA DEVELOPMENT GROUP	91518		SANTEE BLUEGRASS FESTIVAL	150.00
						Total :	150.00
119589	10/4/2018	13141	MANNING, THERESA	N2018-145		PERMIT FEE REFUND	37.00
						Total :	37.00
119590	10/4/2018	11986	MARION B BORG ENVIRONMENTAL	SANTEE01-79	51024	FANITA RCH CONSULTING SVCS	4,141.20
				SECT. 6 GRANT - 36	51024	PROF SVCS-SUBAREA PLAN COOP	1,320.90
						Total :	5,462.10
119591	10/4/2018	10079	MEDICO PROFESSIONAL	2249808	52188	MEDICAL LINEN SERVICE	20.02
				2249809	52188	MEDICAL LINEN SERVICE	8.16
						Total :	28.18
119592	10/4/2018	12451	MOBILE GRAPHICS & DESIGN	201891	52234	BANNER INSTALL & REMOVAL	225.00
						Total :	225.00
119593	10/4/2018	10306	MOTOROLA SOLUTIONS INC	16009116	52278	MOBILE RADIOS FOR NEW MEDIC	3,627.62
						Total :	3,627.62
119594	10/4/2018	13144	NELSON, COURTNEY	21847		PARKING CITE OVERPAYMENT	5.00
						Total :	5.00
119595	10/4/2018	10451	NEOPOST USA INC	56089307		POSTAGE METER MAINTENANCE	2,147.00
						Total :	2,147.00
119596	10/4/2018	10093	PLAYPOWER LT FARMINGTON INC	1400225210	52247	PLAYGROUND PARTS	1,152.94

Voucher List
CITY OF SANTEE

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
119596	10/4/2018	10093	10093 PLAYPOWER LT FARMINGTON INC (Continued)				
					Total :	1,152.94	
119597	10/4/2018	12828	RICK ENGINEERING COMPANY	18100(9)	51964	AS-NEEDED ENGINEERING SVCS	27,468.93
						Total :	27,468.93
119598	10/4/2018	13143	RILEY, TIMOTHY	21830		PARKING CITE OVERPAYMENT	50.00
						Total :	50.00
119599	10/4/2018	13089	SATOR SOCCER	436127A	52307	REPLACEMENT SOCCER GOALS	2,410.05
						Total :	2,410.05
119600	10/4/2018	11638	SAVMART PHARMACEUTICAL	611706	52196	EMS SUPPLIES	104.67
						Total :	104.67
119601	10/4/2018	13146	SCHMIDT, THOMAS OR	21831		PARKING CITE OVERPAYMENT	50.00
						Total :	50.00
119602	10/4/2018	10585	SHARP REES-STEALY MEDICAL	322212922 322559520		TB TEST	48.00
						DMV EXAM	19.00
						Total :	67.00
119603	10/4/2018	10217	STAPLES ADVANTAGE	3389511500 3389511501 3389685862 3389685865 3389685866	52273 52251 52273 52251 52251	OFFICE SUPPLIES OFFICE SUPPLIES OFFICE SUPPLIES OFFICE SUPPLIES OFFICE SUPPLIES	166.08 8.66 20.43 116.29 11.30
						Total :	322.76
119604	10/4/2018	10027	STATE OF CALIFORNIA	324391		FINGERPRINTING CHARGES	128.00
						Total :	128.00
119605	10/4/2018	10572	SUNBELT RENTALS INC	81368334	52335	BUCKET TRUCK RENTAL	5,261.52
						Total :	5,261.52
119606	10/4/2018	13064	TEMECULA CARRIAGE COMPANY LLC	195	52346	HOLIDAY LIGHTING CELEBRATION	1,150.00
						Total :	1,150.00
119607	10/4/2018	10158	THE SOCO GROUP INC	0576083-IN	52227	DELIVERED FUEL	32.54

Voucher List
CITY OF SANTEE

Bank code : ubgen

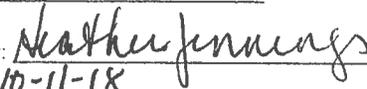
Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
119607	10/4/2018	10158 THE SOCO GROUP INC	(Continued) 0578015-IN CL39789	52227 52142	DELIVERED FUEL FLEET CARD FUELING	67.51 1,950.50 Total : 2,050.55
119608	10/4/2018	10537 WETMORES	63082703	52204	VEHICLE REPAIR PARTS	159.53 Total : 159.53
119609	10/4/2018	10331 WHITE CAP CONSTRUCTION SUPPLY	10009250530	52228	SAFETY APPAREL	38.31 Total : 38.31
119610	10/4/2018	10232 XEROX CORPORATION	094405678 094491701	52275 52145	COPY CHARGES AND LEASE COPY CHARGES	242.58 96.87 Total : 339.45
47 Vouchers for bank code : ubgen						Bank total : 84,497.23
47 Vouchers in this report						Total vouchers : 84,497.23

Prepared by: *Madej*
 Date: 10-4-18
 Approved by: *Heather Jennings*
 Date: 10-4-18

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
474	10/9/2018	12774 LIABILITY CLAIMS ACCOUNT	09302018		LIABILITY CLAIMS	22,295.22
Total :						22,295.22
1 Vouchers for bank code : ubgen						Bank total : 22,295.22
1 Vouchers in this report						Total vouchers : 22,295.22

Prepared by: 
Date: 10-11-18

Approved by: 
Date: 10-11-18

Voucher List
CITY OF SANTEE

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
119611	10/10/2018	12083 ANIMAL PEST MANAGEMENT	582445	52297	PEST CONTROL SERVICES	75.00
					Total :	75.00
119612	10/10/2018	13018 BALD EAGLE SECURITY	12767	52128	SANTEE BLUEGRASS FESTIVAL	1,530.00
					Total :	1,530.00
119613	10/10/2018	10018 BENCHMARK LANDSCAPE SVCS INC	143852 144559	52212 52212	AREA 2 LANDSCAPE SERVICES AREA 2 LANDSCAPE SERVICES	12,575.00 12,575.00
					Total :	25,150.00
119614	10/10/2018	10021 BOUND TREE MEDICAL LLC	82983735 82985126 82985127 82985128 82985129 82985130 82985131 82986479	52163 52163 52163 52163 52163 52163 52163 52163	EMS SUPPLIES EMS SUPPLIES EMS SUPPLIES EMS SUPPLIES EMS SUPPLIES EMS SUPPLIES EMS SUPPLIES EMS SUPPLIES	799.07 1,886.05 1,534.30 1,175.41 326.72 314.44 226.08 1,286.48
					Total :	7,548.55
119615	10/10/2018	10668 CALIFORNIA BUILDING STANDARDS	JULY - SEPT 2018		SB1473 JULY - SEPT 2018	495.00
					Total :	495.00
119616	10/10/2018	10299 CARQUEST AUTO PARTS	11102-468759	52280	VEHICLE REPAIR PARTS	28.47
					Total :	28.47
119617	10/10/2018	10032 CINTAS CORPORATION #694	4009902367	52207	UNIFORM/PARTS CLEANER RNTL	57.18
					Total :	57.18
119618	10/10/2018	10050 HCFA	HCA0000246		2ND QTR MEMBER ASSESSMENT	91,608.75
					Total :	91,608.75
119619	10/10/2018	11173 CITY OF SAN DIEGO	1000237893		AED SERVICE AGREEMENT	250.00
					Total :	250.00
119620	10/10/2018	10039 COUNTY MOTOR PARTS COMPANY INC	418758	52133	VEHICLE REPAIR PART	4.43

Voucher List
CITY OF SANTEE

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
119620	10/10/2018	10039	10039 COUNTY MOTOR PARTS COMPANY II (Continued)				
					Total :	4.43	
119621	10/10/2018	10449	DAY WIRELESS SYSTEMS	227093-00	52134	SANTEE BLUEGRASS FESTIVAL	190.72
						Total :	190.72
119622	10/10/2018	10433	DEPARTMENT OF CONSERVATION	JULY - SEPT 2018		SMIP JULY - SEPT 2018	1,443.43
						Total :	1,443.43
119623	10/10/2018	12483	DISCOUNT SIGNS AND BANNERS	5013	52172	IDENTIFICATION DECALS	58.19
						Total :	58.19
119624	10/10/2018	12760	FOCUS PSYCHOLOGICAL	SANTEE2018-8	52281	COUNSELING SERVICES	600.00
						Total :	600.00
119625	10/10/2018	13157	GENERATION 819	10032018		BUSINESS LICENSE OVERPMT	50.00
						Total :	50.00
119626	10/10/2018	10066	GLOBALSTAR USA LLC	1000000009705311		SATELLITE PHONE SERVICE	86.56
						Total :	86.56
119627	10/10/2018	11196	HD SUPPLY FACILITIES	9166204007	52138	STATION SUPPLIES	103.41
						Total :	103.41
119628	10/10/2018	11724	ICF JONES & STOKES INC	0132802	50991	MSCP SUBAREA PLAN & EIR	18,864.38
						Total :	18,864.38
119629	10/10/2018	10203	LAKESIDE EQUIPMENT SALES &	200549	52329	SANTEE BLUEGRASS FESTIVAL	8,918.37
						Total :	8,918.37
119630	10/10/2018	10204	LIFE ASSIST INC	877099	52186	EMS SUPPLIES	211.58
						Total :	211.58
119631	10/10/2018	11400	MALLORY SAFETY AND SUPPLY	4515944	52097	SCBA EQUIPMENT	41,124.23
				4515993	52096	SCBA EQUIPMENT	191,415.68
						Total :	232,539.91
119632	10/10/2018	10079	MEDICO PROFESSIONAL	2254180	52188	MEDICAL LINEN SERVICE	20.02
				2254181	52188	MEDICAL LINEN SERVICE	8.16

Voucher List
CITY OF SANTEE

Bank code : ubgen

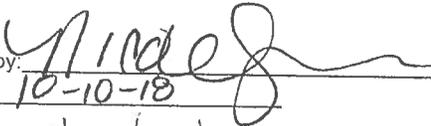
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119632	10/10/2018	10079	10079 MEDICO PROFESSIONAL				
			(Continued)				
					Total :	28.18	
119633	10/10/2018	10458	MIRACLE RECREATION EQUIPMENT	803716	52268	REPLACEMENT SLIDES TCCP	2,239.49
						Total :	2,239.49
119634	10/10/2018	11029	MISSION JANITORIAL SUPPLIES	616641-00	52243	JANITORIAL SUPPLIES	313.29
						Total :	313.29
119635	10/10/2018	10507	MITEL LEASING	1171632		MONTHLY RENTAL 122670	1,878.80
				901567232		MONTHLY RENTAL 124690	312.66
				901567360		MONTHLY RENTAL 130737	276.33
				901567379		MONTHLY RENTAL 131413	266.16
						Total :	2,733.95
119636	10/10/2018	12451	MOBILE GRAPHICS & DESIGN	201892	52234	BANNER INSTALL & REMOVAL	225.00
						Total :	225.00
119637	10/10/2018	10083	MUNICIPAL EMERGENCY SERVICES	IN1264198	52189	FIREFIGHTING EQUIPMENT	128.53
						Total :	128.53
119638	10/10/2018	10336	PADRE DAM MUNICIPAL WATER DIST	1693		MAST PARK - WATER UTILITY SERV	94,270.84
						Total :	94,270.84
119639	10/10/2018	11888	PENSKE FORD	76284	52149	VEHICLE REPAIR	419.24
				76350	52149	VEHICLE SERVICE	74.36
						Total :	493.60
119640	10/10/2018	11891	PRINTER REPAIR DEPOT	43615	52374	HP TONER CARTRIDGE	204.71
						Total :	204.71
119641	10/10/2018	12062	PURETEC INDUSTRIAL WATER	1662780	52270	DEIONIZED WATER SERVICE.	94.50
						Total :	94.50
119642	10/10/2018	11248	RAMONA PAVING & CONSTRUCTION	1	52284	CITYWIDE PAVEMENT REPAIR	113,703.26
				1R		RETENTION	-5,685.16
						Total :	108,018.10
119643	10/10/2018	12828	RICK ENGINEERING COMPANY	18100(10)	51964	AS-NEEDED ENGINEERING SVCS	18,991.00

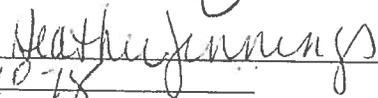
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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
119643	10/10/2018	12828	12828 RICK ENGINEERING COMPANY				
			(Continued)				
					Total :	18,991.00	
119644	10/10/2018	13032	SCARBOROUGH STRATEGIC	09/17/18	52224	MSCP SUBAREA PLAN CONSULT	647.50
							Total :
							647.50
119645	10/10/2018	12223	SITEONE LANDSCAPE SUPPLY LLC	86856610-001	52333	IRRIGATION SUPPLIES	2,182.41
							Total :
							2,182.41
119646	10/10/2018	10314	SOUTH COAST EMERGENCY VEHICLE	491068	52150	VEHICLE REPAIR PART	123.33
							Total :
							123.33
119647	10/10/2018	11056	STANDARD ELECTRONICS	S41762	52294	SECURITY SYS MONITORING	383.75
							Total :
							383.75
119648	10/10/2018	10217	STAPLES ADVANTAGE	3390398981	52251	OFFICE SUPPLIES	69.36
				3390484180	52273	OFFICE SUPPLIES	85.46
							Total :
							154.82
119649	10/10/2018	10119	STEVEN SMITH LANDSCAPE INC	39429	52198	A1 LANDSCAPE SERVICES	150.00
				39450	52198	AREA 1 LANDSCAPE SERVICES	590.66
				39488	52198	AREA 1 LANDSCAPE SERVICES	900.00
							Total :
							1,640.66
119650	10/10/2018	10316	TCB EMBROIDERY	14495	52286	UNIFORM APPAREL	235.97
							Total :
							235.97
119651	10/10/2018	11994	THADDEUS BURCHAM DESIGNS	1780	52347	AMBULANCE GRAPHICS	862.00
							Total :
							862.00
119652	10/10/2018	10158	THE SOCO GROUP INC	CL40899	52142	FLEET CARD FUELING	1,602.07
							Total :
							1,602.07
119653	10/10/2018	10692	UNITED PARCEL SERVICE	000006150X378		SHIPPING CHARGES	8.67
							Total :
							8.67
119654	10/10/2018	13091	UNITED REFRIGERATION INC	64236228-00	52359	ICE MACHINE REPAIR SUPPLIES	157.68
							Total :
							157.68

Bank code : ubgen

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
119655	10/10/2018	12480 UNITED SITE SERVICES	1147369347	52199	SERVICE & FENCING -CONCERTS	58.00
					Total :	58.00
119656	10/10/2018	10148 WESTAIR GASES & EQUIPMENT INC	10748195	52203	WELDING SUPPLIES	278.68
					Total :	278.68
119657	10/10/2018	10537 WETMORES	63083267	52204	VEHICLE REPAIR PARTS	33.66
					Total :	33.66
119658	10/10/2018	10318 ZOLL MEDICAL CORPORATION	90026903	52327	MEDICAL EQUIPMENT WARRANTY	940.50
			90026904	52327	MEDICAL EQUIPMENT WARRANTY	2,090.00
					Total :	3,030.50
48 Vouchers for bank code : ubgen						Bank total : 628,954.82
48 Vouchers in this report						Total vouchers : 628,954.82

Prepared by: 
Date: 10-10-18

Approved by: 
Date: 10-10-18

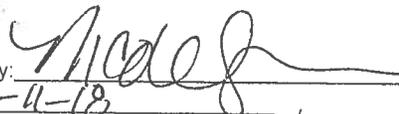
Voucher List
CITY OF SANTEE

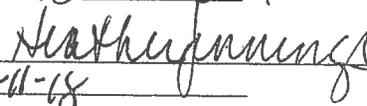
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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
119659	10/11/2018	12903 AMERICAN FIDELITY ASSURANCE CO	2019612		FLEXIBLE SPENDING ACCOUNT	3,064.58	
					Total :	3,064.58	
119660	10/11/2018	10208 ANTHEM BLUE CROSS	October 2018		EMPLOYEE ASSISTANCE PROGRAM	277.50	
					Total :	277.50	
119661	10/11/2018	10334 CHLIC	2364395		HEALTH/DENTAL INSURANCE	204,563.65	
					Total :	204,563.65	
119662	10/11/2018	10844 FRANCHISE TAX BOARD	PPE 10/03/18		WITHHOLDING ORDER	1,113.85	
					Total :	1,113.85	
119663	10/11/2018	10785 RELIANCE STANDARD LIFE	October 2018		VOLUNTARY LIFE INSURANCE	572.96	
					Total :	572.96	
119664	10/11/2018	10424 SANTEE FIREFIGHTERS	PPE 10/03/18		DUES/PEC/BENEVOLENT/BC EXP	2,678.61	
					Total :	2,678.61	
119665	10/11/2018	10776 STATE OF CALIFORNIA	PPE 10/03/18		WITHHOLDING ORDER	308.30	
					Total :	308.30	
119666	10/11/2018	10001 US BANK	PPE 10/03/18		PARS RETIREMENT	678.04	
					Total :	678.04	
119667	10/11/2018	10959 VANTAGE TRANSFER AGENT/457	PPE 10/03/18		ICMA - 457	29,341.61	
					Total :	29,341.61	
119668	10/11/2018	10782 VANTAGEPOINT TRNSFR AGT/801801	PPE 10/03/18		RETIREE HEALTH SAVINGS ACCOL	3,879.00	
					Total :	3,879.00	
10 Vouchers for bank code : ubgen						Bank total :	246,478.10
10 Vouchers in this report						Total vouchers :	246,478.10

Bank code : ubgen

<u>Voucher</u>	<u>Date</u>	<u>Vendor</u>	<u>Invoice</u>	<u>PO #</u>	<u>Description/Account</u>	<u>Amount</u>
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Prepared by: 
Date: 10-4-18

Approved by: 
Date: 10-11-18

City of Santee
COUNCIL AGENDA STATEMENT

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE APPROVAL OF THE EXPENDITURE OF \$86,733.69 FOR SEPTEMBER 2018 LEGAL SERVICES AND RELATED COSTS

DIRECTOR/DEPARTMENT Tim K. McDermott, Finance *tm*

SUMMARY

Legal services invoices proposed for payment for the month of September 2018 total \$86,733.69 as follows:

1) General Retainer Services	\$ 15,821.27
2) Labor & Employment	8,055.00
3) Litigation & Claims	5,052.08
4) Special Projects (General Fund)	44,100.25
5) Applicant Initiated Projects	<u>13,705.09</u>
Total	<u>\$ 86,733.69</u>

FINANCIAL STATEMENT *tm*

	<u>AMOUNT</u>	<u>BALANCE</u>
General Fund:		
Adopted Budget	\$ 492,000.00	
Revised Budget	\$ 492,000.00	
Prior Expenditures	(100,602.02)	
Current Request	(73,028.60)	\$ 318,369.38
Other Funds (excluding applicant initiated items):		
Adopted Budget	\$ 10,000.00	
Revised Budget	\$ 10,094.92	
Prior Expenditures	(117.42)	
Current Request	-	\$ 9,977.50

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION *MDB*

Approve the expenditure of \$86,733.69 for September 2018 legal services and related costs.

ATTACHMENT (Listed Below)

Legal Services Billing Summary

LEGAL SERVICES BILLING SUMMARY
FY 2018-19

<u>Category</u>	<u>Adopted Budget</u>	<u>Revised Budget</u>	<u>Spent Year to Date</u>	<u>Available Balance</u>	<u>Current Request Mo/Yr</u>	<u>Amount</u>
General Fund:						
General / Retainer	\$ 186,000.00	\$ 186,000.00	\$ 31,122.13	\$ 154,877.87	Sep-18	\$ 15,821.27
Labor & Employment	50,000.00	50,000.00	8,122.50	41,877.50	Sep-18	8,055.00
Litigation & Claims	60,000.00	60,000.00	12,865.72	47,134.28	Sep-18	5,052.08
Special Projects	196,000.00	196,000.00	48,491.67	147,508.33	Sep-18	44,100.25
Total	\$ 492,000.00	\$ 492,000.00	\$ 100,602.02	\$ 391,397.98		\$ 73,028.60
Other City Funds:						
Special Projects	\$ -	\$ 94.92	\$ 94.92	\$ -		\$ -
MHFP Commission	10,000.00	10,000.00	22.50	9,977.50		-
Total	\$ 10,000.00	\$ 10,094.92	\$ 117.42	\$ 9,977.50		\$ -
Third-Party Reimbursable:						
Sky Ranch	n/a	n/a	\$ 464.00	n/a	Sep-18	\$ 1,682.36
Weston	n/a	n/a	410.40	n/a	Sep-18	291.00
Weston CFDs	n/a	n/a	348.00	n/a	Sep-18	943.00
Home Fed Project	n/a	n/a	27,043.02	n/a	Sep-18	7,773.73
MSCP - Subarea Plan	n/a	n/a	490.00	n/a	Sep-18	2,870.00
Karl Strauss	n/a	n/a	1,270.67	n/a		-
Walker Trails	n/a	n/a	4,374.82	n/a		-
Prospect Estates II	n/a	n/a	3,032.63	n/a		-
Graves Verizon Wireless Fac.	n/a	n/a	2,870.00	n/a		-
Costco Fuel Facility Relocation	n/a	n/a	5,915.74	n/a	Sep-18	145.00
Carribeau Way TM/DR Permit	n/a	n/a	58.00	n/a		-
Service Station on Cuyamaca	n/a	n/a	422.74	n/a		-
Cornerstone Communities	n/a	n/a	8,751.32	n/a		-
Total			\$ 55,451.34			\$ 13,705.09

**LEGAL SERVICES BILLING SUMMARY
FY 2018-19**

Total Previously Spent to Date FY 2018-19	
General Fund	\$ 100,602.02
Other City Funds	117.42
Applicant Deposits	<u>55,451.34</u>
Total	<u><u>\$ 156,170.78</u></u>

Total Proposed for Payment	
General Fund	\$ 73,028.60
Other City Funds	-
Applicant Deposits	<u>13,705.09</u>
Total	<u><u>\$ 86,733.69</u></u>

City of Santee
COUNCIL AGENDA STATEMENT

5

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE **AUTHORIZATION TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM REGARDING TRANSIT STOP SHELTERS AND BENCHES**

DIRECTOR/DEPARTMENT Melanie Kush, Director of Development Services



SUMMARY

Staff has been working with the San Diego Metropolitan Transit System (MTS) on route changes throughout Santee and potential improvements to transit stops. Proposed improvements include replacing the current concrete and wood transit benches with new permanent metal benches that are supplied by MTS at 30 locations. New MTS-owned shelter areas are also proposed at five locations. The new MTS-owned shelters will have trash and recyclable receptacles and will be lit with solar power. Both the new benches and the shelters will support advertisements to help fund the maintenance of the benches and shelters. A Memorandum of Understanding (MOU) is required between the City and MTS for the installation and maintenance of the new benches and shelters. This MOU stipulates the responsibilities, requirements, and conditions for MTS and the City relating to the placement and maintenance of bus shelters and benches. Of note:

- The City has the final authority to approve or deny the installation of any transit shelter or bus bench.
- MTS is responsible for maintaining their bus shelters and benches including trash and graffiti removal.

FINANCIAL STATEMENT

There is no cost to the City to install or maintain the shelters and benches as the benches and shelters are entirely funded by MTS.

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION

Authorize the City Manager to execute a Memorandum of Understanding with the San Diego Metropolitan Transit System regarding transit stop shelters and benches.

ATTACHMENTS

Memorandum of Understanding with MTS
Sample photos of the new benches and shelters
Exhibit of shelter and bus bench locations

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE CITY OF SANTEE
AND THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
REGARDING BUS SHELTER AND BUS BENCH ADVERTISING

This MOU, dated _____, 2018, is entered into by and between the CITY OF SANTEE (CITY), a municipal corporation, and the SAN DIEGO METROPOLITAN TRANSIT SYSTEM (MTS), a public entity (also known as San Diego Metropolitan Transit Development Board or MTDB).

RECITALS

- A. MTS is the statutorily designated public transit provider for the portion of San Diego County that includes the CITY, as set forth in Public Utilities Code section 120000, *et seq.*;
- B. MTS and CITY are authorized by Public Utilities Code section 120268 to enter into cooperative agreements to establish uniform policies and procedures governing the use of bus passenger loading zones and establishing responsibility and standards for the maintenance of bus loading zones and any associated improvements;
- C. MTS and CITY had a Memorandum of Understanding (MTS Doc. No. 00-89-560) dated June 20, 1989 (1989 MOU), which expired in 2004, in which the CITY gave MTS the exclusive authority to install, or cause to be installed, transit shelters within the public right-of-way of the CITY;
- D. Notwithstanding the expiration of the 1989 MOU, in order to improve transit amenities for its passengers, including CITY residents and visitors, MTS has continued to install, maintain and replace bus shelters at locations where ridership is sufficiently high;
- E. MTS has recently purchased new transit shelters with solar lighting and receptacles for trash and recycling;
- F. MTS has recently purchased new bus benches that will improve the streetscape of the CITY;
- G. MTS has a third-party contract for installation, maintenance and advertising at transit shelters throughout MTS's jurisdiction, including within CITY;
- H. MTS has a third-party contract for the maintenance and advertising at transit benches throughout MTS's jurisdiction, including within CITY;
- I. The revenue generated from the MTS advertising contracts is intended to fund the purchase of the new transit shelters and benches, as well as to fund continued transit services within MTS's jurisdiction, including the CITY; and
- J. MTS and the CITY desire to enter into a new MOU to formally acknowledge their cooperative agreement regarding bus stop improvements within the CITY.

AGREEMENT

NOW, THEREFORE, the CITY shall grant to MTS for the period of 10 years, the exclusive authority to install, or cause to be installed, transit shelters and benches within the public-right-of-way of the CITY, provided the following conditions are complied with by MTS:

1. Location Criteria for Transit Shelters and Transit Bus Benches

- a. Transit shelters and bus benches *with advertising* shall be permitted only in commercial, industrial or multi-family housing areas in CITY unless otherwise authorized by the City Manager.
- b. Transit shelters and bus benches *without advertising* shall be permitted in all areas where a MTS bus stop is located, so long as the CITY has not exercised its authority under this MOU to reject a proposed transit shelter or bus bench location or to request the removal of an existing transit shelter or bus bench.
- c. As transit shelter and bus bench maintenance contracts depend on advertising revenue to be sustainable, the CITY shall allow a ratio of at least 4-to-1 advertising to non-advertising shelters and benches.
- d. The CITY, through the City Manager, shall have final authority to approve or deny the installation of any transit shelter or bus bench notwithstanding the fact that any proposed installation otherwise complies with the terms of this agreement; provided, however, that MTS shall not be required by the CITY to install a transit shelter or bus bench at any specific location.
- e. MTS shall provide a list of existing locations of all bus benches and transit shelters to the CITY and notify the CITY whenever changes are made in the CITY. All new installations shall conform to the terms of this MOU.
- f. The CITY shall have the authority to cause a transit shelter or bus bench to be removed or relocated from any location at no cost to the CITY, upon making written demand to MTS for such removal.
- g. There shall be no other criteria used for the placement of advertising shelters or benches.

2. Advertising Policy and Permissible Signage

- a. Transit shelter advertising is typically limited to two advertising panels that do not exceed four feet in width and six feet in height. Other permissible advertising includes "wrap" materials that are applied to the shelter structure.
- b. All advertising shall comply with MTS Policy No. 21 titled "MTS REVENUE-GENERATING DISPLAY ADVERTISING, CONCESSIONS, AND MERCHANDISE,"

attached as Exhibit A, which may be revised from time-to-time by the MTS Board of Directors.

- c. The CITY may request that MTS exercise its right to remove any advertisement, commercial, or noncommercial that does not conform to MTS Policy No. 21. Such demand shall be in writing and state reasonable grounds for the demand. MTS shall consider and act upon the demand in accordance with the policy and legal requirements.
3. Maintenance
 - a. MTS, through its Contractors, shall be responsible for providing ongoing maintenance for every transit shelter or bench which it caused to be installed and currently exists in the public right-of-way.
 - b. Transit shelters and bus benches shall be maintained in a state of good repair throughout the life of this agreement, and such services shall include, but not be limited to, refurbishing, reconditioning, and replacing worn or damaged transit shelters or bus benches if necessary.
 - c. Routine inspections and trash removal shall be performed
 - d. Transit shelters and bus benches shall be repaired or replaced within 48 hours of notification to MTS of any damage, vandalism, or graffiti found on any transit shelter or bus bench.
 4. Notices. MTS shall use its best efforts to notify the underlying property owners, as indicated on the most recent tax assessor's rolls, and building occupants that a new transit shelter or bus bench with or without advertising is proposed to be installed within 100 feet of their property in the public right-of-way prior to any transit shelter installation. Such notice will not be required if a shelter or bus bench currently exists and is simply being replaced by a new shelter or bus bench unless it is significantly modified.
 5. Permits. A no-cost encroachment permit with proof of insurance shall be required from the CITY for any work that requires lane closures. MTS's contractor will be required to comply with all rules, regulations, and laws of the CITY and any applicable state or federal laws. All traffic control shall be per the San Diego Regional Standard Drawings and the California Manual on Uniform Traffic Control Devices, Latest Edition.
 6. Electrification. MTS's contractor will secure all electrical permits necessary for the installation of new shelters. Solar-powered shelters shall not require any permit, MTS's contractor shall assume all costs associated with lighting and powering transit shelters.
 7. CITY and Private Furniture
 - a. Notwithstanding that the CITY has granted to MTS the exclusive authority to install bus benches and transit shelters within the public right-of-way in the CITY, MTS

agrees to allow the CITY to authorize others to place transit shelters, benches and appurtenances in the public right-of-way conditioned upon those shelters, benches, and appurtenances being placed in such locations as the CITY and MTS may agree to from time to time.

- i. Process. Private entities authorized to install transit shelters, benches, and appurtenances pursuant to this amendment will be required to provide the design, construction, and maintenance for the shelter and bench. Installation will be permitted through a CITY encroachment permit process. The location of the shelters or benches shall conform to the MTS Design Standard Guidelines. MTS will provide the plan review for comment, but will not be responsible or liable for design, construction, or maintenance of the transit shelters or benches that are not installed as part of its existing shelter or bench contract.
- ii. Indemnity. The CITY undertakes and agrees to defend, indemnify, and hold harmless MTS and any and all of MTS's officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, demands, and expenses including, but not limited to: attorney's fees and costs of litigation, damage or liability of any nature whatsoever for death or injury to any person including CITY employees and agents, or damage or destruction of any property of either party hereto or any third person in any section on the part of the CITY or its permitted private entities whether or not contributed to by an act or omission whether passive, active, or otherwise except for the sole negligence of MTS or any of MTS's officers, agents, and employees, in which case MTS shall hold the CITY harmless.
- iii. Advertising. Advertising on the CITY's shelters or benches shall be solely for the purpose of announcing events of noncommercial nature taking place at an adjacent public facility owned or operated by the private entity authorized to install the shelter or bench and shall not be used for posting schedules of public meetings at the facility. Advertising space shall not be leased to any third party. Acknowledgement of sponsorship shall be permitted within the space reserved for advertising posters. All advertising posted on the shelters and benches must conform to the advertising criteria set forth in Section 2 of this agreement. MTS may make demand upon the CITY for the removal of any advertisement that does not conform to the aforementioned advertising criteria. Such demand shall be in writing and shall state reasonable grounds for the demand. The CITY shall consider and act upon the demand in accordance with those advertising criteria. Advertising display panels shall be configured in such a way to be similar to MTS's shelters and benches. Advertising display panels shall be no greater in size than those used in MTS's shelters and benches. MTS shall be given first-right-of-refusal to utilize

one advertising panel in each shelter for the purpose of posting transit information.

- iv. Insurance. The CITY shall require any permitted private entity to maintain insurance to same extent required of MTS pursuant to this Memorandum of Understanding.
- v. Maintenance. For pre-existing and future benches, shelters, trash receptacles, and other bus stop infrastructure and amenities not installed by MTS: MTS does not assume any responsibility in this agreement for repairs, maintenance, cleaning, installation, replacement, removal, trash and recycling service, graffiti abatement, painting, or any other work not agreed to elsewhere. MTS will not be responsible for damage caused by furniture and amenities installed by the City or others (apart from MTS and/or its designees), nor for the restoration of the area to City standard from any condition caused by the installation, damage, repair, or removal of any such infrastructure.

MTS shall maintain responsibility for all work related to the bus stop pole (if any), bus stop blade, and any MTS-provided information or amenities attached to the bus stop pole, including installation, repair, replacement, removal, cleaning, and graffiti abatement. MTS shall be responsible for MTS-provided and installed benches and shelters as specified in this agreement.

- 8. Hold Harmless. MTS undertakes and agrees to defend, indemnify, and hold harmless the CITY and any and all of the CITY's officers, agents, employees, assigns, and successors in interest from and against all suits and causes of actions, claims, loss, demands, expenses, including, but not limited to, attorneys' fees and costs of litigation, damage or liability, or any nature whatsoever, for death or injury to any person, including MTS's employees and agents, or damage or destruction to any property of either party hereto or third person in any manner arising by reason of or incident to the performance of this agreement on the part of MTS, except for active negligence of the CITY or any of the City's officers, agents, contractors or employees, in which case the CITY shall hold MTS harmless and MTS shall have no obligation to defend and indemnify the CITY or its officers, agents, employees, assigns or successors.

9. Termination of this MOU.

- a. By CITY: The CITY may terminate this MOU if MTS or its contractor materially breaches the terms and conditions set forth herein, and the CITY shall owe no payment to MTS or its contractor. In the event the CITY terminates this MOU, the CITY may require MTS to remove every transit shelter and/or bus bench in the public rights-of-way. The City may terminate this MOU without cause, by serving upon MTS written notice of termination of this MOU three hundred sixty five (365) days in advance of said date of termination, and the CITY shall pay MTS the current value for every transit shelter or bus bench in the public right-of-way.

The method of calculating the current value of a transit shelter or bus bench will be as follows:

$$\text{CURRENT VALUE} = \frac{\left[\begin{array}{c} \text{Transit Shelter/Bus} \\ \text{Bench Unit Price} \end{array} \right]}{\text{Depreciation Period} \\ \text{(in months)}} \left[\begin{array}{c} \text{Depreciation Period - Months in Service} \\ \text{(in months)} \end{array} \right]$$

For purposes of calculating the current value the transit shelter or bus bench:

- The unit price shall be the unit price listed in the contractor’s financial plan submitted with the bid documents plus the installation costs of the bus bench or transit shelter;
 - The depreciation period for transit shelters and bus benches will be ninety-six (96) months; and
 - The number of months in service will be calculated from the date the transit shelter or bus bench is placed in service to the date of termination.
- b. By MTS: MTS may terminate this MOU without cause, by serving upon CITY written notice of termination of this MOU three hundred sixty five (365) days in advance of said date of termination. No later than the date of termination, MTS shall either (i) reach an agreement with the CITY for the CITY to take possession and ownership of the transit shelters and bus benches that remain installed within the CITY, or (ii) remove each and every transit shelter and bus bench and restore the sidewalk to a safe and usable condition.
10. Insurance. During the term of the agreement, MTS shall require its contractor to maintain the following levels and types of insurance:
- a. Comprehensive general liability insurance for bodily injury (including death) and property damage, which provides total limits of not less than two million dollars (\$2,000,000.00) combined single limit per occurrence. Coverages included shall be:
 - i. Premises and operations;
 - ii. Contractual liability expressly, including liability assumed under this agreement, with deletion of the exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass, and crossway;
 - iii. Personal injury liability;
 - iv. Independent contractors; and

change is received, the last address and addressee stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed effective.

- 11. Attorneys' Fees. If legal action be commenced to enforce or to declare the effect of any provisions of the agreement, the court as part of its judgment shall award reasonable attorneys' fees and costs to the prevailing party.
- 12. No Waiver. The waiver by one (1) party of the performance of any covenant, condition, or promise shall not invalidate this agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.
- 13. Severance. If any provision of this agreement is found to be unenforceable, the remainder of the provisions shall continue to be given full force and effect.
- 14. Amendments. No change in or addition to this agreement or any part hereof shall be valid unless in writing and properly authorized by the CITY and MTS.
- 15. Term. This MOU shall commence upon approval. MTS shall have the right to administer its transit shelter and bus bench programs through June 30, 2028. After June 30, 2028, this MOU shall continue on a year-over-year basis unless terminated by either party pursuant to Section 9.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CITY OF SANTEE

Paul C. Jablonski
Chief Executive Officer

By: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Karen Landers
General Counsel

Santee City Attorney's Office

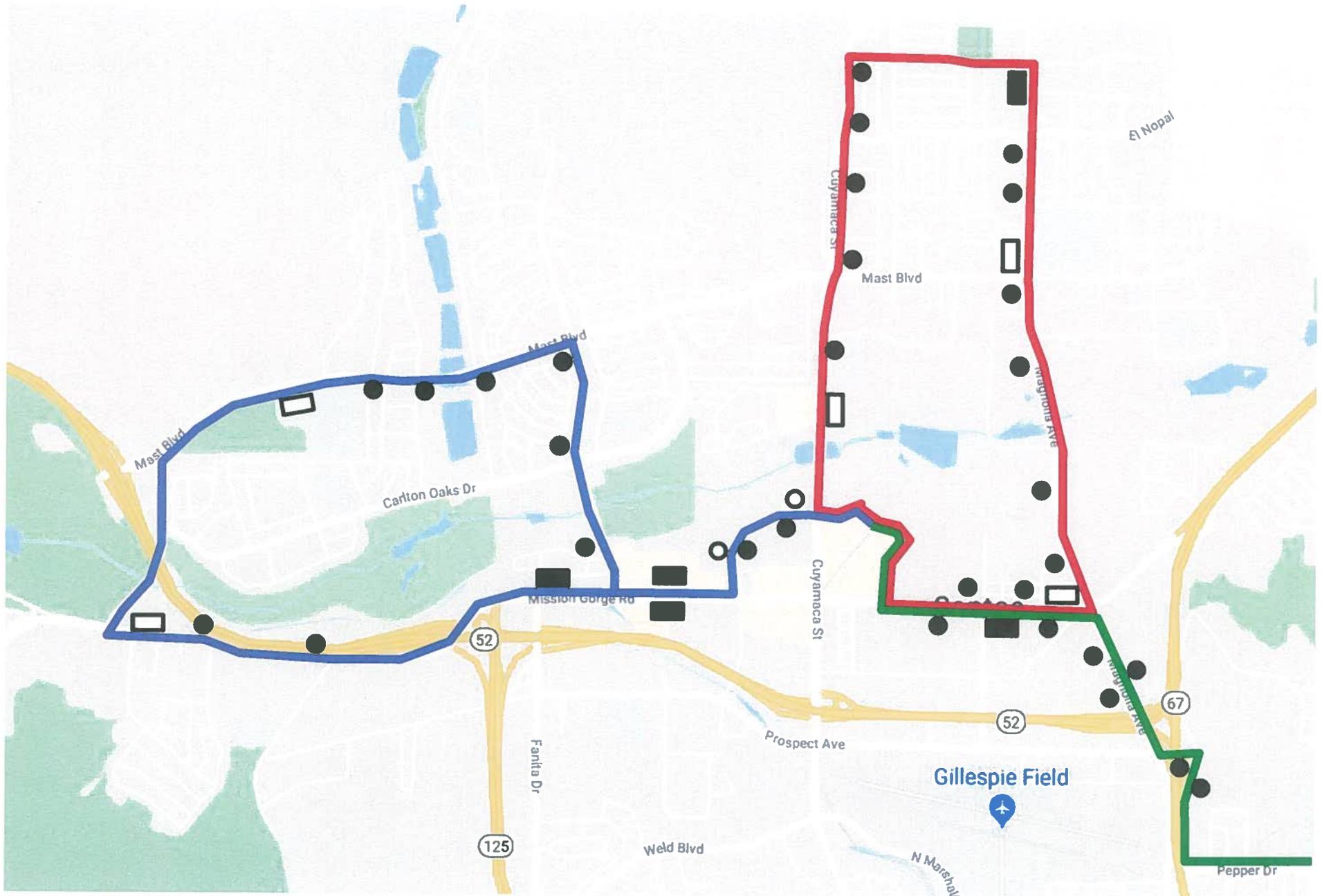
Examples of new MTS owned transit bench



Examples of new MTS owned shelter



Exhibit of Shelter and Bus Bench Locations



□ - Existing City-owned shelter

■ - Proposed MTS-owned shelter

○ - Existing permanent bench

● - Proposed MTS owned bench

City of Santee
COUNCIL AGENDA STATEMENT

6

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA, AUTHORIZING THE EXTENSION OF THE PROFESSIONAL SERVICES AGREEMENT WITH DOKKEN ENGINEERING FOR "AS NEEDED" ENGINEERING SERVICES ON CAPITAL IMPROVEMENT AND LAND DEVELOPMENT PROJECTS**

DIRECTOR/DEPARTMENT Melanie Kush, Director of Development Services *MK*

SUMMARY

On September 25, 2013, City Council authorized the City Manager to execute a professional services agreement with Dokken Engineering to perform on-call engineering services on Capital Improvement and Land Development projects for a three year term. A two-year extension was granted on September 14, 2016 with an expiration date of October 24, 2018. This item requests City Council adopt the attached Resolution authorizing the City Manager to execute an additional two-year extension to the Consultant Services Agreement with Dokken Engineering to provide "as needed" engineering services on Capital Improvement and Land Development projects. The current contract allows the Director of Development Services to negotiate a task order scope and fee for engineering services. These services are needed to assist City staff with the review, design development, award and construction of projects included in the adopted Capital Improvement Program (CIP) Five-Year Budget for Fiscal Years 2017-18 through 2021-22 and assist with land development projects as necessary. The annual limit established for this contract is based on the projects anticipated to begin in the next two years. The services provided would include the preparation of plans, review of submittals, specification development, cost estimating, bid document preparation, inspection, testing, surveying and construction support to offset the department staffing needs and balance the work load peaks.

Dokken Engineering has provided outstanding services to the City for projects including the design of the Prospect Avenue Corridor Enhancements, San Diego River Trail, Walker Preserve, Deputy Ken Collier Neighborhood Park, Mast Park Improvements, and the SR67/Woodside Avenue Intersection Improvements. Given the history of the projects completed and the development of a strong working relationship, staff was able to negotiate a reduction to Dokken's standard rates for most services, with some key rates being reduced by as much as 10%. These negotiated rates are also lower than comparable industry rates.

FINANCIAL STATEMENT *m* Funding for the "as needed" services will be paid for out of CIP project adopted budgets or developer deposits for larger development projects for which the services are required. No general funds will be used. The extended contract shall not exceed \$800,000 per fiscal year for as needed engineering services.

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION *MOB* Adopt a Resolution authorizing the City Manager to execute a two-year extension to the professional services agreement with Dokken Engineering for "as needed" engineering services on capital improvement and land development projects not to exceed \$800,000 per fiscal year and authorizing the Director of Development Services to negotiate and issue task orders to complete the desired work.

ATTACHMENTS Resolution

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA,
AUTHORIZING THE EXTENSION OF THE PROFESSIONAL SERVICES
AGREEMENT WITH DOKKEN ENGINEERING FOR “AS NEEDED” ENGINEERING
SERVICES ON CAPITAL IMPROVEMENT AND LAND DEVELOPMENT PROJECTS**

WHEREAS, on September 25, 2013, the City Council authorized the City Manager to execute a professional services agreement with Dokken Engineering for “as needed” engineering services on Capital Improvement Program and Land Development projects (“Agreement”); and

WHEREAS, on September 14, 2016, the City Council authorized the City Manager to execute a two-year extension to the contract; and

WHEREAS, services are needed to assist City staff with the review, design development, award, inspection and construction of Capital Improvement Program (CIP), and land development projects; and

WHEREAS, the Agreement will terminate on October 24, 2018; and

WHEREAS, Section 8 of the Agreement allows the term of the Agreement to be extended by mutual consent of the parties; and

WHEREAS, Dokken Engineering has provided outstanding services to the City for various CIP and land development projects; and

WHEREAS, a two-year extension to the Agreement will maintain current project schedules for ongoing CIP, and Land Development projects; and

WHEREAS, staff recommends City Council authorize the City Manager to execute a two-year extension to the Agreement; and

WHEREAS, funding for the services will continue to be paid as provided in the CIP project adopted budgets or developer deposits for larger development projects for which the services are required.

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

SECTION 1. The City Manager is authorized to execute a two-year extension to the professional services agreement with Dokken Engineering for “as needed” engineering services on Capital Improvement Program and land development projects with an expiration date of October 24, 2020.

SECTION 2. The Director of Development Services is authorized to negotiate and issue task orders to complete the desired work, and any task order issued prior to the expiration date may continue until completion.

RESOLUTION NO. _____

SECTION 3. The extended agreement shall not exceed \$800,000 per fiscal year for “as needed” services.

ADOPTED by the City Council of the City of Santee, California, at a Regular Meeting thereof held this 24th day of October, 2018, by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

APPROVED:

JOHN W. MINTO, MAYOR

ATTEST:

ANNETTE ORTIZ, MBA, CMC, CITY CLERK

City of Santee
COUNCIL AGENDA STATEMENT

7

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA, ACCEPTING THE TOWN CENTER COMMUNITY PARK HVAC UPGRADES (CIP 2018-46) DESIGN-BUILD PROJECT AS COMPLETE**

DIRECTOR/DEPARTMENT Melanie Kush, Development Services



SUMMARY

This item requests City Council accept the Town Center Community Park HVAC Upgrades Project (CIP 2018-46) as complete.

City Council awarded the construction contract for the Town Center Community Park HVAC Upgrades Project (CIP 2018-46) to Johnson Controls, Inc. on July 25, 2018 in the amount of \$27,593.00 with change order authorization up to \$3,483.10. A Notice to Proceed was issued on September 17, 2018 and the work was completed on October 1, 2018. No change orders were approved for the project.

Staff requests City Council accept the project as complete and direct the City Clerk to file a Notice of Completion.

FINANCIAL STATEMENT



Funding for this project was included in the adopted FY 2017-18 and FY 2018-19 Capital Improvement Program budget as part of the General Park Improvements project and was provided by Park In-Lieu Fees. The total project budget was \$40,000.00.

Design and Bidding	\$ 12,172.13
Construction Contract	27,593.00
Construction Change Orders	0.00
Construction Management and Inspection	<u>152.42</u>
Total Estimated Project Cost	<u>\$ 39,917.55</u>

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION



Adopt the attached Resolution accepting the Town Center Community Park HVAC Upgrades project (CIP 2018-46) as complete.

ATTACHMENTS

Resolution

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA,
ACCEPTING THE TOWN CENTER COMMUNITY PARK HVAC UPGRADES
(CIP 2018-46) DESIGN-BUILD PROJECT AS COMPLETE**

WHEREAS, the City Council awarded the design-build construction contract for the Town Center Community Park HVAC Upgrades (CIP 2018-46) project to Johnson Controls, Inc. on July 25, 2018 for \$27,593.00; and

WHEREAS, City Council authorized staff to approve construction change orders not to exceed \$3,483.10; and

WHEREAS, no change orders were approved for the project; and

WHEREAS, the project was completed for a total contract amount of \$27,593.00; and

WHEREAS, Johnson Controls, Inc. has completed the project in accordance with the contract plans and specifications.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Santee, California, that the work for the construction of the Town Center Community Park HVAC Upgrades (CIP 2018-46) project is accepted as complete on this date and the City Clerk is directed to record a "Notice of Completion".

ADOPTED by the City Council of the City of Santee, California, at a Regular meeting thereof held this 24th day of October, 2018, by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

APPROVED:

JOHN W. MINTO, MAYOR

ATTEST:

ANNETTE ORTIZ, MBA, CMC, CITY CLERK

City of Santee
COUNCIL AGENDA STATEMENT

8

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE **RESOLUTION AUTHORIZING THE PURCHASE AND INSTALLATION OF UPDATED ALERTING SYSTEMS AND RELATED EQUIPMENT FOR FIRE STATION 4 AND FIRE STATION 5 FROM WESTNET, INC., PER UTILIZATION OF HOUSTON-GALVESTON AREA COUNCIL COOPERATIVE PURCHASING PROGRAM CONTRACT NO. ECO7-18 AND DECLARING CERTAIN ITEMS AS SURPLUS**

DIRECTOR/DEPARTMENT Richard Smith, Fire Chief 

SUMMARY This item seeks authorization for the purchase and installation of updated fire station alerting systems for Fire Station 4 and Fire Station 5 from Westnet, Inc., per utilization of the Houston-Galveston Area Council (“H-GAC”) cooperative purchasing program Contract No. ECO7-18. Current fire service standards include a combination of sound and light to alert firefighters of an emergency response. Our existing systems do not include light indicators and the tone decibel levels are above acceptable standards. The requested replacement systems provide updated alerting methods and improved coverage of alerts on Fire Department property. Staff has identified H-GAC Contract No. ECO7-18 as meeting all requirements for the purchase and installation of the recommended fire station alerting systems and related equipment.

Santee Municipal Code (SMC) Section 3.24.180 allows the City to join with other public jurisdictions in cooperative purchasing plans or programs and to buy directly from a vendor at a price established by a competitive or competitively negotiated bid by another public jurisdiction in substantial compliance with SMC Section 3.24.110. In early 2018, H-GAC conducted a formal competitive bid process, substantially complying with SMC Section 3.24.110, for the procurement of 9-1-1 Equipment & Emergency Notification Software and Services. As a result, H-GAC Contract No. ECO7-18 was awarded to Westnet, Inc., with a contract term of July 1, 2018, through June 30, 2020.

Staff recommends utilizing H-GAC Contract No. ECO7-18 for the purchase and installation of updated alerting systems for Fire Station 4 and Fire Station 5 from Westnet, Inc., in the total amount of \$88,998.59. Westnet, Inc., will be providing a credit for the trade-in of existing hardware and equipment totaling \$10,448.21, resulting in a net cost of \$78,550.38.

FINANCIAL STATEMENT 

The FY 2018-19 adopted Fire Department budget includes \$75,000.00 for the alerting system equipment and installation. Additional funding is available in the Fire Department budget for the additional \$3,550.38 required for the net cost of \$78,550.38.

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION 

Adopt resolution authorizing the purchase and installation of modern fire station alerting systems and related equipment from Westnet, Inc., per Houston-Galveston Area Council Contract No. ECO7-18 for a total amount of \$88,998.59, declaring certain items as surplus with a trade-in credit to be provided in the amount of \$10,448.21, and authorizing the City Manager to execute all necessary documents.

ATTACHMENTS

Staff Report Resolution Quotations (2)

STAFF REPORT

RESOLUTION AUTHORIZING THE PURCHASE AND INSTALLATION OF UPDATED ALERTING SYSTEMS AND RELATED EQUIPMENT FOR FIRE STATION 4 AND FIRE STATION 5 FROM WESTNET, INC., PER UTILIZATION OF HOUSTON-GALVESTON AREA COUNCIL COOPERATIVE PURCHASING PROGRAM CONTRACT NO. ECO7-18 AND DECLARING CERTAIN ITEMS AS SURPLUS

CITY COUNCIL MEETING OCTOBER 24, 2018

This item seeks approval to purchase updated fire station alerting systems for Fire Station 4 and Fire Station 5 from Westnet, Inc., per utilization of the Houston-Galveston Area Council cooperative purchasing program Contract No. ECO7-18. The fire station alerting systems at both fire stations are outdated and no longer meet current industry practice. The United States Fire Administration study, "Fire & Emergency Service—Hearing Conservation Program Manual" (FA-118/1992) and NFPA 1500 "*Standard on Fire Department Occupational Safety, Health, and Wellness Program*" both address the effects of chronic noise exposure in the fire service and the unfavorable results. Current fire service standards include a combination of sound and light to alert firefighters of an emergency response. Our existing systems do not include light indicators and the tone decibel levels are above acceptable standards. The replacements mentioned above provide updated alerting methods and improved coverage of alerts on fire department property. Additionally, all new-construction fire stations include the alert system configuration proposed in this agenda item.

The Fire Department conducted an evaluation of two (2) brands of alerting systems. Westnet, Inc., is the only one which is compatible with the current computer systems at Heartland Communications Fire Authority (HCFA). Additionally, Westnet, Inc., is the brand currently used by other agencies within the Central Zone and is used by most fire department agencies throughout San Diego County. We were able to view the product as installed in other local fire stations and have received positive feedback regarding ongoing (vendor) service from other agencies.

Staff requests authorization to purchase the updated fire station alerting systems for a total amount of \$88,998.59. Westnet, Inc., will be providing a credit for the trade-in of existing hardware and equipment totaling \$10,448.21, resulting in a net cost of \$78,550.38. The purchase includes installation of the systems in both stations. Funding for this purchase is included in the FY 2018-19 Fire Department budget.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA, AUTHORIZING THE PURCHASE AND INSTALLATION OF UPDATED ALERTING SYSTEMS AND RELATED EQUIPMENT FOR FIRE STATION 4 AND FIRE STATION 5 FROM WESTNET, INC., PER UTILIZATION OF HOUSTON-GALVESTON AREA COUNCIL COOPERATIVE PURCHASING PROGRAM CONTRACT NO. ECO7-18 AND DECLARING CERTAIN ITEMS AS SURPLUS

WHEREAS, Santee Fire Department is in need of new fire station alerting systems to perform its mission of protecting life, property and the environment; and

WHEREAS, current fire station alerting systems are greater than 25 and 18 years old and are in need of replacement; and

WHEREAS, staff has identified all necessary equipment, including programmable dorm remotes, speaker and light satellites and related accessories; and

WHEREAS, staff has identified the Houston-Galveston Area Council cooperative purchasing program Contract No. ECO7-18 with Westnet, Inc., as meeting all requirements for purchase in accordance with Santee Municipal Code Section 3.24.180; and

WHEREAS, Westnet, Inc., is the only brand of alerting system that is compatible with the current computer systems at Heartland Communications Fire Authority (HCFA), is the brand currently used by other agencies within the Central Zone, and is used by most fire department agencies throughout San Diego County.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Santee, California, that the City Council hereby:

1. Finds the purchase and installation of updated fire station alerting systems are in the City's best interest; and
2. Finds purchasing from Westnet, Inc., per utilization of the Houston-Galveston Area Council cooperative purchasing program Contract No. ECO7-18 for select fire station alerting systems, is in the City's best interest and authorizes such purchasing in the total amount of \$88,998.59; and
3. Declares certain hardware and equipment which are part of the current alerting systems as surplus, and authorizes the trade-in of said hardware and equipment to Westnet, Inc., for a trade-in credit of \$10,448.21, resulting in a net cost for the updated alerting systems of \$78,550.38; and
4. Authorizes the City Manager to execute all necessary documents.

RESOLUTION NO. _____

ADOPTED by the City Council of the City of Santee, California, at a Regular Meeting thereof held this 24th day of October 2018, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

JOHN W. MINTO, MAYOR

ATTEST:

ANNETTE ORTIZ, CITY CLERK



WESTNET

15542 Chemical Lane
Huntington Beach, CA 92649
Phone: 714-548-3500 Fax: 714-901-5610



Quote: Santee Fire Station #4 First-In Alerting Additional Equipment Revised 9

From: Zulema Perez

To: Santee Fire Department

Santee Fire Department
10601 Magnolia Avenue
Santee, CA 92071
Contact:

Summary

Total Amount:	\$39,304.93	Quote ID:	Q-02449-Y4V3 Revision: 9
Shipping Method:	Ground	Date:	10/17/2018
Payment Terms:	Net 30	Effective To:	11/23/2018

Description: This is a quote for the First-In Alerting additional equipment including installation and one year of technical support and onsite maintenance.

Clarifying Comments: This quote is based upon installation occurring in 1 trip. If the station is not ready and additional trips are required, customer agrees to pay additional fees. Client is responsible for all network connectivity between dispatch and station, as well as the CAD interface if network activation is desired. Client is responsible to have the network equipment and power within 6 feet of the Master Control Unit location. Quote does not include conduit of more than 20 feet, if required. Customer to provide VPN access to Westnet for remote adjustments and support. The Customer will supply a lift if one is required.

Quote includes prevailing wages rate. Client agrees to pay additional wages if the rate is different. Client is responsible for the difference in sales tax if applicable. Client agrees to pay additional sales tax should the sales tax rate change.

This quote was revised 1/31/18 to update the tax rate and current product pricing if different.
This quote was revised 07/18/18 for updated equipment count.
Quote was revised 7/23/18 for updated equipment count.
Quote was revised 8/6/18 to remove 1 - Satelight 1 - Satelight Kit and to add 1 - Dorm Remote and 1 - Dorm Remote Kit.
Quote was revised 8/7/18 to remove 3 - Dorm Remote Flush Mount 3 - Dorm Remote Flush Mount Kit and to add 3 - Dorm Remote Surface Mount, 3 - Surface Dorm Remote Wire Cover Kits.
Quote was revised 8/13/18 to remove 1 - Satelight Controller and 1 - Outside Speaker Audio Module (including one speaker) and to add 1 - Satelight and 1 - Outside Speaker Audio Module (including two speaker).
Quote was revised 8/15/18 to remove 1 - Turnout Timer and 1 Satelight Controller and add 1 Satelight.
Quote was revised 8/17/18 to add 1 Dorm Remote (Surface Mount)
Quote was revised 10/10/18 to update the tax.

Quote is based on drawing AS1.1 Revision # Submitted: 8/6/18
Drawing will be revised once the quote has been approved.

Quote was revised 10/16/18 to add bond amount.

Payment terms are net 30 with payment milestones. Quote includes HGAC discount.

Shipping Information

Ship To:

Bill To:

Details

Product ID	Product	QTY	Price	Sub Total
FIN-Eth-T10	Ethernet Data Activated First-In Type 10 MCU	1	\$9,495.95	\$9,495.95
SDRM38V-FM	Dorm Remote -Flush Mount Kit also required	3	\$898.25	\$2,694.75
SDRM38V-SM	Dorm Remote (surface mount)	3	\$938.45	\$2,815.35
SDRMKIT-HOF	Dorm Remote Flush Mount Hoffman Kit	3	\$218.25	\$654.75
SPC28-HS-1K2PS	Power Module w/ Hub & Spoke Controller, UPS & Dual Power Supplies	1	\$3,194.38	\$3,194.38
SSAT	Satellite (driven off Satellite Controller)	8	\$295.00	\$2,360.00
SSATKIT-TBD	Satellite Mounting Kit - TBD	12	\$48.00	\$576.00
SSAT-M	Satellite Controller	4	\$599.98	\$2,399.92
SS-OSA	Outside Speaker Audio Module (includes one speaker)	1	\$599.98	\$599.98
SS-OSA-D	Outside Speaker Audio Module (includes two speakers)	2	\$698.98	\$1,397.96
	Surface Mount Dorm Remote Wire Cover - Kit	3	\$19.95	\$59.85

NOTES:

1. In the event that taxes, other than sales tax apply to the purchase of this equipment, said taxes will be paid by the customer.
2. Quote is based on a properly working and installed CAD, radio system(s), station radio(s) and does not include costs for repair or modifications of the CAD, radio system(s), or station radio(s).
3. Any equipment drawings included with this quote are for quoting purposes only and are not to be used as working drawings unless such drawings are labeled "Installation Drawings". See attached Limited Warranty.

Equipment Total	\$26,248.89
Quote Discount (%)	5.00%
Install Supplies	\$1,036.00
Total Tax (7.750 %)	\$1,932.57
Station Equipment Install	\$15,292.79
One Year Toll Free Technical Support	\$1,000.00
MCU Upgrade Credit	(\$2,000.00)
Telecon Fire Equipment Credit	(\$6,969.39)
Permitting and Bonding Amount	\$1,876.51
On Site Warranty	\$2,200.00
Total Amount	\$39,304.93

Manufacturer's warranties apply on all parts. First-In warranty is provided by Westnet and consists of one-year parts and labor. Warranty does not apply to damage resulting from outside agencies or extraneous circumstances. Installation labor for any other items is ninety days. This quote is based on the reasonable assumption that the fire station is prepared to accept the above listed parts and that any existing equipment involved with the fire station alarm be in good working order or that it will be prior to commencement of the First-In installation. Westnet has made reasonable attempts to verify that conditions are satisfactory such that installation may occur. However, should an occurrence arise where further parts, labor and/or engineering are required, the customer may be billed at the Purchase Order rate. Any additional parts, labor and/or engineering exceeding \$250 will have prior approval, unless otherwise specified by the customer prior to commencement.

If payment is not received by 30 (thirty) days from the date of invoice, a late charge of 1.5% per month of the unpaid balance will be charged to that particular invoice.



WESTNET

15542 Chemical Lane
Huntington Beach, CA 92649
Phone: 714-548-3500 Fax: 714-901-5610



Quote: Santee Fire Station #5 First-In Alerting Additional Equipment Revised 8

From: Zulema Perez

To: Santee Fire Department

Santee Fire Department
10601 Magnolia Avenue
Santee, CA 92071
Contact:

Summary

Total Amount:	\$39,245.45	Quote ID:	Q-04617-M4S7 Revision: 8
Shipping Method:	Ground	Date:	10/17/2018
Payment Terms:	Net 30	Effective To:	11/23/2018

Description: This is a quote for the First-In Alerting additional equipment including installation and one year of technical support and onsite maintenance.

Clarifying Comments: Client is responsible for all network connectivity between dispatch and station, as well as the CAD interface if network activation is desired. Client is responsible to have the network equipment and power within 6 feet of the Master Control Unit location. Quote does not include conduit of more than 20 feet, if required. Customer to provide VPN access to Westnet for remote adjustments and support. The Customer will supply a lift if one is required.

Quote includes prevailing wages rate. Client agrees to pay additional wages if the rate is different. Client is responsible for sales tax if applicable. Client agrees to pay additional sales tax should the sales tax rate change.

This quote was revised 1/31/18 to update the tax rate and current product pricing if different.

This quote was revised 07/18/18 for updated equipment count.

This quote was revised 7/23/18 for updated equipment count.

This quote was revised 8/7/18 to remove 1 Satellight Controller, add 1 Satellight and to add 8 Surface Dorm Remote Wire Cover Kits.

This quote was revised 8/13/18 to remove 1 Turnout Timer and to add 2 Satellights, 1 Satellight Controller, 3 Satellight Mounting Kits and 1 outside Speaker Audio module (including two speakers)

This quote was revised 8/15/18 to remove 3 Satellights and add 1 Satellight Controller.

This quote was revised 8/17/18 Add 1 Satellight and remove 2 Satellight Controllers.

Quote was revised 10/10/18 to update the tax.

Quote is based on drawing AS1.1 Revision # Submitted: 7/24/18
Drawing will be revised once the quote is approved.

Quote was revised 10/16/18 to add bond amount.

Payment terms are net 30 with payment milestones. Quote includes HGAC discount.

Shipping Information

Ship To:

Bill To:

Details

Product ID	Product	QTY	Price	Sub Total
FIN-Eth-T10	Ethernet Data Activated First-In Type 10 MCU	1	\$9,495.95	\$9,495.95
SDRM38V-SM	Dorm Remote (surface mount)	8	\$938.45	\$7,507.60
SPC28-HS-1K2PS	Power Module w/ Hub & Spoke Controller, UPS & Dual Power Supplies	1	\$3,194.38	\$3,194.38
SSAT	Satellite (driven off Satellite Controller)	2	\$295.00	\$590.00
SSATKIT-TBD	Satellite Mounting Kit - TBD	6	\$48.00	\$288.00
SSAT-M	Satellite Controller	4	\$599.98	\$2,399.92
SS-OSA-D	Outside Speaker Audio Module (includes two speakers)	2	\$698.98	\$1,397.96
	Surface Mount Dorm Remote Wire Cover - Kit	8	\$19.95	\$159.60

NOTES:

1. In the event that taxes, other than sales tax apply to the purchase of this equipment, said taxes will be paid by the customer.
2. Quote is based on a properly working and installed CAD, radio system(s), station radio(s) and does not include costs for repair or modifications of the CAD, radio system(s), or station radio(s).
3. Any equipment drawings included with this quote are for quoting purposes only and are not to be used as working drawings unless such drawings are labeled "Installation Drawings". See attached Limited Warranty.

Equipment Total	\$25,033.41
Quote Discount (%)	5.00%
Install Supplies	\$810.00
Total Tax (7.750 %)	\$1,843.08
Station Equipment Install	\$13,216.00
One Year Toll Free Technical Support	\$1,000.00
MCU Upgrade Credit	(\$2,000.00)
Telecon Fire Equipment Credit	(\$3,478.82)
Permitting and Bonding Amount	\$1,873.45
On Site Warranty	\$2,200.00
Total Amount	\$39,245.45

Manufacturer's warranties apply on all parts. First-In warranty is provided by Westnet and consists of one-year parts and labor. Warranty does not apply to damage resulting from outside agencies or extraneous circumstances. Installation labor for any other items is ninety days. This quote is based on the reasonable assumption that the fire station is prepared to accept the above listed parts and that any existing equipment involved with the fire station alarm be in good working order or that it will be prior to commencement of the First-In installation. Westnet has made reasonable attempts to verify that conditions are satisfactory such that installation may occur. However, should an occurrence arise where further parts, labor and/or engineering are required, the customer may be billed at the Purchase Order rate. Any additional parts, labor and/or engineering exceeding \$250 will have prior approval, unless otherwise specified by the customer prior to commencement.

If payment is not received by 30 (thirty) days from the date of invoice, a late charge of 1.5% per month of the unpaid balance will be charged to that particular invoice.

City of Santee
COUNCIL AGENDA STATEMENT

9

MEETING DATE October 24, 2018

AGENDA ITEM NO.

ITEM TITLE **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA, FINDING THAT THE PUBLIC INTEREST AND CONVENIENCE REQUIRE THE SALE OF CERTAIN REAL PROPERTY, DECLARING ITS INTENT TO SELL SUCH PROPERTY, AND SETTING A PUBLIC HEARING**

DIRECTOR/DEPARTMENT Marlene D. Best, City Manager

SUMMARY

The City currently owns a parcel of real property located north of Town Center Parkway between Cuyamaca Street and Riverview Parkway in Santee, California ("Property"). City staff recommends the sale of the Property, for the following reasons: (1) the Property is subject to a deed restriction limiting its use; (2) the City has no economically viable use for the Property at this time; (3) the sale of the Property will increase revenue for the City's General Fund and bring a needed use to the City; and (4) the sale will result in the development of an underdeveloped property eliminating a blighting influence and creating jobs within the City.

The City and TNTF, LLC ("TNTF") have negotiated the terms of a Disposition and Development Agreement ("Agreement"), pursuant to which the City would sell the Property to TNTF to be developed as a movie theater with associated uses, consistent with the deed restriction. California Government Code section 37421 provides that when the City Council finds that the public interest and convenience require the sale of sites dedicated to public use, it may adopt a resolution of its finding and intention to sell such property. The City must also schedule a public hearing at which the Council will hear any protests to the sale.

This item requests that the Council adopt the attached Resolution declaring the City's intent to sell the Property pursuant to the terms of the Agreement, fixing a time for the hearing of any protests to the sale, providing for publication of the notice of the hearing, and fixing the time for final action on the sale of the Property and approval of the Agreement.

FINANCIAL STATEMENT *Jm*

There is no fiscal impact from this action. The proposed sale of the subject property which would be considered at a public hearing on November 14, 2018 would be at a fair market price of \$1,000.

CITY ATTORNEY REVIEW N/A Completed

RECOMMENDATION *MSB*

Adopt the Resolution Finding that the Public Interest and Convenience Require the Sale of Certain Real Property, Declaring Its Intent to Sell Such Property, and Setting a Public Hearing.

ATTACHMENT

Resolution
Staff Report

RESOLUTION NO. -2018

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA,
FINDING THAT THE PUBLIC INTEREST AND CONVENIENCE REQUIRE THE SALE
OF CERTAIN REAL PROPERTY, DECLARING ITS INTENT TO SELL SUCH
PROPERTY, AND SETTING A PUBLIC HEARING**

WHEREAS, California Government Code Section 37421 provides that when the legislative body of a city finds that the public interest and convenience require the sale of public buildings and sites dedicated to public use, it may adopt a resolution of its finding and intention to sell such property; and

WHEREAS, the City of Santee ("City") currently owns in fee that certain real property known as Parcel 3 of Parcel Map 20177 located north of Town Center Parkway between Cuyamaca Street and Riverview Parkway in Santee, California [Assessor's Parcel No. 381-050-66; County Parcel 2014-0156-A], and legally described in Exhibit "A" attached to this resolution and incorporated by reference herein (the "Property"); and

WHEREAS, the City hereby finds that the Property is encumbered with a deed restriction limiting its use and that the sale of the Property is consistent with that deed restriction, will increase revenue for the City's General Fund, result in the development of an underdeveloped property and bring a needed use to the City; and

WHEREAS, the City and TNTF, LLC, a Texas limited liability company ("Potential Buyer") have negotiated the terms of a Disposition and Development Agreement in connection with the sale of the Property from City to Potential Buyer ("Agreement"), which is attached hereto as Exhibit "B" and incorporated herein;

WHEREAS, pursuant to Government Code section 65402, the proposed sale of the Property shall be presented to the City Council, and such sale shall be contingent on a finding by the City Council that the sale of the Property from City to Potential Buyer is in conformance with the City's general plan; and

WHEREAS, the City wishes to declare its intent to sell the Property pursuant to the terms of the Agreement, fix a time for the hearing of any protests to the sale, provide for publication of the notice of said hearing, and fix the time for final action on the sale of the Property and approval of the Agreement.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTEE
RESOLVES AS FOLLOWS:**

SECTION 1. The City Council of the City hereby finds and determines that public convenience and necessity require the sale of the Property. The factors demonstrating that the public convenience and necessity require the sale of the Property include, but are not limited to the following:

1. The Property is encumbered with a deed restriction limiting its use;
2. The City has no economically viable use at this time;

RESOLUTION NO. -2018

3. The sale of the Property will increase revenue for the City's General Fund and bring a needed use to the City; and
4. The sale will result in the development of an underdeveloped property eliminating a blighting influence and creating jobs within the City.

SECTION 2. The City Council of the City hereby declares its intent to sell the Property and fixes November 14, 2018 at 7:00 p.m. at Santee City Hall Council Chamber, 10601 Magnolia Avenue, Santee, California, as the date, time and location for hearing any protests to the proposed sale of the Property, approval of the Agreement, and as the final action date.

SECTION 3. The City Council of the City hereby directs City staff to publish this resolution at least once in a daily newspaper prior to November 14, 2018 and to post this Resolution for not less than ten (10) days in at least three (3) conspicuous places upon the Property prior to November 14, 2018.

ADOPTED by the City Council of the City of Santee, California, at a Regular Meeting thereof held this 24th day of October, 2018, by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

APPROVED:

JOHN W. MINTO, MAYOR

ATTEST:

ANNETTE ORTIZ, MBA, CMC, CITY CLERK

Attachments: Exhibit A – Legal Description of Property
Exhibit B – Disposition and Development Agreement

RESOLUTION NO. -2018

EXHIBIT "A"

Legal Description of Property

Real property in the City of Santee, County of San Diego, State of California, described as follows:

PARCEL 3 OF PARCEL MAP 20177 OF RIVERVIEW OFFICE PARK, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY DECEMBER 21, 2006.

APN: 381-050-66

**2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(CINEMA PARCEL)**

between

**THE CITY OF SANTEE
a California charter city**

and

**TNTF, LLC,
a Texas limited liability company**

DRAFT

This 2018 DISPOSITION AND DEVELOPMENT AGREEMENT (Cinema Parcel) (“**Agreement**”) is dated as of _____, 2018 (“**Reference Date**”), for reference purposes only, and is entered into by and between the City of Santee, a California charter city (“**City**”) and TNTF, LLC, a Texas limited liability company (“**Developer**”). The City and the Developer are sometimes referred to in this Agreement, each individually, as a “**Party**,” or collectively, as the “**Parties**.”

RECITALS

This Agreement is entered into with reference to the following recitals of fact (“**Recitals**”) that City and Developer believe to be true as of the Effective Date of this Agreement:

A. In April 2017, the City purchased from the County of San Diego (“**County**”) 6.74 acres of real property (“**Cinema Parcel**”) known as Parcel 3 of Parcel Map 20177 located north of Town Center Parkway between Cuyamaca Street and Riverview Parkway in Santee, California, being Assessor’s Parcel No. 381-050-66; County Parcel 2014-0156-A, as further described in the attached Exhibit A (Legal Description of Property), for the future development of a multiplex theater.

B. The City acquired the Cinema Parcel subject to certain deed restrictions and option provisions (“**Deed Restrictions**”) outlined in the *Grant Deed and Option Agreement* executed by the City and the County. Specifically, the *Grant Deed and Option Agreement* provides that, for a term of 20 years, the Cinema Parcel shall be used solely to develop and operate a movie theater and food services ancillary to the operation of a movie theater, or other County-approved civic, educational, or cultural uses such as a performing arts center, museum, library, or community center.

C. The City desires to sell to Developer and Developer desires to purchase from the City, on the terms and conditions set forth in this Agreement, the Cinema Parcel (as specifically defined in Recital A), for the development and operation by Developer of the Cinema Improvements (as specifically defined in 1.1.7 below), consistent with the Deed Restrictions.

E. This Agreement is made for the purpose of providing for the conveyance of the Cinema Parcel from the City to Developer, for the development, improvement, and operation of the Cinema Improvements on the Cinema Parcel by Developer, and for the cooperation of the City in such development, improvement and operation, all in accordance with the terms of this Agreement. The Cinema Parcel, together with the completed Cinema Improvements (as defined in 1.1.7 below) and all other improvements located on the Cinema Parcel, following completion of the Cinema Improvements, is sometimes referred to in this Agreement as the “**Project**” or “**Cinema Project**.”

The Developer’s proposed acquisition of the Cinema Parcel and subsequent construction and completion of the Cinema Project on the Cinema Parcel in accordance with the terms of this Agreement are in the best interest of the City and the health, safety and welfare of the City’s taxpayers and residents and is in accordance with the public purposes set forth in applicable law. Implementation of this Agreement will further the goals and objectives of the City’s general plan

by: (i) strengthening the City's land use and social structure, and (ii) alleviating economic and physical blight on the Cinema Parcel and in the surrounding community.

F. The City desires to sell the Cinema Parcel to the Developer for the development of the Cinema Project and the Developer desires to purchase the Cinema Parcel from the City for the same purpose.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by City and Developer, the Parties agree as follows:

TERMS AND CONDITIONS

ARTICLE I

DEFINITIONS; REPRESENTATIONS AND WARRANTIES;
EFFECTIVE DATE

1.1 Definitions. All initially capitalized term not otherwise defined in this Agreement shall have the following meanings:

1.1.1 "Actual knowledge" has the meaning ascribed to such term in Section 1.2.1 (with respect to City) and Section 1.2.2 (with respect to Developer), respectively.

1.1.2 "Additional Insureds" has the meaning ascribed to such term in Section 5.11.

1.1.3 "Affiliate" means and refers to any person or entity, directly or indirectly, Controlling or Controlled by or under common Control with the Developer, whether by direct or indirect ownership of equity interests, by contract or otherwise.

1.1.4 "Building Permits" means the building permits required under the City Requirements for the construction of the Project.

1.1.5 "CEQA" means the California Environmental Quality Act, Public Resources Code Sections 21000, et seq.

1.1.6 "Certificate of Completion" means the written certification of City that the construction of the Project has been completed in compliance with the terms and conditions of this Agreement, substantially in the form of Exhibit G attached to this Agreement.

1.1.7 "Cinema Improvements" means those improvements described in Exhibit B:

1.1.8 "City" means the City of Santee, California, a California charter city.

1.1.9 "City Manager" means the City Manager of the City or his or her designee or successor in function.

1.1.10 “City Requirements” has the meaning ascribed to the term in Section 2.6.1.

1.1.11 “City’s Title Notice Response” means the written response of the City to the Developer’s Title Notice, in which the City either (i) elects to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer’s Title Notice, or (ii) elects not to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Developer’s Title Notice.

1.1.12 “Close of Escrow” or “Closing” means the recording of the Grant Deed for the Cinema Parcel in the Official Records of the Recorder of the County, and completion of each of the actions set forth in ARTICLE III by the Escrow Holder for the City to sell the Cinema Parcel to the Developer and the Developer to purchase the Cinema Parcel from the City.

1.1.13 “Closing Date” has the meaning ascribed to the term in Section 3.5.7.

1.1.14 “Completion of Construction” means the issuance of a Certificate of Completion confirming that the final certificate of occupancy for the Project, based on the plans submitted by the Developer to the City, has been issued.

1.1.15 “Construction Costs” means the total cost incurred by Developer in acquiring the Property and constructing the Project in accordance with this Agreement.

1.1.16 “Construction Lender” means a Lender(s) that provide(s) a Construction Loan to the Developer to pay the Construction Costs of all or a portion of the Project.

1.1.17 “Construction Loan” means a Loan obtained by Developer from a Construction Lender to finance all or part of the Construction Costs in conformity with the Financing Plan.

1.1.18 “Construction Loan Deed of Trust(s)” means the Lien(s) required by a Construction Lender to secure the Developer’s performance under the associated Construction Loan.

1.1.19 “Control” means and refers to possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether by ownership of equity interests, by contract or otherwise.

1.1.20 “Controlling” and “Controlled” mean and refer to exercising or having Control.

1.1.21 “County” means the County of San Diego, California.

1.1.22 “Developer’s Title Notice” means a written notice from the Developer to the City indicating the Developer’s acceptance of the state of the title to the Cinema Parcel, as described in the Preliminary Report, or the Developer’s objection to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Cinema Parcel, describing in suitable detail the actions that the Developer reasonably believes are indicated to cure or correct each of the Developer’s objections.

1.1.23 “Developer’s Title Notice Waiver” means a written notice from the Developer to the City waiving the Developer’s previous objection in the Developer’s Title Notice to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy for the Cinema Parcel.

1.1.24 “Due Diligence Investigations” means the Developer’s due diligence investigations of the Cinema Parcel to determine the suitability of the Cinema Parcel for development and operation of the Project, including, without limitation, investigations of the environmental and geotechnical suitability of the Cinema Parcel, as deemed appropriate in the reasonable discretion of the Developer, all at the sole cost and expense of the Developer.

1.1.25 “Due Diligence Investigation Conclusion Notice” means a written notice of the Developer delivered to the City and the Escrow Holder, prior to the end of the Due Diligence Period, indicating the Developer’s acceptance of the condition of the Cinema Parcel or indicating the Developer’s rejection of the condition of the Cinema Parcel and refusal to accept a conveyance of fee title to the Cinema Parcel, describing in reasonable detail the actions that the Developer reasonably believes are indicated to allow the Developer to accept the condition of the Cinema Parcel.

1.1.26 “Due Diligence Period” means the date commencing on the Escrow Opening Date and ending at 5:00 p.m. on the ninetieth (90th) day following the Escrow Opening Date.

1.1.27 “Earnest Money Deposit” means Ten Percent (10%) of the Purchase Price payable in cash or other immediately available funds.

1.1.28 “Effective Date” has the meaning ascribed to the term in Section 1.3.

1.1.29 “Environmental Claims” has the meaning ascribed to the term in Section 5.9.

1.1.30 “Environmental Laws” means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability of standards of conduct concerning any hazardous substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 USC Section 6901 et seq.];

the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 USC Section 1251 et seq.]; the Toxic Substances Control Act (“TSCA”) [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act (“HMTA”) [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [California Health & Safety Code Section 25288 et seq.]; the California Hazardous Substances Account Act [California Health & Safety Code Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [California Health & Safety Code Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [California Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

1.1.31 “**Environmental Matters**” has the meaning ascribed to the term in Section 5.10.

1.1.32 “**Escrow**” has the meaning ascribed to the term in Section 2.1.

1.1.33 “**Escrow Holder**” means _____

1.1.34 “**Escrow Opening Date**” has the meaning ascribed to the term in Section 3.1.

1.1.35 “**Event of Default**” has the meaning ascribed to the term in Section 7.1.1.

1.1.36 “**Financing Commitment**” means (a) one or more commitment(s) from one or more Construction Lender(s) agreeing to provide sufficient funds which, when combined with the Developer’s equity contribution and the other funds available to Developer, is sufficient, as reasonably determined by the City, to fully fund the Project’s Construction Costs, or (b) a letter from one or more Construction Lender(s) indicating approval of a loan to the Developer for the development of the Property.

1.1.37 “**FIRPTA Affidavit**” means an affidavit complying with Section 1445 of the United States Internal Revenue Code.

1.1.38 “**Grant Deed**” means a deed in the form of Exhibit D to this Agreement, conveying all of the City’s interest in the Cinema Parcel to the Developer.

1.1.39 “**Governmental Agency**” means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal,

state, county, district, municipal, city, or otherwise), whether now or later in existence, having jurisdiction over the Property or the Project.

1.1.40 “Governmental Requirements” means all codes, statutes, ordinances, laws, permits, orders, and any rules and regulations promulgated thereunder of any Governmental Agency applicable to the Property or the Project.

1.1.41 “Hazardous Substances” means, without implied limitation, substances defined as “hazardous substances,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminate” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.; the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Section 2601, et seq.]; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the EPA, or any successor authority, as hazardous substances [40 CFR Part 302]; and those substances defined as “hazardous waste” in Section 25117 of the California Health and Safety Code or, as “hazardous substances” in Section 25316 of the California Health and Safety Code; other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products, and substances designated as a hazardous substance pursuant to 33 USC Section 1321 or listed pursuant to 33 USC Section 1317.

1.1.42 “Indemnified Parties” has the meaning ascribed to the term in Section 5.10.

1.1.43 “Lender” means any state or federally chartered bank, savings and loan, capital investment group, or other third party financial institution which makes Loans to developments and developers such as the Project and the Developer in the normal course of business and which has been approved by the City pursuant to Section 6.3.

1.1.44 “Lien” means any mortgage, deed of trust, or other security instrument encumbering Developer’s fee interest in the Property and/or Project, or any part thereof, or any pledge or other agreement given as security for the repayment of a Loan and by which a Lender would be able to acquire any interest in the Developer upon the Developer’s breach of any obligation under the Lender’s Loan Documents.

1.1.45 “Loan” means any loan or third party equity/capital contribution (e.g. mezzanine financing) for the Project other than that provided by the City.

1.1.46 “Loan Documents” means the various documents and instruments made by and between the Developer and a Lender that evidence a Loan and the security for repayment of such Loan.

1.1.47 “Maintenance Deficiency” has the meaning ascribed to the term in Section 5.4.1.

1.1.48 “**Normal Business Hours**” means the normal business hours of the City. As of the Effective Date, the City’s normal business hours are Monday through Thursday, between the hours of 8:00 a.m. and 5:00 p.m. and Friday from 8:00 a.m. and 1:00 p.m. Pacific Time.

1.1.49 “**Notice of Agreement**” means the notice in the form of Exhibit E to this Agreement to be recorded against the Property at the Close of Escrow to provide constructive record notice of the existence and application of this Agreement to the Property.

1.1.50 “**Party**” means, individually, the City or the Developer, as applicable.

1.1.51 “**Parties**” means, collectively, the City and the Developer.

1.1.52 “**PCO Statement**” means a preliminary change of ownership statement provided for in California Revenue and Taxation Code Section 480.3.

1.1.53 “**Permitted Exceptions**” means (i) any and all items shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that the Developer accepts, pursuant to Section 2.4; (ii) any exceptions from coverage under the proposed Title Policy resulting from the Developer’s activities on the Property (including the Liens securing any Construction Loan); (iii) non-delinquent property taxes and assessments; (iv) this Agreement; or (v) the Grant Deed.

1.1.54 “**Permitted Transfer**” means and refers to any of the following types of Transfers by the Developer, where the person or entity to which such Transfer is made expressly assumes the obligations of the Developer under this Agreement in a written instrument approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

1.1.54.1 Any Transfer of stock or equity of the Developer that does not change management or operational Control of the Property or the Project;

1.1.54.2 Any Transfer of any interest in the Developer or the Property or Project or any portion thereof irrespective of the percentage of ownership (i) to any other owner of any interest in the Developer; or (ii) to any Affiliate, or (iii) to any other person or entity in which any holder of an interest (including any beneficial interest), in the Developer is a manager, officer or partner or in which any of the aforementioned is a shareholder, member or partner (including a beneficial owner); and

1.1.54.3 Any Lien given to Lender in connection with a Loan approved by the City pursuant to Section 6.3.

1.1.55 “**Plans and Specifications**” has the meaning ascribed to the term in Section 2.6.1.

1.1.56 “**Preliminary Report**” means a preliminary report issued by the Title Company in contemplation of the issuance of the Title Policy, accompanied by legible copies of

all documents listed in Schedule B of the report as exceptions to coverage under the proposed Title Policy.

1.1.57 “**Project**” means the construction and development of the Property as a cinema complex, with the completed Cinema Improvements and all other improvements located on the Cinema Parcel, following completion of the Cinema Improvements, including all required or associated on-site and off-site improvements and related hardscape and all landscaping, all as generally consistent with the Scope of Development, and all to be developed in accordance with the Plans and Specifications to be approved by the City and any conditions imposed by the City in its approval of the Plans and Specifications.

1.1.58 “**Project Completion Date**” means that date set forth therefor by which a Certificate of Completion shall be issued for the Project as more particularly described in the Schedule of Performance. The Project Completion Date shall be no later than _____.

1.1.59 “**Property**” means that real property consisting of the Cinema Parcel, and all current and future improvements thereon (including, without implied limitation, the Project), legally described in Exhibit A.

1.1.60 “**Property Transfer**” means and refers to any “change in ownership,” as defined in Revenue and Taxation Code Sections 60, et seq., of all or any portion of the Property.

1.1.61 “**Purchase Price**” means the amount of One Thousand Dollars (\$1000.00), in cash or immediately available funds.

1.1.62 “**Record**”, “**recorded**”, “**recording**” or “**recordation**” each mean and refer to recordation of the referenced document in the official records of the Recorder of the County of San Diego, California.

1.1.63 “**Schedule of Performance**” means the schedule for the performance of certain actions by the Parties pursuant to this Agreement, attached to this Agreement as Exhibit C.

1.1.64 “**Scope of Development**” means the description of the Project attached to this Agreement as Exhibit B.

1.1.65 “**Title Company**” means _____.

1.1.66 “**Title Policy**” means a standard CLTA owners’ policy of title insurance issued by the Title Company, with coverage in the full amount of the Purchase Price and insuring fee title to the Cinema Parcel, subject only to the Permitted Exceptions. However, at Developer’s option, Developer may obtain an ALTA extended coverage policy. City shall pay for the standard CLTA policy. Developer shall pay for any excess above the premium for a standard CLTA policy in order to obtain an ALTA extended coverage policy.

1.1.67 “**Transfer**” means any of the following:

1.1.67.1 Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by the Developer of more than a 49% interest in the Developer's interest in this Agreement, the Property, or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in the Developer's interest in this Agreement, the Property or the Project; or

1.1.67.2 Any total or partial sale, assignment, conveyance, or transfer in any other mode or form, of or with respect to any interest in the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest in any interest in the Developer; or

1.1.67.3 Any merger, consolidation, sale, or lease of all or substantially all of the assets of the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of the Developer; or

1.1.67.4 Any Property Transfer; or

1.1.67.5 The recordation of any deed of trust, mortgage, Lien or similar encumbrance against all or any portion of the Property or the Project.

1.1.68 "Unavoidable Delay" means any delay that is caused by the other Party or that is beyond the control of the City or the Developer, including, without limitation, delay caused by strikes, acts of God, weather, inability to obtain labor or materials, inability to obtain governmental permits or approvals, governmental restrictions, civil commotion, fire or similar causes, but excluding circumstances subject to Section 8.7.2 except as otherwise set forth therein.

1.2 Representations and Warranties.

1.2.1 City Representations and Warranties. Where the representations and warranties of City contained in this Section 1.2.1 are stated to be to the actual knowledge of City, "actual knowledge" shall mean the actual knowledge of the City Manager as of the Effective Date. All representations and warranties contained in this Section 1.2.1 are true and correct as of the Effective Date. City's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. City hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by Developer has been made in material reliance by Developer on such covenants, representations and warranties:

1.2.1.1 City is a California charter city, duly formed and operating under the laws of the State of California. City has the legal power, right and authority to enter into this Agreement and to execute the instruments and documents referenced herein, and to consummate the transactions contemplated hereby.

1.2.1.2 The persons executing any instruments for or on behalf of City have been authorized to act on behalf of City and this Agreement is valid and enforceable against

City in accordance with its terms and each instrument to be executed by City pursuant hereto or in connection therewith will, when executed, shall be valid and enforceable against City in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of this Agreement by City and compliance with this Agreement by City.

1.2.1.3 City has taken all requisite action and obtained all requisite consents for agreements or matters to which City is a party in connection with entering into this Agreement and the instruments and documents referenced herein and in connection with the consummation of the transactions contemplated hereby.

1.2.1.4 Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which City is a party or by which City may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to City. Notwithstanding the foregoing, the Parties acknowledge that the City has not yet received the consent of the County as provided for in Section _____, below, and the County's failure to consent to this Agreement shall not be a breach of this representation or warranty by the City.

1.2.1.5 If the City becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the City under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the City's knowledge and/or belief as of a certain date, the City will give immediate written notice of such changed fact or circumstance to the Developer.

1.2.2 Developer Representations and Warranties. Where the representations and warranties of Developer contained in this Section 1.2.2 are stated to be to the actual knowledge of Developer, "actual knowledge" shall mean the actual knowledge of _____ as of the Effective Date. All representations and warranties contained in this Section 1.2.2 are true and correct as of the Effective Date. Developer's liability for misrepresentation or breach of warranty, representation or covenant, wherever contained in this Agreement, shall survive the execution and delivery of this Agreement and the Closing. Developer hereby makes the following representations, covenants and warranties and acknowledges that the execution of this Agreement by City has been made in material reliance by City on such covenants, representations and warranties:

1.2.2.1 Developer is a Texas limited liability company, lawfully entitled to do business in the State of California and the City. Developer has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein and to consummate the transactions contemplated hereby. The persons executing this Agreement and the instruments referenced herein on behalf of Developer hereby represent and warrant that such persons have the power, right and authority to bind Developer.

1.2.2.2 Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and

documents referenced herein and, to the actual knowledge of Developer, the consummation of the transactions contemplated hereby, and no consent of any other party is required for Developer's authorization to enter into Agreement.

1.2.2.3 Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which Developer is a party or by which Developer may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to Developer.

1.2.2.4 To the actual knowledge of Developer, this Agreement is, and all agreements, instruments and documents to be executed by Developer pursuant to this Agreement shall be, duly executed by and shall be valid and legally binding upon Developer and enforceable in accordance with their respective terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution and delivery of this Agreement by Developer and, to the actual knowledge of Developer, compliance with this Agreement by Developer.

1.2.2.5 If the Developer becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the Developer under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the Developer's knowledge and/or belief as of a certain date, the Developer will give immediate written notice of such changed fact or circumstance to the City.

1.3 Effective Date. This Agreement is dated _____, 2018 for reference purposes only. This Agreement shall not become effective until the date on which all of the following are true ("**Effective Date**"): (i) this Agreement is approved and executed by the appropriate representative(s) of Developer and delivered to City; (ii) Developer has delivered to City a certified copy of the official action taken by all of the members of the Developer approving this Agreement, in the form attached to this Agreement as Exhibit F; (iii) following all legally required notices and hearings, this Agreement is approved by the City Council of City; and (iv) this Agreement is executed by the authorized representative(s) of City and delivered to Developer. Upon the occurrence of the Effective Date, the parties shall acknowledge the Effective Date to each other in writing.

1.4 Exhibit List. The following is a list of the Exhibits attached to this Agreement. Each of the Exhibits is incorporated by this reference into the text of this Agreement.

<u>Exhibit A</u>	Legal Description of Cinema Parcel
<u>Exhibit B</u>	Scope of Development
<u>Exhibit C</u>	Schedule of Performance
<u>Exhibit D</u>	Form of Grant Deed
<u>Exhibit E</u>	Form of Notice of Agreement
<u>Exhibit F</u>	Form of Official Action of Developer
<u>Exhibit G</u>	Form of Certificate of Completion

ARTICLE II

PROPERTY DISPOSITION

2.1 Purchase and Sale. In exchange for the Purchase Price and the Developer's other covenants and undertakings set forth in this Agreement, the City shall sell the Cinema Parcel to the Developer and the Developer shall purchase the Cinema Parcel from the City pursuant to the terms and conditions of this Agreement. For the purposes of exchanging funds and documents to complete the sale from the City to the Developer and the purchase by the Developer from the City of the Cinema Parcel pursuant to the terms of this Agreement, the City and the Developer agree to open an escrow ("**Escrow**") with the Escrow Holder. ARTICLE III of this Agreement constitutes the joint escrow instructions of the Parties to the Escrow Holder for completion of the Escrow for the sale of the Cinema Parcel, as contemplated by this Agreement. The Developer and the City shall execute such further escrow instructions, consistent with the provisions of this Agreement, as may be reasonably requested by the Escrow Holder. In the event of any conflict between the provisions of this Agreement and any other escrow instructions requested by the Escrow Holder, the provisions of this Agreement shall control.

2.2 Payment of Purchase Price. The Developer shall deposit the Purchase Price into Escrow, subject to credit to the Developer for the Earnest Money Deposit.

2.3 Earnest Money Deposit. Concurrent with its opening of the Escrow, the Developer shall deposit into Escrow the Earnest Money Deposit. The Escrow Holder shall deposit the Earnest Money Deposit into an interest bearing account. All interest earned on such funds shall be added to the original principal amount of the Earnest Money Deposit and be considered part of the same. The Earnest Money Deposit shall be nonrefundable upon the conclusion of the Due Diligence Period except as otherwise provided in this Agreement. Upon the Close of Escrow, the Earnest Money Deposit shall be credited to the Developer toward the Purchase Price and paid to the City as part of the Purchase Price. Should Escrow fail to close due to Developer's default under this Agreement, the Earnest Money Deposit shall be forfeited by Developer as liquidated damages and shall be paid to the City upon the cancellation of Escrow in accordance with Section 3.9.

2.4 Title Approval. As soon as practicable following the opening of the Escrow, the City shall instruct the Title Company to deliver the Preliminary Report to the Developer. Within thirty (30) days following the Developer's receipt of a Preliminary Title Report, the Developer shall deliver the Developer's Title Notice to the City. If the Developer fails to deliver the Developer's Title Notice to the City within thirty (30) days of receipt of the Preliminary Title Report, the Developer will be deemed to disapprove the status of title to the Cinema Parcel and refuse to accept title to the Cinema Parcel, in which case the City shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the City's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder. Within twenty (20) days following receipt by the City of Developer's Title Notice, if any, the City shall serve City's Title Notice Response. If Developer's Title Notice does not object to any matter in the Preliminary Report, the City shall

not be required to serve City's Title Notice Response. If the City does not serve City's Title Notice Response, if necessary, within twenty (20) days following its receipt of Developer's Title Notice, the City shall be deemed to elect not to remove any matter objected to in Developer's Title Notice, if any, from the Preliminary Report. If the City elects in City's Title Notice Response to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, the City shall cause the removal of each such objectionable matter from the Preliminary Report within sixty (60) days following receipt by the Developer of City's Title Notice Response or such other period of time that may be agreed to in writing by both the City and the Developer. If the City is unwilling or unable to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, then, within ten (10) days following the Developer's receipt of City's Title Notice Response stating that the City is unwilling to remove or cause the removal of any matter objected to in Developer's Title Notice or upon the expiration of the above sixty (60) day time period during which the City elected to remove such objectionable matters from the Preliminary Report and was unable to do so, the Developer may either (1) refuse to accept the title to and conveyance of the Cinema Parcel, in which case the Parties shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement without liability to either Party or any other person, by delivery of a written notice of termination to the Escrow Holder, or (2) waive its objection to any items set forth in Developer's Title Notice by delivering Developer's Title Notice Waiver to the City. Failure by the Developer to deliver Developer's Title Notice Waiver, where City's Title Notice Response or the City's failure to serve City's Title Notice Response indicates the City's election not to cause the removal of any matter objected to in Developer's Title Notice from the Preliminary Report, for the City to deliver City's Title Notice Response under this Agreement, will be deemed the Developer's continued refusal to accept the title to and conveyance of the Cinema Parcel, in which case the City shall have the right, subject to Section 2.4.2, to cancel the Escrow and terminate this Agreement, in the City's sole discretion, without liability to the Developer or any other person, by delivery of a written notice of termination to the Developer and Escrow Holder.

2.4.1 If at any time prior to the Close of Escrow the Title Company issues an updated Preliminary Report containing any previously undisclosed matter affecting title to the Cinema Parcel, or the City becomes aware of any previously undisclosed matter affecting title to the Cinema Parcel, following the delivery of the Developer's Title Notice, the City shall provide written notice to the Developer of such matter, together with any updated Preliminary Report related to such matter. The City and the Developer shall have such rights and obligations with respect to such previously undisclosed title matters as they did with respect to any title matters set forth in the original Preliminary Report as set forth in Section 2.4.

2.4.2 Before exercising any right a Party may have under this Section 2.4 to cancel the Escrow and terminate this Agreement, such Party shall notify the non-terminating Parties in writing of its election to terminate and shall, upon a non-terminating Party's request, which must be delivered, if at all, within three (3) days following its receipt of the terminating Party's notice of election to terminate, meet and confer with the non-terminating Parties for a period of thirty (30) days. During such time, the Parties shall meet as often as reasonably requested by any Party to negotiate, in good faith, methods and means by which the objectionable title matter may be eliminated or mitigated. Nothing herein shall constitute an agreement, representation, or warranty by any Party that an acceptable resolution of the objectionable title matter will be achieved, nor shall any Party be obligated to expend any funds

or undertake any other action whatsoever with respect to such title matter unless such agreement is reduced to a writing which is approved by all Parties, in their sole and absolute discretion. If, at the end of such thirty (30) day period, the Parties have not been able to agree on a mutually acceptable method of resolving such title matter, or if any proposed agreement is disapproved by the City Council, the Escrow shall be cancelled, this Agreement shall be terminated without liability to any Party, and the Parties shall proceed pursuant to Section 3.9.

2.5 Developer Investigations.

2.5.1 The Developer shall have until the expiration of the Due Diligence Period to complete all of its Due Diligence Investigations with respect to the Cinema Parcel. The Developer shall complete all of its Due Diligence Investigation within the Due Diligence Period and shall conduct all of its Due Diligence Investigations at its sole cost and expense. The Developer shall rely solely and exclusively upon the results of its Due Diligence Investigations of the Cinema Parcel, including, without limitation, investigations regarding geotechnical soil conditions, compliance with applicable laws pertaining to the use of the Cinema Parcel by the Developer and any other matters relevant to the condition or suitability of the Cinema Parcel for the Project (including, without limitation, cost and ability to obtain entitlements, permits and approvals), as the Developer may deem necessary or appropriate. City makes no representation or warranty to the Developer relating to the condition of the Cinema Parcel or suitability of the Cinema Parcel for any intended use or development by the Developer. The Developer shall deliver a Due Diligence Investigation Conclusion Notice to the City and the Escrow Holder prior to the end of the Due Diligence Period. If the Developer does not unconditionally accept the condition of the Cinema Parcel by delivery of its Due Diligence Investigation Conclusion Notice indicating such acceptance prior to the end of the Due Diligence Period, the Developer shall be deemed to have rejected the condition of the Cinema Parcel and refused to accept conveyance of title to the Cinema Parcel. If the condition of the Cinema Parcel is rejected or deemed rejected by the Developer, then this Agreement shall terminate and the Escrow shall be cancelled pursuant to Section 3.9 below. The Developer's delivery of its Due Diligence Investigation Conclusion Notice indicating the Developer's unconditional acceptance of the condition of the Cinema Parcel shall evidence the acceptance of the condition of the Cinema Parcel by the Developer in its existing "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition, as of the last day of the Due Diligence Period. In its sole discretion, the Developer may accept the Cinema Parcel in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS" condition at any time before the end of the Due Diligence Period. The Developer shall conduct during the Due Diligence Period such environmental assessment(s) of the Cinema Parcel as the Developer deems appropriate. If such assessment(s) do reveal the presence of any Hazardous Substances on the Cinema Parcel in levels that exceed applicable Governmental Requirements, then the City and the Developer shall negotiate in good faith in an effort to reach agreement as to the allocation of responsibility and cost of remediation thereof.

2.5.2 Any Due Diligence Investigations of the Cinema Parcel by the Developer shall not unreasonably disrupt any then existing use or occupancy of the Cinema Parcel or the operations of the City. The Developer shall be liable for any damage or injury to any person or property arising from the acts of the Developer, its employees, agents or representatives during the course of any Due Diligence Investigations on the Cinema Parcel and the Developer shall indemnify, defend with counsel reasonably acceptable to the City and hold

harmless the City and its elected officials, officers, directors, attorneys, contractors, agents and employees from any and all actual or alleged liens, claims, demands or liability arising from Developer or its agents' presence on the property or any Due Diligence Investigations by the Developer on the Cinema Parcel. Prior to commencing any Due Diligence Investigations on the Cinema Parcel, the Developer shall deliver copies of policies or certificates of insurance to the City evidencing that, in accessing the Cinema Parcel or making any inspections or conducting any testing of, on or under the Cinema Parcel, Developer or Developer's agents entering on the Cinema Parcel carry not less than One Million Dollars (\$1,000,000) of comprehensive general liability insurance from an insurance company reasonably acceptable to City, with contractual liability endorsement that insures Developer's indemnity obligations. Insurance coverage in the minimum amount set forth in this Section 2.5.2 shall not be construed to relieve Developer of any liability or indemnity obligation, whether within, outside, or in excess of such coverage.

2.5.3 Before exercising any right a Party may have under this Section 2.5 to cancel the Escrow and terminate this Agreement, such Party shall notify the non-terminating Parties in writing of its election to terminate and shall, upon a non-terminating Party's request, which must be delivered, if at all, within three (3) days following its receipt of the terminating Party's notice of election to terminate, meet and confer with the non-terminating Parties for a period of thirty (30) days. During such time, the Parties shall meet as often as reasonably requested by any Party to negotiate in good faith, methods and means by which the objectionable Due Diligence matter may be eliminated or mitigated. Nothing herein shall constitute an agreement, representation, or warranty by any Party that an acceptable resolution of the objectionable Due Diligence matter will be achieved, nor shall any Party be obligated to expend any funds or undertake any other action whatsoever with respect to such Due Diligence matter unless such obligation is reduced to a writing which is approved by all Parties, in their sole and absolute discretion. If, at the end of such thirty (30) day period, the Parties have not been able to agree on a mutually acceptable method of resolving the objectionable Due Diligence matter, or if any proposed agreement is disapproved by the City Council, the Escrow shall be cancelled, this Agreement shall be terminated without liability to any Party, and the Parties shall proceed pursuant to Section 3.9.

2.6 Developer to Obtain all Project Entitlements.

2.6.1 Developer has developed and presented to City staff, for review the following (collectively, the "**Plans and Specifications**"):

2.6.1.1 A proposed complete conceptual development plan for the Project on the Property that describes and depicts: (1) the location and placement of proposed buildings and (2) the architecture and elevations of the proposed buildings;

2.6.1.2 A list of potential users or tenants and anticipated lease rates for the Property, as developed with the Cinema Project;

2.6.1.3 A proposed time schedule and cost estimates for the development of the Cinema Project on the Property;

2.6.1.4 A proposed financing plan identifying financing sources for all private and public improvements proposed for the Cinema Project; and

2.6.2 The City's zoning, building and land use regulations (whether contained in ordinances, the City's municipal code, conditions of approval, or policies and practices and procedures generally applicable to new development in the City) (collectively, the "**City Requirements**"), shall be applicable to the use and development of the Project on the Property by the Developer. The Developer acknowledges that all Plans and Specifications and any changes to the Plans and Specifications shall be subject to the City Requirements. No action by the City with reference to this Agreement or any related documents shall be deemed to constitute a waiver of any City Requirements regarding the Property, the Project, the Developer, any successor-in-interest of the Developer or any successor-in-interest to the Property unless expressly stated otherwise by the City in writing. The City Requirements may only be changed or waived by modification or variance approved by the City and consistent with this Agreement. Except as otherwise approved in writing by the City, no entitlement, permit or other approval from the City for development of the Project on the Property shall attach to any portion of the Property or otherwise become effective to allow the Developer to develop the Project on the Property until after the Developer owns fee title to that portion of the Property to which such entitlement, permit or other approval pertains. Under no circumstances shall the Developer commence on-site development activities on any portion of the Project on the Property prior to the Developer owning fee title to the Property. After the end of the Due Diligence Period, Developer may apply for a permit to place signage at the Property to advertise that the contemplated Project is "coming soon."

2.6.3 The approval of the Scope of Development shall not be binding on the City Council or the Planning Commission of the City regarding any approvals of the Project required by such bodies. The Developer obtains no right to develop the Project on the Property or any portion of the Property by virtue of this Agreement, except that following the Close of Escrow, the Developer shall possess the same rights as any other owner of property within the City that desires to develop its property in a manner consistent with the City's General Plan. If any revisions of the Scope of Development are required by a Governmental Agency (other than the City) having jurisdiction over the Property or the Project, the Developer shall promptly make any such revisions that are generally consistent with the Scope of Development.

2.6.4 Notwithstanding any provision to the contrary in this Agreement, following the Close of Escrow, the Developer agrees to accept and comply fully with any and all conditions of approval applicable to all approvals, permits and other governmental actions regarding the development or operation of the Project on the Property, so long as such conditions of approval are consistent with the Scope of Development and this Agreement in all material respects.

2.6.5 Developer to Pay All Costs and Expenses. The Parties agree that the City shall not provide any financial assistance to the Developer in connection with the Project. The Developer shall be solely responsible for paying for the costs of all design work, construction, labor, materials, fees and permit expenses associated with the Project. The Developer shall pay any and all fees pertaining to the review and approval of the Project by the City, any other Governmental Agency and utility service providers, including the costs of

preparation of all required construction, planning and other documents reasonably required by a Governmental Agency pertinent to the development or operation of the Project on the Property, including, but not limited to, specifications, drawings, plans, maps, permit applications, land use applications, zoning applications, environmental review and disclosure documents and design review documents. The Developer shall pay for any and all costs, including, but not limited to, the costs of design, construction, relocation and securing of permits for sewer or utility improvements and connections, that may be required in development of the Project, whether located on or off of the Property. The Developer shall obtain any and all necessary approvals, prior to the commencement of applicable portions of construction, and the Developer shall take reasonable precautions to ensure the safety and stability of surrounding Property during said construction. In accordance with this Section 2.6.5, Developer shall be responsible for the costs, or immediate (i.e., within 30 days) reimbursement to the City upon delivery by the City of an invoice for the costs of the following:

2.6.5.1 all fees or expenses of engineers, architects, financial consultants, legal, planning or other consultants or contractors, retained by the Developer for any study, analysis, evaluation, report, schedule, estimate, environmental review, planning and/or design activities, drawings, specifications or other activity or matter relating to the Property or the Project or the negotiation of this Agreement that may be undertaken by the Developer;

2.6.5.2 all fees, charges and costs, make all deposits and provide all bonds or other security associated with the submission to and processing by the City of any and all applications and other documents and information to be submitted to the City by the Developer pursuant to this Agreement or otherwise associated with the Project; and

2.6.6 The Developer shall obtain all entitlements, permits and other approvals for use and development of the Project on the Property from each Governmental Agency, as provided in the Schedule of Performance, subject to the other applicable provisions of this Agreement.

2.7 Beer, Alcohol, and Wine License . Developer shall obtain or be satisfied in Developer's reasonable discretion that Developer will be able to obtain a Beer, Alcohol, and Wine license (the "Beer, Alcohol, and Wine License") on terms reasonably satisfactory to Developer (provided that conditions similar to other Beer, Alcohol, and Wine Licenses of Developer shall be deemed to be reasonable) or if the actual Beer, Alcohol, and Wine License is not obtainable within such period that Developer shall have received an opinion from its legal counsel that a Beer, Alcohol, and Wine License is obtainable. Developer shall use good faith and diligent efforts to apply for the Beer, Alcohol, and Wine License and/or the legal opinion forthwith upon execution of the Agreement. If no Beer, Alcohol, and Wine License and/or legal opinion is obtained prior to the Close of Escrow, then Tenant may terminate this Agreement and cancel escrow pursuant to Section 3.9.

2.8 No Waiver of Discretion. Nothing in the approval of this Agreement by City shall be binding on the City Council, Design Review Committee, or any other commission, committee, board or body of the City regarding any approvals of the Cinema Improvements required by such bodies regarding Developer's use or development of the Cinema Parcel. Nothing in this Agreement, nor any action by Developer with reference to this Agreement or any

related documents shall be deemed to constitute issuance or waiver of any required City Approval regarding the Cinema Parcel, the Cinema Improvements or Developer, or waiver or exercise of any legislative discretion of the City regarding any application, Approval or other matter relating to Developer's intended use or development of the Cinema Parcel.

2.9 No Commitment to Development. The Parties agree that nothing in this Agreement is intended to commit the Developer to completing a particular project or to commit the City to granting any Approval. The City's approval of this Agreement does not constitute approval by the City of any development of the Cinema Parcel or of other activity on the Cinema Parcel that would have a direct or reasonably foreseeable indirect environmental impact pursuant to CEQA. (See 14 C.C.R. §§ 15060(c); 15378(b).) Moreover, Developer's future use or development of the Cinema Parcel is expressly conditioned on CEQA compliance. City shall conduct environmental review in accordance with CEQA prior to taking any discretionary action with regard to any proposed development of the Cinema Parcel. Nothing in this Agreement shall be construed to limit the City's discretion to consider and adopt any mitigation measure or project alternative, including the alternative of rejecting any proposed development of the Cinema Parcel, as provided in Public Resources Code section 21002. Following completion of the City's environmental review of any proposed development of the Cinema Parcel, the City shall file a notice of such approval as provided in Public Resources Code section 21152.

2.10 Future Proposals Subject to Review. Developer and City shall work together to conduct environmental review in accordance with CEQA before City takes action on any plan or entitlement. The Parties agree and acknowledge that any proposed development of the Property might change as a result of various environmental factors. The scope and location of proposed development and the design of the anticipated improvements might well change to account for needs of Developer, including changes required by the CEQA process.

ARTICLE III

ESCROW INSTRUCTIONS

3.1 Opening of Escrow. For purposes of this Agreement, the opening of Escrow shall be the first date on which a fully executed copy of this Agreement and Earnest Money Deposit are deposited with Escrow Holder ("**Escrow Opening Date**"). The Developer shall cause the Escrow to be opened within five (5) days following the Effective Date. Escrow Holder shall promptly confirm in writing to each of the Parties the date of the Escrow Opening Date. This ARTICLE III shall constitute the joint escrow instructions of the City and the Developer to Escrow Holder for conduct of the Escrow to complete the purchase and sale of the Cinema Parcel between them, as contemplated in this Agreement.

3.2 Conditions to Close of Escrow. The conditions set forth below shall be satisfied or waived in writing by the respective benefited Party on or before the Escrow Closing Date or the Party benefited by any unsatisfied condition shall not be required to proceed to close Escrow.

3.2.1 Developer's Conditions to Close of Escrow. The Developer's obligation to purchase the Cinema Parcel from the City on the Closing Date shall be subject to the satisfaction of the following conditions precedent, each of which can only be waived in writing by the Developer:

3.2.1.1 The Developer agrees to accept the title to and conveyance of the Cinema Parcel, pursuant to Section 2.4;

3.2.1.2 The Developer delivers its Due Diligence Investigation Conclusion Notice to both the City and Escrow Holder indicating the Developer's unconditional acceptance of the condition of the Cinema Parcel, prior to the expiration of the Due Diligence Period;

3.2.1.3 The Developer has obtained all entitlements required in connection with the development of the Project;

3.2.1.4 The Title Company is unconditionally committed to issue the Title Policy for the Cinema Parcel, subject to any Permitted Exceptions, to the Developer;

3.2.1.5 The City deposits the items into the Escrow required by Section 3.4;

3.2.1.6 Satisfaction of Beer, Alcohol and Wine License requirement in Section 2.7.

3.2.1.7 The representations, warranties and covenants of the City set forth in Section 1.2.1 are true and correct in all material respects on the Effective Date and on the Closing Date;

3.2.1.8 The City has completed all of their material obligations required by this Agreement to be completed prior to the Close of Escrow;

3.2.2 City's Conditions to Close of Escrow. The City's obligation to sell the Cinema Parcel to the Developer on or before the Closing Date shall be subject to the satisfaction of the following conditions precedent, which can only be waived in writing by the City:

3.2.2.1 The Developer has deposited the Purchase Price less the Earnest Money Deposit into Escrow;

3.2.2.2 The Developer agrees to accept the title to and conveyance of the Cinema Parcel, pursuant to Section 2.4;

3.2.2.3 The Developer delivers its Due Diligence Investigation Conclusion Notice to both the City and Escrow Holder indicating the Developer's unconditional acceptance of the physical condition of the Cinema Parcel, prior to the expiration of the Due Diligence Period;

3.2.2.4 The Title Company is unconditionally committed to issue the Title Policy for the Property, subject to Permitted Exceptions, to the Developer;

3.2.2.5 The Developer submits to the City, at least five (5) business days prior to the Escrow Closing Date, evidence satisfactory to the City, in the City's reasonable discretion, that the Developer has obtained all entitlements necessary for the development of the Property;

3.2.2.6 The Developer obtains the City's approval of the Construction Loan and Construction Lender applicable to the Cinema Parcel, in accordance with Section 6.3;

3.2.2.7 The Developer has completed all of its material obligations required by this Agreement to be completed prior to the Close of Escrow;

3.2.2.8 The representations, warranties and covenants of the Developer set forth in Section 1.2.2 are true and correct in all material respects on the Effective Date and on the Closing Date; and

3.2.2.9 The Developer deposits the funds and items into the Escrow required by Section 3.3 for the Escrow.

3.3 Developer's Escrow Deposits. Following satisfaction or waiver of each of the Developer's conditions to Close of Escrow set forth in Sections 3.2.1, as applicable, the Developer shall deposit the following funds and documents into Escrow at least two (2) business days prior to the Escrow Closing Date in a writing delivered to the Parties:

3.3.1 Purchase Price and Other Funds. Purchase Price, less the amount of the Earnest Money Deposit, plus any additional funds required to be deposited into Escrow by the Developer under the terms of this Agreement to close the Escrow, all in immediately available funds

3.3.2 PCO Statement. A PCO Statement executed by the authorized representative(s) of the Developer.

3.3.3 Acceptance of Grant Deed. The Certificate of Acceptance of the Deed, in the form attached to the Grant Deed, executed by the authorized representative(s) of the Developer in recordable form.

3.3.4 Notice of Agreement. The Notice of Agreement executed by the authorized representative(s) of the Developer in recordable form.

3.4 City's Escrow Deposits. Following satisfaction or waiver of each of the City's conditions to Close of Escrow set forth in Sections 3.2.2, as applicable, the City shall deposit the following documents into Escrow at least two (2) business days prior to the Closing Date:

3.4.1 Grant Deed. The Grant Deed executed by the authorized representative(s) of the City in recordable form.

3.4.2 FIRPTA Affidavit (City). The FIRPTA Affidavit completed and executed by the authorized representative(s) of the City.

3.4.3 Notice of Agreement. The Notice of Agreement executed by the authorized representative(s) of the City in recordable form.

3.5 Closing Procedure. When each of the Developer's Escrow required deposits as set forth in Section 3.3, and each of the City's Escrow required deposits as set forth in Section 3.4, are deposited into Escrow, Escrow Holder shall request confirmation in writing from the City and the Developer that each of their respective conditions to the Close of Escrow, as set forth in Section 3.2 are satisfied or waived. Upon Escrow Holder's receipt of such written confirmation from both the City and the Developer that their respective conditions to the Close of Escrow are either satisfied or waived, Escrow Holder shall close the Escrow for the Cinema Parcel by doing all of the following:

3.5.1 Recordation of Documents. File the following with the Office of the Recorder of the County, for recordation in the order set forth in Section 3.6 (i) the Grant Deed, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, and (iii) if applicable, the Construction Loan Deed of Trust.

3.5.2 Distribution of Recorded Documents. Distribute each recorded document to the Party or person designated for such distribution in Section 3.6.

3.5.3 PCO Statement. File the PCO Statement with the Office of the Recorder of the County.

3.5.4 FIRPTA Affidavit. File the FIRPTA Affidavit with the United States Internal Revenue Service.

3.5.5 Title Policy. Obtain and deliver the Title Policy to the Developer.

3.5.6 Purchase Price. Deliver the Purchase Price to the City, less the City's share of Escrow closing costs, and less any other charges to the account of the City, and return any remaining funds held by Escrow Holder for the account of the Developer to the Developer, less the Developer's share of Escrow closing costs, and less any other charges to the account of the Developer.

3.5.7 Close of Escrow. Close of Escrow shall occur no later than the earlier of: (1) the tenth (10th) business day following Escrow Holder's receipt of written confirmation from both the City and the Developer of the satisfaction or waiver of all conditions precedent to the Close of Escrow for the Property, or (2) ninety (90) days from the end of the Due Diligence Period (the "**Escrow Closing Date**"). If for any reason the Close of Escrow has not occurred by the Escrow Closing Date, then any Party not then in default of this Agreement may cancel the Escrow and terminate this Agreement, subject to the notice and cure provisions of Section 7.1 (to the extent applicable), without liability to any other Party or any other person for such termination and cancellation, by delivering written notice of termination to the other Party(ies) and Escrow Holder and, thereafter, the Parties shall proceed pursuant to Section 3.9 if the non-terminating Party is not in default or pursuant to Section 7.2 or **Error! Reference source not**

found. (as applicable) if the non-terminating Party is in default. Without limiting the right of any Party to terminate this Agreement, pursuant to the preceding sentence, if Escrow does not close on or before the Escrow Closing Date, and no Party has exercised its contractual right to cancel Escrow and terminate this Agreement before such time, then Escrow shall close as soon as reasonably possible following the first date on which Escrow Holder is in a position to close the Escrow pursuant to the terms and conditions of this Agreement.

3.6 Recordation and Distribution of Documents. As applicable, Escrow Holder shall cause the following documents to be recorded in the official records of the Recorder of the County in the following order of priority at the Close of Escrow: (i) the Grant Deed, with the Developer's certificate of acceptance attached, (ii) the Notice of Agreement, and (iii) the Construction Loan Deed of Trust, if applicable, and (iv) any other documents to be recorded through Escrow upon the joint instructions of the Parties. All recorded documents shall provide that they are to be returned to Escrow Holder after recordation. When originals of such recorded documents are returned to Escrow Holder, Escrow Holder shall deliver: (i) the original Grant Deed, with the Developer's original certificate of acceptance attached, to the Developer and copies to the City, each showing all recording information, (ii) the original of the Notice of Agreement to the City, with copies to the Developer, each showing all recording information, (iii) the Construction Loan Deed of Trust (if applicable) to the Construction Lender for the Project, with copies to the Developer and the City, each showing all recording information, and (iv) the original of any other document recorded at the close of Escrow to the Party or other person designated in the joint escrow instructions of the Parties for such recordation and a copy of each such document to the other Party or Parties, each showing all recording information.

3.7 Escrow Closing Costs, Taxes and Title Policy Premium. The City and the Developer shall each pay one-half (1/2) of the Escrow fees and such other costs as Escrow Holder may charge for the conduct of the Escrow. Escrow Holder shall notify the Developer and the City of the costs to be borne by each of them at the Close of Escrow by delivering the Escrow Holder's estimated closing/settlement statement to both the City and the Developer at least four (4) business days prior to the Escrow Closing Date. The City shall pay the premium charged by the Title Company for the standard Title Policy for the Cinema Parcel, exclusive of any endorsements or other supplements to the coverage of such Title Policy that may be requested by the Developer, as well as documentary transfer taxes and any and all other charges, fees and taxes levied by a Governmental Authority relative to the conveyance of any portion of the Cinema Parcel through the Escrow transaction contemplated in this Agreement. The Developer shall pay any and all recording fees relative to the conveyance of any portion of the Cinema Parcel through the Escrow transaction contemplated in this Agreement.

3.8 Escrow Cancellation Charges. If the Escrow fails to close due to either the City's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the City shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close due to the Developer's material default under this Agreement and the Escrow is cancelled and this Agreement is terminated, the Developer shall pay all ordinary and reasonable Escrow and title order cancellation charges. If the Escrow fails to close for any reason other than the material default of either the Developer or the City and the Escrow is cancelled and this Agreement is terminated, the Developer and the City shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges.

3.9 Escrow Cancellation. If this Agreement is terminated and the Escrow cancelled pursuant to a contractual right granted to a Party in this Agreement to terminate this Agreement and cancel the Escrow, other than due to the material default of another Party, the Parties shall do each of the following:

3.9.1 Cancellation Instructions. The Parties shall, within three (3) business days of receipt of Escrow Holder's written request, execute any reasonable Escrow cancellation instructions requested by Escrow Holder;

3.9.2 Return of Funds and Documents. Within ten (10) days of receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from Escrow Holder: (i) the Developer or Escrow Holder shall return to the City any documents previously delivered by the City to the Developer or Escrow Holder, (ii) the City or Escrow Holder shall return to the Developer all documents previously delivered by the Developer to the City or Escrow Holder; (iii) Escrow Holder shall return to the Developer any funds deposited by Developer into Escrow, including the Earnest Money Deposit, less the Developer's share of customary and reasonable Escrow and title order cancellation charges, if any; and (iv) Escrow Holder shall return to the City any funds deposited by City into Escrow if it has already been deposited, less the City's share of customary and reasonable Escrow and title order cancellation charges, if any.

3.10 Report to IRS. Following the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service, if such report is required pursuant to Section 6045(e) of the Internal Revenue Code, Escrow Holder shall report the gross proceeds of the purchase and sale of the Cinema Parcel to the Internal Revenue Service on Form 1099-B, W-9 or such other form(s) as may be specified by the Internal Revenue Service pursuant to Section 6045(e). Upon the filing of such reporting form with the Internal Revenue Service, Escrow Holder shall deliver a copy of the filed form to the City and the Developer.

ARTICLE IV

PROJECT DEVELOPMENT

4.1 Developer Covenant to Undertake Project. The Developer covenants, for itself, its successors and assigns, to and for the exclusive benefit of the City, that the Developer shall commence and complete the development of the Project on the Property within the time period for such actions set forth in the Schedule of Performance. The Developer covenants and agrees for itself, its successors, and assigns, that the Property shall be improved and developed with the Project in substantial conformity with the terms and conditions of this Agreement, the Scope of Development, the Schedule of Performance, any and all plans, specifications and similar development documents required by this Agreement, except for such changes as may be mutually agreed upon in writing by and among the Parties, and all applicable laws, regulations, orders and conditions of each Governmental Agency with jurisdiction over the Property or the Project. The covenants of this Section 4.1 shall run with the land of the Property until the earlier of the date of recordation of the Certificate of Completion or the fifteenth (15th) anniversary of the date of the Close of Escrow.

4.1.1 Application for Land Use Entitlements. Developer covenants that Developer shall use good faith efforts to apply for and obtain the Land Use Entitlements for the construction of the Cinema Improvements on the Cinema Parcel. Developers shall apply for the Land Use Entitlements on or before thirty (30) days after the Effective Date and shall obtain the Land Use Entitlements no later than six (6) months thereafter after the Effective Date (the "Entitlements Deadline Date"), subject to extension for each day of Unavoidable Delay, a CEQA Challenge, or a Third Party Appeal. If Developer fails to obtain the Land Use Entitlements by the Entitlements Deadline Date, then Developer shall be in a default of this Agreement.

4.1.1.1 "CEQA Challenge" shall mean any action filed under the California Environmental Quality Act and similar statutes ("CEQA") relating to or arising from the Land Use Entitlements or the Cinema Improvements. In the event of a CEQA Challenge, the Entitlements Deadline Date shall be tolled for every day such CEQA Challenge remains outstanding, including any appeals thereof.

4.1.1.2 "Third Party Appeal" shall mean any appeal, request for consideration, or other challenge to the Land Use Entitlements filed by any person, group of people, or entity, including by the County or another Governmental Authority.

4.2 Developer Changes to Plans and Specifications During Course of Construction. The Developer shall have the right during the course of construction of the Project to make "minor field changes," without seeking the approval of the City, if such changes do not affect the overall scope of the development or the type of use to be conducted within all or any portion of a structure. "Minor field changes" shall be defined as those changes from the approved plans and specifications that have no substantial effect on the Project or are made in order to expedite or accommodate the work of construction in response to field conditions. The Developer shall submit all other changes, i.e. those changes which are not "minor field changes", to the City for its review and approval no less than fifteen (15) days prior to the date that the Developer intends to implement such changes. The City shall have ten (10) days from its receipt of such proposed changes to review the same and advise the Developer in writing whether such changes are approved by the City, which approval shall not be unreasonably withheld conditioned or delayed. Any proposed changes which are not disapproved by the City within such ten (10) day period shall be deemed approved. Nothing contained in this Section 4.2 shall be deemed to constitute a waiver of or change in the City Requirements governing "minor field changes" or other changes or in any approvals by the City otherwise required for "minor field changes." or other changes.

4.3 Construction Start and Completion of Project. Developer shall commence construction of the Project (as evidenced by the excavation of foundations and footings) in accordance with the Schedule of Performance and thereafter diligently proceed to complete the construction of the Project in a good and workmanlike manner in substantial conformity with the approved plans, specifications, and conditions for the Project approved by the City and the Schedule of Performance. Developer shall substantially complete construction and installation of the Cinema Improvements not later than thirteen (13) months following the commencement of construction. Notwithstanding the foregoing, the City may extend the Project Completion Date set forth in the Schedule of Performance by a period of up to six (6) months upon written request of Developer, which extension shall be granted in the reasonable discretion of the City Manager

if Developer is not in default under this Agreement and has prosecuted the construction of the Project on a diligent basis as required under this Agreement. The Developer shall achieve Completion of Construction and request that City issue a Certificate of Completion from City with respect to the Project on or before the Project Completion Date. The Developer will, promptly upon substantial completion of construction activities for the Project, use diligent efforts to cause the Project to be inspected by each Governmental Agency with jurisdiction over the Project, shall correct any defects and deficiencies that may be disclosed by any such inspection and shall use diligent efforts cause to be duly issued all occupancy certificates and other licenses, permits and authorizations necessary for the operation and occupancy of the completed Project. The Developer shall do and perform all of the foregoing acts and things and use diligent efforts to cause to be issued and executed all such occupancy certificates, licenses, and authorizations for the Project on or before the Project Completion Date. After commencement of the work of improvement of the Project, the Developer shall not permit the work of improvement of the Project to cease or be suspended for a time period in excess of thirty (30) consecutive calendar days, subject to Unavoidable Delay.

4.3.1 Developer covenants to City that the Cinema Improvements shall be open to the general public for business as a multiplex movie theater by forty-five (45) days after the Project Completion Date, subject to the Black Out Period (the "Cinema Opening Date").

4.3.1.1 "Black Out Period" means the months of August and January

4.4 Compliance with Laws. All work performed in connection with the development of the Project shall comply with all Governmental Requirements.

4.4.1 Exterior Signs. All exterior signage on the Cinema Parcel shall comply with sign provisions of the Santee Municipal Code and the Land Use Entitlements. All signs will be maintained by Developer in good condition.

4.5 Schedule of Performance. The Schedule of Performance establishes various dates and times for the accomplishment of various tasks assigned to the City and the Developer and the satisfaction of the conditions precedent to the close of the Escrow. The Parties agree that time is of the essence in the performance of such tasks and the satisfaction of conditions precedent, in view of the large investment of resources that all Parties recognize will be required for assembly of the Property and the undertaking of the Project. If the date or time for the performance of a task or the satisfaction of a condition, as set forth in either the text of this Agreement or in the Schedule of Performance, may not be achieved, then prior to such date or time set forth in the text of this Agreement or the Schedule of Performance, the Parties shall consider whether a modification to the text of this Agreement or to the Schedule of Performance is reasonably required. Any decision to approve a modification to a time or date established in either the text of this Agreement or the Schedule of Performance shall be subject to the reasonable approval of each Party. Any modification of a time or date for performance of a particular task or satisfaction of a particular condition that does not result in a change of more than one hundred eighty (180) days may be approved on behalf of the City by the City Manager, in his or her reasonable discretion. A modification of a time or date for performance of a task or satisfaction of a condition (or a series of such modifications) that results in an aggregate change of more than one hundred eighty (180) days shall be subject to the approval of the City Council,

in its sole and absolute discretion. In addition to the foregoing, if performance of a task or satisfaction of a condition in the Schedule Performance is prevented or delayed by Unavoidable Delay, the deadline for completion of such task or satisfaction of such condition shall be extended by the period of such Unavoidable Delay.

4.6 Developer Attendance at City Meetings. The Developer agrees to have one or more of its employees or consultants who are knowledgeable regarding this Agreement and the development of the Project, such that such person(s) can meaningfully respond to City questions regarding the progress of the Project, attend City Council meetings, when requested to do so on not less than ten (10) days prior written notice by City staff.

4.7 City's Right to Inspect Project and Property. Officers, employees, agents and representatives of the City shall have the right of reasonable access to the Property, without the payment of charges or fees, during normal construction hours, during the period of construction of the Project. Such officers, employees, agents or representatives of the City shall be those persons who are designated by the City Manager. Any and all officers, employees, agents or representatives of the City who enter the Property shall identify themselves at the construction management office on the Property, upon their entrance on to the Property, and shall at all times be accompanied by a representative of the Developer, while on the Property. The Developer shall make a representative of the Developer available for this purpose at all times during normal construction hours, upon reasonable notice from the City. The City shall indemnify and hold the Developer harmless from injury, property damage or liability arising out of the exercise by the City of the right of access to the Property provided in this Section 4.7, other than injury, property damage or liability arising from the negligence or willful misconduct of the Developer or its officers, agents or employees. The City shall inspect relevant portions of the Property, prior to issuing any written statements reflecting adversely on the Developer's compliance with the terms and conditions of this Agreement pertaining to development of the Project. If in the City's reasonable judgment it is necessary, the City shall have the further right, from time to time, to retain a consultant or consultants to inspect the Project and verify compliance by the Developer with the provision of this Agreement. The Developer acknowledges and agrees that any such inspections are for the sole purpose of protecting the City's rights under this Agreement, are made solely for the City's benefit, that the inspections may be superficial and general in nature, and are for the purposes of informing the City of the progress of the Project and the conformity of the Project with the terms and conditions of this Agreement, and that the Developer shall not be entitled to rely on any such inspection(s) as constituting an approval, satisfaction or acceptance of any materials, workmanship, conformity of the Project with this Agreement or otherwise. The Developer agrees to make its own regular inspections of the work of construction of the Project to determine that the quality of the Project and all other requirements of the work of construction of the Project are being performed in a manner satisfactory to the Developer. The Developer also agrees to immediately notify the City in writing should the Developer's inspections show any matters that will prevent the entire Project from being completed by the Project Completion Date set forth therefore in the Schedule of Performance (as such date may have been modified pursuant to this Agreement). Without limiting the foregoing, the Developer shall permit the City upon reasonable notice to examine and copy all books and account records and other papers relating to the Property and the construction of the Project. The Developer will use commercially reasonable efforts to cause all contractors, subcontractors and materialmen to cooperate with the City to enable such examination.

4.8 Cost of Construction. The cost and expense of undertaking and completing the Project, including, without limitation, constructing all legally imposed on-site and off-site improvements, and providing all utilities therefor, shall be borne by Developer at its sole cost, expense and liability. Developer shall be solely responsible for payment of all City land use, construction, inspection, plan check and development impact fees (collectively, “**Development Fees**”) imposed by the City with respect to the development of the Project. Developer shall bear all costs and expenses associated with the processing and obtaining of the entitlements and shall bear all costs and expenses (except to the extent expressly set forth otherwise in this Agreement), associated with any and all terms, conditions, requirements, mitigation measures and other exactions imposed on, or required in connection with, the entitlements.

4.9 Prevailing Wages.

4.9.1 The Developer acknowledges that the City has not made any representation, express or implied, to the Developer or any person associated with the Developer regarding whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, *et seq.* The Developer agrees with the City that the Developer shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification.

4.9.2 The Developer, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action that may be available to it pursuant to Labor Code Sections 1726 and 1781. The Developer acknowledges the protections of Civil Code Section 1542 relative to the waiver and release contained in this Section 4.9, which reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

BY INITIALING BELOW, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 4.9.2.

Developer’s Initials

4.9.3 Additionally, in accordance with Section 7.7, the Developer shall indemnify, defend with counsel acceptable to the City and hold the City harmless against any claims pursuant to Labor Code Sections 1726 and 1781 arising from this Agreement or the construction or operation of the Project.

4.10 Certificate of Completion.

4.10.1 Following the substantial completion of construction of the Project, and upon written request from the Developer for issuance of a Certificate of Completion for the Project, the City shall inspect the Project to determine whether or not the Project has been substantially completed in compliance with this Agreement. If the City determines that the Project is complete and in compliance with this Agreement, the City Manager shall furnish the Developer with a Certificate of Completion for the Project. If the City determines that the Project is not in compliance with this Agreement, the City Manager shall send written notice of each non-conformity to the Developer. Upon issuance of the final certificate of occupancy for the development of the Project, based on the plans submitted by the Developer to the City, the City shall furnish the Developer with a Certificate of Completion for the Project.

4.10.2 Upon the Developer's substantial completion of the Project, the Developer shall request and be entitled to receive a Certificate of Completion, including, without limitation, the right of the City Manager to issue the Certificate of Completion, except that the Certificate of Completion, upon issuance, shall be evidence of the City's conclusive determination of satisfactory substantial completion of the entirety of the Project pursuant to the terms of this Agreement.

4.10.3 The City shall not unreasonably withhold, condition or delay the issuance of a Certificate of Completion. A Certificate of Completion shall be evidence of the City's conclusive determination of satisfactory completion of the Project to which it pertains pursuant to the terms of this Agreement. After the recordation of a Certificate of Completion for the Project, any person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property improved with the Project shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement regarding construction or installation of the Project except that such person shall be bound by any reservations, covenants, conditions, restrictions and other interests recorded against the Property pursuant to this Agreement and the Grant Deed.

4.10.4 If the City fails or refuses to issue a Certificate of Completion following written request from the Developer, the City shall, within fifteen (15) calendar days of the Developer's written request or within three (3) calendar days after the next regular meeting of the City Council, whichever date occurs later, provide the Developer with a written statement setting forth the reasons for the City's failure or refusal to issue a Certificate of Completion. The statement shall also contain the City's opinion of the action(s) the Developer must take to obtain a Certificate of Completion from the City. If the reason for the Developer's failure to complete the Project is confined to the immediate unavailability of specific items or materials for construction or landscaping at a price reasonably acceptable to the Developer or other minor building "punch-list" items, the City may issue its Certificate of Completion upon the posting of a bond or irrevocable standby letter of credit by the Developer in a form reasonably acceptable to the City in an amount representing the fair value of the work on the Project remaining to be completed, as reasonably determined by the City. If the City fails to provide such written statement within the specified time period, then, without relieving the City of its continuing obligation to issue such Certificate of Completion, the Developer shall be deemed conclusively and without further action of the City to have satisfied the requirements of this Agreement with respect to the Project, as if a Certificate of Completion had been issued by the City pursuant to this Agreement.

4.10.5 A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the Project, or any parts thereof. A Certificate of Completion shall not be deemed to constitute a notice of completion under Section 3093 of the California Civil Code, nor shall it act to terminate the continuing covenants, restrictions or conditions contained in the Grant Deed or any other instruments recorded against the Property pursuant to this Agreement. A Certificate of Completion is not evidence of the compliance of the Project with any City Requirements or any building code, conditions of approval, land use, zoning or other requirements of the City or any Governmental Agency with jurisdiction over the Property, other than the City.

ARTICLE V

DEVELOPER COVENANTS

5.1 Covenant to Maintain Property on Tax Rolls. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.1.1 The Property shall remain on the County secured real property tax rolls for twenty years from the date of issuance of a certificate of occupancy for the Project.

5.1.2 The Developer shall pay all property tax bills with respect to the Property and all improvements thereon on or before the last day for the timely payment of each property tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Property issued by the County. The Developer further covenants and agrees to provide to the City, on or before July 31 of each year, commencing in the calendar year following the calendar year in which a Certificate of Completion is recorded and in each calendar year, thereafter, for the full term of this covenant: (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between the Developer and the County regarding the Property and all improvements thereon, with respect to the preceding fiscal year of the County, and (ii) cancelled checks issued by the Developer in payment of all property tax payments that are made to the County regarding the Property and all improvements thereon (or other reasonably acceptable evidence of such payment), with respect to the preceding County fiscal year.

5.1.3 The covenants of this Section 5.1 shall run with the land of the Property, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.1.4 The covenants of this Section 5.1.3 shall run with the land of the Property, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.2 Use and Operation Covenant. Developer covenants to City that the Cinema Project shall be used and operated as a multiplex movie theater business with a minimum of nine

(9) screens operating, exhibiting "first-run" movies, and providing food and alcoholic drinks to patrons (the "Theater Business") and for any lawful purpose associated with such Theater Business. The Cinema Project shall not be used for any general office, distribution, storage, industrial or other use inconsistent with or not reasonably, directly and customarily part of businesses such as the Theater Business. Developer further covenants to City to cause the Theater Business to be open for business to the general public on or before the Cinema Opening Date and to cause the Theater Business to continuously operate on the Cinema Parcel for at least twenty (20) years following the recordation of a Certificate of Completion for the Cinema Improvements ("Theater Business Covenant Term"). If, during the Theater Business Covenant Term, Developer determines that industry changes warrant a reconfiguration of the Cinema Improvements or the Operational Features, Developer shall provide City with written notice to and receive the consent of City of such proposed modifications. City's consent shall not be unreasonably withheld.

5.2.1 City of Santee Use of the Cinema Improvements. The City of Santee shall have the right to use of the Cinema Improvements for up to four (4) events per calendar year during the Theater Business Covenant Term. The City of Santee's use of the Cinema Improvements shall be exercised as follows: [

5.2.1.1 Not less than thirty (30) days prior to the date requested, the City of Santee shall provide Developer a written request to utilize the Cinema Improvements.

5.2.1.2 Developer shall authorize the City's use of the Cinema Improvements within seven (7) days or provide City with alternate dates.

5.2.1.3 The Parties shall work cooperatively to ensure the City's reasonable ability to utilize the Cinema Improvements.

5.3 **No Conveyance to Tax Exempt Entity.** The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.3.1 The Developer shall not use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Property, the Project, or any portion of any of the foregoing to any entity or person, or for any use of the Property, the Project, or any portion of any of the foregoing, that is partially or wholly exempt from the payment of real or personal property taxes or that would cause the exemption of the payment of all or any portion of real or personal property taxes otherwise assessable regarding the Property, the Project, or any portion of any of the foregoing, without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion for a period of twenty (20) years from the date of issuance of the certificate of completion for the Project by the City.

5.3.2 If the Property, or any portion of the Property, shall be conveyed, transferred or sold to any entity or person that is partially or wholly exempt from the payment of real or personal property taxes otherwise assessable against the Property, or any portion thereof, without the prior written consent of the City, then, at the City's election and in addition to all other remedies available to the City under this Agreement or at law or in equity, the Developer shall pay to the City a fee in lieu of payment of such taxes each year in an amount determined by

the City to be one percent (1%) of the “full cash value” of the Property, or portion thereof, as may be subject to such exemption from payment of real or personal property taxes. The City’s determination of “full cash value” for in-lieu payment purposes under this Section 5.3.2 shall be established by the City each year, if necessary, by reference to the real or personal property tax valuation principles and practices generally applicable to a county property tax assessor under Section 1 of Article XIII A of the California Constitution. The City’s determination of “full cash value” and that an in-lieu payment is due shall be conclusive on such matters. If the City determines that an amount is payable as an in-lieu payment under this Section 5.3.2 in any tax year, then such amount shall be paid to the City for that tax year within forty-five (45) days following transmittal by the City to the Developer of an invoice for payment of the in-lieu amount.

5.4 Maintenance of the Property. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.4.1 The areas of the Property that are subject to public view (including all existing and future improvements, paving, walkways, landscaping, exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted. If there is an occurrence of an adverse condition on any area of the Property that is subject to public view in contravention of the general maintenance standard described above (a “Maintenance Deficiency”), then the City shall notify the Developer in writing of the Maintenance Deficiency. If the Developer fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days of its receipt of notice of the Maintenance Deficiency, the City shall have the right to enter the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 5.4.1 shall become a lien on the Property, as applicable. If the amount of the lien is not paid within thirty (30) days after written demand for payment from the City to the Developer, the City shall have the right to enforce the lien in the manner provided in Section 5.4.3.

5.4.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Developer by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within ninety-six (96) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Property and remove the graffiti, without notice to the Developer. Any sum reasonably expended by the City for the removal of graffiti from the Property pursuant to this Section 5.4.2, shall be a lien on the Property. If the amount of the lien is not paid within thirty (30) days after written demand to the Developer from the City, the City shall have the right to enforce its lien in the manner provided in Section 5.4.3.

5.4.3 The Parties further mutually understand and agree that the rights conferred upon the City under this Section 5.2 expressly include a grant by the Developer of a

security interest in the Property with the power to establish and enforce a lien or other encumbrance against the Property or any portion thereof, in the manner provided under Civil Code Sections 2924, 2924b and 2924c, to secure the obligations of the Developer and its successors under Section 5.4.1 or Section 5.4.2, including the reasonable attorneys' fees and costs of the City associated with the abatement of a Maintenance Deficiency or removal of graffiti. For the purposes of the preceding sentence the words "reasonable attorneys' fees and costs of the City" mean and include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney.

5.4.4 The provisions of this Section 5.2, shall be a covenant running with the land of the Property, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed, and shall terminate and expire on the date ten (10) years after the Completion of Construction. Nothing in the foregoing provisions of this Section 5.2 shall be deemed to preclude the Developer from making any alteration, addition, or other change to any structure or improvement or landscaping on the Property, provided that any such changes comply with applicable zoning and building regulations of the City.

5.5 Obligation to Refrain from Discrimination. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.5.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Developer, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Property. The covenant of this Section 5.5 shall run with the land of the Property and shall be enforceable against the Developer and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

5.5.2 The covenant of this Section 5.5 shall run with the land of the Property in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.6 Form of Non-Discrimination and Non-Segregation Clauses. The Developer for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

5.6.1 The Developer, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Property (or any portion thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

5.6.1.1 In deeds: “The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

5.6.1.2 In leases: “The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased.”

5.6.1.3 In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred.” The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

5.6.2 The covenant of this Section 5.6 shall run with the land of the Property in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

5.7 Prohibited Uses. No portion of the Property shall be used for a junkyard, adult entertainment, adult movie theater, adult bookstore, massage parlor, pawn shop, dollar store, check cashing center (the foregoing shall in no event prohibit banking facilities within a grocery store or a walk up ATM), payday loan or other similar business, laundromat (not including full service dry cleaners), marijuana dispensary, tattoo parlor or fortuneteller, or for the sale of narcotics paraphernalia, or for the long term treatment, storage or disposal of Hazardous Materials.

5.8 Survival of Special Development Covenants. All of the covenants set forth in ARTICLE V, inclusive, shall be a covenant running with the land of the Property and each such special development covenant shall survive the Close of Escrow, execution and recordation of the Grant Deed, and issuance and recordation of any Certificate of Completion for the time period specifically set forth in each such special development covenant. The Parties

acknowledge that although the special development covenants apply to the Property, portions of the Project and Property may, in accordance with the Permitted Transfer requirements, be sold or otherwise transferred to various successors and assigns of the Developer. Accordingly, the City agrees that with respect to enforcement of any of the special development covenants, it is understood and agreed that, in the event of a breach of any of the special development covenants, the City will seek to enforce those covenants only against the then-current owner(s) of that portion of the Property which is not in compliance with any one or more the special development covenants. No owner of any portion of the Property which is in compliance with the special development covenants shall be liable for the breach of any of the special development covenants by any other owner of any other portion of the Property; provided, however, that the foregoing shall not preclude City from seeking damages against any prior owner of any portion of the Property if, during the tenure of such owner's ownership, such owner's portion of the Property was not in compliance with any one or more of the special development covenants.

5.9 Developer Covenant to Defend this Agreement. The Developer acknowledges that the City is a "public entity" and "public agency" as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to the actions of public entities and public agencies including, without limitation, CEQA. Also, as a public body, the City's action in approving this Agreement may be subject to proceedings to invalidate this Agreement or mandamus. The Developer assumes the risk of delays and damages that may result to the Developer from any third-party legal actions related to the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third-party files a legal action regarding the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, either the City may terminate this Agreement on thirty (30) days written notice to the Developer of the City's intent to terminate this Agreement, referencing this Section 5.9, without any further obligation to perform the terms of this Agreement and without any liability to the Developer resulting from such termination, unless the Developer unconditionally agrees to indemnify and defend the City, with legal counsel reasonably acceptable to the City, against such third-party legal action, as provided in the next sentence. Within thirty (30) days of receipt of the City's notice of intent to terminate this Agreement, as provided in the preceding sentence, the Developer may offer to defend the City, with legal counsel reasonably acceptable to the City, in the third-party legal action and pay all of the court costs, reasonable attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Any such offer from the Developer must be in writing and reasonably acceptable to the City in both form and substance. Nothing contained in this Section 5.9 shall be deemed or construed to be an express or implied admission that the City is liable to the Developer or any other person or entity for damages alleged from any alleged or established failure of the City to comply with any statute, including, without limitation, CEQA. The Developer's defense of such third party actions as described in this Section 5.9 shall constitute an Unavoidable Delay.

5.10 Environmental Indemnity of the City by the Developer. The Developer agrees, at its sole cost and expense, to fully indemnify, protect, hold harmless, and defend (with counsel selected by the Developer and reasonably approved by the City) the City and its commissions, agents, attorneys, officers, employees, and authorized representatives (collectively,

the “**Indemnified Parties**”), from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever (collectively, “**Environmental Claims**”) that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, the Indemnified Parties, directly or indirectly relating to or arising from any of the following “**Environmental Matters**” existing or occurring during or arising from the Developer’s ownership of the Property or construction or operation of the Project:

5.10.1 The presence of Hazardous Materials on, in, under, from or affecting all or any portion of the Property or the Project.

5.10.2 The storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal or transportation of any Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.10.3 The violation of any law, rule, regulation, judgment, order, permit, license, agreement, covenant, restriction, requirement or the like by the Developer, its agents or contractors, relating to or governing in any way Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.10.4 The failure of the Developer, its agents or contractors, to properly complete, obtain, submit and/or file any and all notices, permits, licenses, authorizations, covenants and the like in connection with the Developer’s activities on the Property or regarding the Project.

5.10.5 The implementation and enforcement by the Developer, its agents or contractors of any monitoring, notification or other precautionary measures that may, at any time, become necessary to protect against the release, potential release or discharge of Hazardous Materials on, in, under, from or affecting the Property or the Project.

5.10.6 The failure of the Developer, its agents or contractors, in compliance with all applicable Environmental Laws, to lawfully remove, contain, transport or dispose of any Hazardous Materials existing, stored or generated on, in, under or from the Property or the Project.

5.10.7 Any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency after the Close of Escrow in connection with any Hazardous Materials on, in, under, from or affecting the Property or the Project or the violation of any Environmental Law relating to the Property or the Project.

5.10.8 The Developer shall pay to the Indemnified Parties all costs and expenses including, without limitation, reasonable attorneys’ fees and costs, incurred by the Indemnified Parties in connection with enforcement of the aforementioned environmental indemnity.

5.11 Insurance. In order to protect the City and its commissions, agents, attorneys, officers, employees and authorized representatives (collectively, “**Additional Insureds**”) against any and all claims and liability for death, injury, loss and damage resulting from the Developer’s actions in connection with this Agreement, the Property, and the Project, the Developer shall secure and maintain the insurance coverage as described in and required by this Section 5.11 upon the Close of Escrow and prior to any on-site construction activities at the Property by or on behalf of the Developer. The Developer shall pay any deductibles and self-insured retentions under all insurance policies issued in satisfaction of the terms of this Agreement. Developer shall retain all insurance policies as set forth in this Section 5.11 until the issuance of the Certificate of Completion.

5.11.1 Workers’ Compensation Insurance Requirement. The Developer shall submit written proof that the Developer is insured against liability for workers’ compensation in accordance with the provisions of Section 3700 of the Labor Code. By executing this Agreement, the Developer makes the following certification, required by Section 1861 of the Labor Code:

“I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Agreement.”

The Developer shall require each contractor and sub-contractor performing work on the Project to provide workers’ compensation coverage for all of such contractor’s or sub-contractor’s employees, unless the contractor’s or sub-contractor’s employees are covered by workers’ compensation insurance provided by the Developer. If any class of employees engaged in work or services performed in connection with the Project is not covered by Labor Code Section 3700, the Developer shall provide and/or require each contractor or sub-contractor to provide adequate workers’ compensation insurance covering such employees. Each workers’ compensation policy procured pursuant to this Section 5.11.1 shall contain a full waiver of subrogation clause in favor of the Additional Insureds.

5.11.2 Liability and Permanent Insurance Requirements.

5.11.2.1 The Developer shall maintain in full force and effect, until the issuance of the Certificate of Completion, subject to Section 5.11.2.4, the following insurance coverage:

5.11.2.1.1 Commercial General Liability Insurance coverage, including, but not limited to, Premises-Operations, Contractual Liability Insurance (specifically covering all indemnity obligations of the Developer pursuant to this Agreement), Products-Completed Operations Hazards, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of the construction of the Project and/or the Developer’s operations concerning the Property or the Project. The commercial general liability insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability

of TWO MILLION DOLLARS (\$2,000,000) each occurrence and FOUR MILLION DOLLARS (\$4,000,000) aggregate.

5.11.2.1.2 Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used by the Developer with minimum limits for Bodily Injury and Property Damage of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.

5.11.2.1.3 If the Developer hires a consultant to provide design services, such as architectural or engineering services in connection with the Project, or any portion of the Project, the Developer shall require each such consultant to provide Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of such design services, with limits of not less than ONE MILLION DOLLARS (\$1,000,000).

5.11.2.1.4 Upon acceptance of the Project or any portion thereof, from each contractor, the Developer shall maintain Fire and Extended Coverage Insurance on the Project on a blanket basis or with an agreed amount clause in amounts not less than 100% of the replacement value of all portions of the Project so accepted.

5.11.2.2 During the construction of the Project, the Developer shall require that each contractor performing work on the Project maintain the following insurance coverage, as specified below, at all times during the performance of said work, or the Developer shall provide for such contractors "wrap" coverage, as specified below, at all times during the performance of said work:

5.11.2.2.1 The Developer shall maintain Builder's Risk Insurance to be written on an All Risk Completed Value form, in an aggregate amount equal to 100% of the completed insurable value of the Project or portion of the Project on which such contractor is performing work.

5.11.2.2.2 Each general contractor and each sub-contractor shall maintain Commercial General Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate to protect the Developer during the construction of the Project from claims involving bodily injury and/or death and damage to the property of others.

5.11.2.2.3 Each general contractor and each sub-contractor shall maintain Automobile Liability Insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used in the performance of the contractor's obligations with minimum limits for bodily injury and property damage of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. Such automobile liability insurance shall be provided by a business or commercial vehicle policy.

5.11.2.3 The insurance required in Section 5.11.2.1 and Section 5.11.2.2 above shall include endorsements naming the Additional Insureds as additional insured for liability arising out of this Agreement and any operation related to this Agreement.

5.11.2.4 Any insurance coverage required under this Agreement shall not be written on a “claims made” basis. The applicable certificate of insurance must clearly provide that the coverage is on an “occurrence” basis. The requirements of this Section 5.11.2.4 shall survive any expiration or termination of this Agreement and the recordation of the Grant Deed and any Certificate of Completion.

5.11.2.5 Receipt by the City of evidence of insurance that does not comply with the above requirements shall not constitute a waiver of the insurance requirements of this Agreement.

5.11.2.6 Subject to Section 5.11.2.4, all of the insurance coverage required under this Section 5.11 shall be maintained by the Developer or its contractors, as required by the terms of this Agreement, until the issuance of the Certificate of Completion and shall not be reduced, modified, or canceled without, at least, thirty (30) days prior written notice to the City. Also, phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates of insurance or any coverage for the Additional Insureds. The Developer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy.

5.11.2.7 All insurance to be obtained and maintained by the Developer under this Section 5.11 shall be issued by a company or companies listed in the then current “Best’s Key Rating Guide” publication with a minimum of an “A:VII” rating and be admitted to conduct business in the State of California by the State of California Department of Insurance.

5.11.2.8 The City will not accept self-insurance in satisfaction of the insurance requirements of this Section 5.11.

5.11.2.9 All insurance obtained and maintained by the Developer in satisfaction of the requirements of this Agreement shall be primary to and not contributing to any insurance maintained by the Additional Insureds.

5.11.2.10 Insurance coverage in the minimum amounts set forth in this Section 5.11 shall not be construed to relieve the Developer of any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the Additional Insureds from taking such other actions as are available to them under any other provision of this Agreement or otherwise at law.

5.11.3 Failure by the Developer to maintain all insurance coverage required by this Section 5.11 in effect shall be an Event of Default by the Developer. The City, at its sole option, may exercise any remedy available to them in connection with such an Event of Default. Alternatively, the City may, at its sole option, purchase any such required insurance coverage and the City shall be entitled to immediate payment from the Developer for any premiums and

associated costs paid by the City for such insurance coverage. Any election by the City to purchase or not to purchase insurance otherwise required to be carried by the Developer shall not relieve the Developer of its obligation to obtain and maintain the insurance coverage required by this Agreement.

ARTICLE VI

PROJECT FINANCING

6.1 Recordation of Construction Loan Deed of Trust. The Developer covenants to the City that, if Developer has arranged any secured Construction Loan, the Developer shall cause the Construction Loan Deed of Trust(s) to be recorded against the Property within sixty (60) days following the Close of Escrow.

6.2 Unauthorized Liens. Except as provided in Section 6.3, until recordation of the Certificate of Completion, the Developer shall not record, and shall not allow to be recorded, against the Property, or any portion thereof, any Lien not expressly authorized by this Agreement. Until recordation of the Certificate of Completion, the Developer shall remove, or shall have removed, any unauthorized Lien made or recorded against the Property or any portion of the Property, or shall assure the satisfaction thereof to the satisfaction of the City. After one hundred twenty (120) calendar days prior written notice to the Developer, the City shall have the right, but not the obligation, to satisfy any unauthorized Lien made or recorded prior to recordation of the Certificate of Completion and receive reimbursement from the Developer for any amounts paid or incurred in satisfying any such Lien, upon demand. Nothing in this Section 6.2, though, shall require the Developer to pay or make provisions for the payment of any tax, assessment, lien, mechanic's lien or the like or any other lien or charge that the Developer is in the process of contesting the validity or amount thereof, in good faith, and so long as such contest shall not subject the Property, or any portion thereof, to forfeiture or sale.

6.3 Rights of Lenders and City Regarding Permitted Loans and Liens.

6.3.1 The City shall have the right of reasonable review and approval of any Lender from which the Developer proposes to obtain any Loan that will be secured by a Lien against the Property or any portion thereof. The City shall not unreasonably withhold, condition or delay its approval of any proposed Lender or Loan and will not withhold, condition or delay such approval unless such Lender or Loan will pose a significant risk of impeding Developer's completion of the Project as required pursuant to this Agreement. In making such a determination, City may consider whether or not the terms of the Loan are overly burdensome so as to make it substantially unlikely that Developer will be able to complete the Project as required pursuant to this Agreement and what effect, if any, any changes requested by the Lender to either this Agreement or any of the exhibits to this Agreement may have upon the City's rights and remedies hereunder. In connection therewith, in any notice requesting approval of a proposed Lender and Loan, the Developer shall include a statement identifying any amendments, modifications, or other changes to this Agreement or its exhibits which the proposed Lender will request in connection with the Developer's obtaining of the Loan. The City agrees to reasonably consider, but shall not be obligated to accept, any amendment, modification, or other change to

this Agreement or any of the exhibits to this Agreement which materially restricts, diminishes, or burdens the City's rights and remedies.

6.3.2 Whenever the City delivers any notice or demand to the Developer regarding any breach or default by the Developer under this Agreement that, if not timely cured by the Developer, would entitle the City to terminate this Agreement, the City concurrently shall send a copy of such notice to each affected Lender of which the City has received notice and a contact address for transmittal of such notices. Whenever the City delivers any notice or demand to the Developer regarding any breach or default by the Developer under this Agreement that, if not timely cured by the Developer, would entitle the City to exercise its power of termination of the fee estate of all or any portion of the Property pursuant to Section 7.6, the City shall at the same time send a copy of such notice or demand to each affected Lender of which the City has received notice and a contact address for transmittal of such notice. Each affected Lender receiving a copy of any such notice shall have the right, at its option, to commence the cure or remedy of any such default of the Developer and to diligently and continuously proceed with such cure or remedy, within one hundred eighty (180) calendar days following its receipt of notice of the default. If a default of the Developer under this Agreement cannot, with diligence, be remedied or cured, or the remedy or cure of such default cannot be commenced, within such one hundred eighty (180) calendar day period, the Lender shall have such additional time as is reasonably necessary to remedy or cure such default of the Developer, but in no event beyond three hundred sixty five (365) calendar days following its receipt of notice of the default. If such default of the Developer can only be remedied or cured by the Lender upon obtaining possession of the Property, then Lender's cure right as to such matters shall be subject to the condition that the Lender seeks to obtain possession of the Property with reasonable diligence and continuity through a receiver or otherwise, and then, upon the Lender's obtaining possession of the Property, the Lender's cure right as set forth above shall commence. Nothing contained in this Agreement shall be deemed to permit or authorize any Lender to undertake or continue the construction of any portion of the Project prior to acquiring title to the Property (beyond the extent necessary to conserve or protect improvements or construction already made), without expressly assuming the Developer's obligations under this Agreement by written agreement approved by the City, in which the Lender agrees to complete, in the manner provided in this Agreement, the improvements on the portion of the Property to which the Lien or title of the Lender relates, which approval shall not unreasonably be withheld, delayed, or conditioned by the City.

6.3.3 In any case where, one hundred eighty (180) calendar days after delivery of notice of a default of the Developer under Section 6.3.2, an affected Lender has not exercised the options and/or rights provided in Section 6.3.2 to construct the applicable portions of the Project, or has exercised the option, but has not proceeded as set forth in Section 6.3.2, the City shall have the option, in the City's sole and absolute discretion, to purchase the Loan of such Lender and any security interest of such Lender under its Loan Documents by payment to the Lender of the amount of the unpaid Loan, including principal, accrued and unpaid interest, late charges, costs, expenses and other amounts payable to the Lender by the Developer under its Loan Documents and, if the ownership of the Property or any portion of the Property has previously vested in such Lender, the City, at its option but not as its obligation, shall be entitled to a conveyance of any title or interest in the Property vested in such Lender from such Lender.

6.3.4 After expiration of the one hundred eighty (180) calendar day period provided for in Section 6.3.3, any affected Lender may demand, in writing, that the City act to exercise or forego the option granted in Section 6.3.3. If the City fails to exercise the right granted in Section 6.3.3 within sixty (60) calendar days from the date of the City's receipt of such written demand from a Lender, the City shall be conclusively deemed to have waived its right of purchase of that Lender's interest pursuant to Section 6.3.3.

6.3.5 Developer shall make commercially reasonable efforts to have the Lender include in the loan documents for each Loan reasonable rights to the City to cure defaults by Developer thereunder, including requesting that the Loan Documents provide that in the event of a default or breach by the Developer under any Loan Documents, where the Lender has not exercised its option to complete the Project under Section 6.3.2, the City may cure the default of the Developer under the applicable Loan Documents, but is under no obligation to do so, prior to completion of any sale or foreclosure of the Property or any portion thereof under the applicable Loan Documents. The City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing any default of the Developer under any Loan Documents. Failure to include cure rights that afford the City at least twenty-one (21) days for monetary defaults and forty-five (45) additional days for other defaults that are reasonably curable by the City, in each case beyond the corresponding cure rights of Developer under a Loan, shall be a reasonable ground for the City to reject such Loan under Section 6.3.2, above.

6.3.6 In any case where a Lender has acquired title to all or any portion of the Property or Project through foreclosure, deed in lieu of foreclosure, or any other means, and such Lender proposes to enter into an agreement to transfer the Property and/or Project, or any portion thereof, to a third party transferee, the Lender shall provide the City with written notice thereof, which notice shall include a reasonably detailed description of the terms and conditions of the proposed transaction. The City shall have the option, but not the obligation, to purchase the Property and/or Project on substantially the same terms as described in the Lender's notice, which option, if ever, shall be exercised by written notice from the City to the Lender within twenty (20) days following the City's receipt of the Lender's notice. If the City elects not to exercise its option, then, subject to Section 8.2.2, the Lender may complete the transaction described in its notice, provided that such transaction is closed on materially identical terms and conditions as those described in the Lender's notice to the City. If the Lender and third party transferee desire to materially amend the terms of their proposed transaction, the Lender shall give the City written notice of the proposed modifications and the City shall once again have the right to elect to acquire the Property and the Project (or portion thereof) on terms and conditions substantially similar to those modified terms. If, for any reason, the proposed transaction between the Lender and third party transferee fails to close within two hundred forty (240) days following the date on which the City first receives notice of the proposed transaction (or notice of the proposed modified transaction, whichever is later), then the City once again have the right to elect to acquire the Property and/or Project pursuant to this Section 6.3.6.

6.3.7 The restrictions set forth in this Section 6.3 shall remain in effect only until the recordation of the Certificate of Completion for the Project.

ARTICLE VII

DEFAULTS, REMEDIES AND TERMINATION

7.1 Defaults - General.

7.1.1 Subject to any extensions of time provided for in this Agreement, failure or delay by any Party to perform any term or provision of this Agreement shall constitute an “Event of Default” under this Agreement; provided, however, that if a Party otherwise in default commences to cure, correct or remedy such default, within thirty (30) calendar days after receipt of written notice from the injured Party specifying such default, and shall diligently and continuously prosecute such cure, correction or remedy to completion (and where any time limits for the completion of such cure, correction or remedy are specifically set forth in this Agreement, then within said time limits), such Party shall not be deemed to be in default under this Agreement and no Event of Default shall be deemed to have occurred.

7.1.2 The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the non-defaulting Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

7.1.3 Any failure or delays by any Party in asserting any of their rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any Party in asserting any of its rights and/or remedies shall not deprive that Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

7.1.4 In addition to other acts or omissions of the Developer that may legally or equitably constitute a default or breach of this Agreement, the occurrence of any of the following specific events, prior to the issuance of a Certificate of Completion for the Project, shall constitute an “Event of Default” under this Agreement and shall not be subject to the notice and cure provisions of Section 7.1.1:

7.1.4.1 Any material default by the Developer under any Loan Documents for any purpose or reason that remains uncured following any applicable notice and expiration of any applicable cure period under such Loan Documents.

7.1.4.2 Any representation or warranty made to the City by the Developer regarding this Agreement or the Project is materially false or misleading, whether or not such representation or disclosure appears in this Agreement.

7.1.4.3 The Developer fails to make any payment or deposit of funds required under this Agreement or to pay any other charge set forth in this Agreement, following seven (7) days’ written notice to the Developer from the City of such failure.

7.1.4.4 The construction of the Project is delayed or suspended for a period in excess of that permitted under Section 4.3 or the Developer has not achieved Completion of Construction by the time required pursuant to this Agreement.

7.1.4.5 There occurs any event of dissolution, reorganization or termination of the Developer that adversely and materially affects the operation or value of the Property or the Project, and such event is not corrected within thirty (30) days following written notice of such event from the City to the Developer.

7.1.4.6 The Developer Transfers its interest in this Agreement, the Property, or the Project, or any portion thereof, whether voluntarily or involuntarily or by operation of law, in violation of the terms and conditions of this Agreement and such action is not cured within the period prescribed in Section 8.2.2.

7.1.4.7 The Developer becomes insolvent or a receiver is appointed to conduct the affairs of the Developer under state or federal law.

7.1.4.8 The Developer's legal status as a limited liability company authorized by the Secretary of State of the State of California to transact business in California is suspended or terminated.

7.2 LIQUIDATED DAMAGES TO THE CITY. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY MAY CANCEL THE ESCROW PURSUANT TO SECTION 3.9, AND UPON CANCELLATION OF THE ESCROW, THE CITY SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO SELL OR CONVEY THE CINEMA PARCEL OR ANY PORTION THEREOF AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE CITY TO THE DEVELOPER OR ANY OTHER PERSON ARISING FROM SUCH ACTIONS. THE CITY AND THE DEVELOPER ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL, IF NOT IMPOSSIBLE, TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY AND THE DEVELOPER AGREE THAT A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT IS THE TOTAL SUM OF THE DEPOSIT (THE "LIQUIDATED DAMAGES AMOUNT"). THEREFORE, UPON THE CANCELLATION OF THE ESCROW BY THE CITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF THE ESCROW, ESCROW HOLDER SHALL IMMEDIATELY CANCEL THE ESCROW AND PAY THE LIQUIDATED DAMAGES AMOUNT TO THE CITY, IN PART, FROM THE EARNEST MONEY DEPOSIT WITHIN FIVE (5) DAYS OF ESCROW CANCELLATION. RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE DEVELOPER UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW.

CITY'S INITIALS: _____ DEVELOPER'S INITIALS: _____

7.3 LIMITATION ON RECOVERY OF DAMAGES AND OTHER REMEDIES.

IN THE EVENT OF A DEFAULT BY THE CITY UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW WHICH DEFAULT THE CITY DOES NOT CURE WITHIN THIRTY (30) DAYS AFTER RECEIPT FROM DEVELOPER OF WRITTEN NOTICE OF SUCH DEFAULT, THE DEVELOPER MAY (I) TERMINATE THIS AGREEMENT, IN WHICH EVENT THE PARTIES SHALL CANCEL THE ESCROW PURSUANT TO SECTION 3.9, AND DEVELOPER SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO PURCHASE OR ACCEPT TITLE TO THE PROPERTY, AND ANY ESCROW CANCELLATION CHARGES SHALL BE PAID BY THE CITY, OR (II) PURSUE SPECIFIC PERFORMANCE OF THIS AGREEMENT AS MAY AVAILABLE UNDER APPLICABLE LAW. IF THE DEVELOPER CHOSSES TO TERMINATE THE AGREEMENT, THE DEVELOPER'S RECOVERY OF DAMAGES AGAINST THE CITY SHALL BE LIMITED TO RECOVERING ANY AMOUNTS ACTUALLY EXPENDED BY THE DEVELOPER IN REASONABLE RELIANCE ON THIS AGREEMENT PRIOR TO THE DATE OF THE OCCURRENCE OF THE EVENT OF DEFAULT BY THE CITY, NOT TO EXCEED TWENTY FIVE THOUSAND DOLLARS (\$25,000) IN THE AGGREGATE. THE DEVELOPER WAIVES ANY RIGHT TO RECOVER ANY OTHER SUMS FROM THE CITY ARISING FROM AN EVENT OF DEFAULT BY THE CITY. IF THE DEVELOPER CHOSSES TO PURSUE SPECIFIC PERFORMANCE, DEVELOPER SHALL NOT BE ENTITLED TO RECOVER MONETARY DAMAGES FROM THE CITY. THE DEVELOPER ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 7.3, WHICH CIVIL CODE SECTION READS AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

BY INITIALING BELOW, THE DEVELOPER KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 7.3.

DEVELOPER'S INITIALS _____

IN CONNECTION WITH THE WAIVERS OF THIS SECTION 7.3, THE DEVELOPER FURTHER WAIVES THE RIGHT TO RECORD A NOTICE OF PENDENCY OF ACTION AGAINST ALL OR ANY PORTION OF THE .

7.4 Legal Actions.

7.4.1 Except as otherwise provided by Section 7.2 or 7.3, any Party may institute legal action to cure, correct or remedy any default, to recover damages for any default,

or to obtain any other remedy available to that Party under this Agreement or at law or in equity. Such legal actions must be instituted in the Superior Court of the State of California in and for the County of San Diego, California, in any other appropriate court within the County of San Diego, California.

7.4.2 The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the City of Santee, County of San Diego, California.

7.5 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this ARTICLE VII are non-exclusive and cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party(ies).

7.6 City Power of Termination Regarding the Property.

7.6.1 The City hereby reserves a power of termination pursuant to Civil Code Sections 885.010, *et seq.*, exercisable by the City, in its sole and absolute discretion, upon thirty (30) calendar days written notice to the Developer referencing this Section 7.6, to terminate the fee interest of the Developer in the Property and/or any improvements to the Property and revest such fee title in the City and take possession of all or any portion of such real property and improvements, without compensation to the Developer, upon the occurrence of an Event of Default by the Developer following the Close of Escrow and prior to the issuance of the Certificate of Completion.

7.6.2 The thirty (30) calendar day written notice specified Section 7.6.1 shall specify the Event of Default by the Developer triggering the City's exercise of its power of termination. The City shall proceed with its remedy set forth in Section 7.6.1 only if the Developer continues in default for a period of sixty (60) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion.

7.6.3 The rights of the City under this Section 7.6 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

7.6.3.1 Each Lien recorded against the Property and specifically authorized by this Agreement as a Permitted Transfer;

7.6.3.2 Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Property and specifically authorized by this Agreement as a Permitted Transfer.

7.6.4 Upon the City's exercise of its power of termination pursuant to this Section 7.6, the Developer or its successors or assigns shall convey by grant deed to the City title to the Property, as specified in the City's notice pursuant to Section 7.6.1, and all improvements

thereon, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Developer and a notary in a manner suitable for recordation. The City may enforce its rights pursuant to this Section 7.6 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

7.6.5 Upon the revesting in the City of title to the Property, whether by grant deed or court decree, the City shall exercise its reasonable good faith efforts to resell the Property at its then fair market value, as soon and in such manner as the City shall, in its sole discretion, find feasible and consistent with the objectives of the City's General Plan, to a qualified and responsible person or persons (as reasonably determined by the City) who will assume the Developer's obligations to begin and/or complete and/or operate that portion of the Project located on the Property, or such other replacement development acceptable to the City, in its sole and absolute discretion. Upon any such resale of the Property (or any portion thereof), the proceeds to the City from such sale shall be applied as follows:

7.6.5.1 First, to pay any and all amounts required to release/reconvey any Lien recorded against all or any portion of the Property; and

7.6.5.2 Second, to reimburse the City on its own behalf or on behalf of the City for all actual internal and third-party costs and expenses previously or currently incurred by the City related to the Property, the Project, or this Agreement, including, but not limited to, customary and reasonable fees or salaries to third-party personnel engaged in such actions, in connection with the recapture, management and resale of the Property or any part thereof; all taxes, assessments and utility charges paid by the City with respect to the Property or portion thereof; any payment made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred by the Developer with respect to the acquisition of the Property or the construction of the Project; and amounts otherwise owing to the City by the Developer or its successors or assigns pursuant to the terms of this Agreement; and

7.6.5.3 Third, to the extent that any proceeds from such resale are, thereafter, available, taking into account any prior encumbrances with a claim thereto, to reimburse the Developer, or its successors in interest to the equal to the sum of: (1) the Purchase Price; and (2) the third-party costs actually incurred and paid by the Developer regarding the development of the Project located on the Property, including, but not limited to, pro rata costs of carry, taxes, and other items as set forth in a cost certification to be made by the Developer to the City prior to any such reimbursement, which certification shall be subject to the City's reasonable approval; provided, however, that the Developer shall not be entitled to reimbursement for any expenses to the extent that such expenses relate to any loans, Liens or other encumbrances that are paid by the City pursuant to the provisions of sub-sections 7.6.5.1 or 7.6.5.2 above.

7.6.5.4 Any portion of the proceeds from the resale of the Property remaining after the foregoing applications shall be retained by the City as their sole and exclusive property.

7.6.6 IMMEDIATELY FOLLOWING THE THIRTY (30) PERIOD SPECIFIED IN SECTION 7.6.1, ABOVE, THE CITY, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE PROPERTY AND ANY IMPROVEMENTS THEREON, WITHOUT FURTHER NOTICE OR COMPENSATION TO THE DEVELOPER. BY INITIALING BELOW, THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

DEVELOPER'S INITIALS _____

7.6.7 THE DEVELOPER ACKNOWLEDGES AND AGREES THAT THE CITY'S EXERCISE OF ITS POWER OF TERMINATION AND RIGHT OF REENTRY PURSUANT TO THIS SECTION 7.6 MAY WORK A FORFEITURE OF THE ESTATE IN THE DEFAULTED PORTION OF THE PROPERTY CONVEYED TO THE DEVELOPER THROUGH THE GRANT DEED. THE DEVELOPER HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE DEVELOPER MAY HAVE TO SUCH FORFEITURE INCLUDING BUT NOT LIMITED TO THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE. THE DEVELOPER FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE DEVELOPER MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT. THE DEVELOPER ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE CITY'S POWER OF TERMINATION PROVIDED IN THIS SECTION 7.6 AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO SECTION 7.6.6. AND THIS SECTION 7.6.7.

DEVELOPER'S INITIALS _____

7.6.8 The provisions of this Section 7.6 shall terminate and expire upon the Completion of Construction.

7.7 Developer Indemnification of the City. In addition to any other specific indemnification or defense obligations of the Developer set forth in this Agreement, the Developer agrees to indemnify, defend (upon written request by the City and with counsel reasonably acceptable to the City) and hold harmless the Indemnified Parties, from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs and expenses, including, but not limited to reasonable attorney's fees of counsel retained by the Indemnified Parties, expert fees, costs of staff time, and investigation costs, of whatever kind or nature, that are in any manner directly or indirectly caused, occasioned or contributed to in whole

or in part, through any act, omission, fault or negligence, whether active or passive, of the Developer or the Developer's officers, agents, employees, independent contractors or subcontractors of any tier ("Developer Parties"), relating in any manner to this Agreement, any work to be performed by the Developer related to this Agreement, the Property, or the Project, any authority or obligation exercised or undertaken by the Developer under this Agreement' or arising out of or relating to this Agreement. Without limiting the generality of the foregoing, the Developer's obligation to indemnify the Indemnified Parties shall include injury or death to any person or persons, damage to any property, regardless of where located, including the property of the Indemnified Parties, any workers' compensation or prevailing wage determination, claim or suit or any other matter arising from or connected with any goods or materials provided or services or labor performed regarding the Project or the Property on behalf of the Developer by any person or entity. The obligation to indemnify the Indemnified Parties shall also include the use or occupancy, or manner of use or occupancy, of the Property; any act error or omission, or negligence of Developer, Developer Parties, or of any invitee, guest, or licensee of Developer Parties in, on, or about the Property; or Developer's conducting of their business. These and any other specific indemnification or defense obligations of the Developer set forth in this Agreement shall survive the expiration or earlier termination of this Agreement.

ARTICLE VIII

GENERAL PROVISIONS.

8.1 Incorporation of Recitals. The Recitals of fact set forth preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

8.2 Restrictions on Transfers.

8.2.1 The Developer acknowledges that the qualifications and identity of the Developer are of particular importance to the City. The Developer further recognizes and acknowledges that the City has relied and is relying on the specific qualifications and identity of the Developer in entering into this Agreement with the Developer and, as a consequence, Transfers are permitted only as expressly provided in this Agreement. The Developer shall promptly notify the City in writing of any and all changes in the identity of the business entities or individuals either comprising or in control of the Developer, as well as any and all changes in the interest or the degree of control of the Developer by any such person, of which information the Developer or any of its partners, members or officers are notified or may otherwise have knowledge or information.

8.2.2 Except as expressly permitted in this Agreement, the Developer represents to the City that it has not made and agrees that it will not make or create, or suffer to be made or created, any Transfer other than a Permitted Transfer, either voluntarily, involuntarily or by operation of law, until after the recordation of a Certificate of Completion for the Project subject to the Transfer; provided, however, that the City may approve in its reasonable discretion, Transfers other than Permitted Transfers prior to the recordation of a Certificate of Completion. In deciding whether to approve or disapprove any proposed Transfer, the City may consider the proposed transferee's financial strength, reputation and the experience of the

proposed transferee and its senior management, and the City shall consent to a Transfer requested by Developer if (i) the proposed transferee and its senior management have experience at least equal to that of Developer in undertaking and successfully completing projects of a similar type and size as the Project or that portion of the Project proposed to be transferred, (ii) has financial wherewithal and liquidity (or ready access thereto through partners, investors or lenders) at least equal to that of Developer, and (iii) and does not have other material and adverse attributes that would make a reasonable person unwilling to do business with the proposed transferee (e.g. attributes such as a history of repeated dishonesty or business failure or prior bankruptcy). Any Transfer made in contravention of this Section 8.2 shall be voidable at the election of the City and this Agreement may be terminated by the City or the City may exercise any other remedy available to the City under the terms of this Agreement, provided, however, that (i) the City shall first notify the Developer in writing of its intention to terminate this Agreement or to exercise any other remedy, and (ii) the Developer shall have twenty (20) calendar days following its receipt of such written notice to commence and, thereafter, diligently and continuously proceed to cure the default of the Developer and submit evidence of the initiation and satisfactory completion of such cure to the City, in a form and substance reasonably satisfactory to the City.

8.2.3 The Developer shall provide the City no less than thirty (30) days prior written notice of any proposed Transfer which the Developer desires to enter into prior to the recordation of a Certificate of Completion for the Project subject to the Transfer, other than a Permitted Transfer for which no notice shall be required. The Developer shall have the burden of demonstrating to the City's reasonable satisfaction that the proposed Transfer meets the conditions and requirements of this Agreement with respect to Permitted Transfers or that the City should approve the Transfer under Section 8.2.2 (if such Transfer is not a Permitted Transfer).

8.2.4 In connection with the City's review of any request for approval of any proposed Transfer under this Section 8.2, or of any Lender or Loan under Section 6.3, the Developer agrees to reimburse the City for those third party costs and expenses reasonably incurred by the City in connection with its review of the Developer's request for approval, including, without limitation, the reasonable fees and costs of those outside consultants and legal counsel retained by the City to assist it in its review of the Developer's request, including the City Attorney.

8.3 Notices, Demands and Communications Between the Parties.

8.3.1 Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight courier service or by registered or certified United States Mail, postage prepaid, return receipt requested, to the principal office of the City or the Developer, as applicable, as designated in Section 8.3.2. Such written notices, demands or communications may be sent in the same manner to such other addresses as either Party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is delivered by personal delivery, on the date of delivery by a nationally

recognized overnight courier service or three (3) calendar days after it is placed in the United States Mail, as provided in this Section 8.3.

8.3.2 The following are the authorized addresses for the submission of notices, demands or communications to the Parties or Escrow Holder:

TO DEVELOPER: TNTF LLC
12404 Park Central Drive, Suite 400-N
Dallas, TX 75251
Attention: Ted Croft

COPY TO:

TO CITY: City of Santee
ADDRESS
Attention: City Manager

COPY TO: Best Best & Krieger, LLP
18101 Von Karman Ave, Suite 1000
Irvine, CA 92614
Attention: Elizabeth Hull
(T) 949-263-2600
(F) 949-260-0972

TO ESCROW
HOLDER:

8.4 Conflict of Interest. No member, official or employee of the City, having any conflict of interest, direct or indirect, related to this Agreement, the Property, or the development or operation of the Project shall participate in any decision relating to this Agreement. The Parties represent and warrant that they do not have knowledge of any such conflict of interest.

8.5 Warranty Against Payment of Consideration for Agreement. The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 8.5, shall not include persons to whom fees are paid for professional services, if rendered by attorneys, financial consultants, accountants, engineers, brokers, architects and the like when such fees are considered necessary by the Developer.

8.6 Non-liability of City, Officials and Employees. No member, official or employee of the City shall be personally liable to the Developer, or any successor in interest of the Developer, in the event of any default or breach by the City under this Agreement or for any amount that may become due to the Developer or to its successor, or on any obligations under the terms of this Agreement, except as may arise from the gross negligence or willful acts of such member, official or employee.

8.7 Unavoidable Delay; Extension of Time of Performance.

8.7.1 Subject to specific provisions of this Agreement, performance by any Party under this Agreement shall not be deemed, or considered to be, in default where any such default is due to an Unavoidable Delay that is not attributable to the fault of the Party claiming an extension of time to perform. An extension of time for any Unavoidable Delay shall be for the period of the Unavoidable Delay and shall commence to run from the date of occurrence of the Unavoidable Delay, if the Party asserting the existence of the Unavoidable Delay provides the other Parties with written notice of the occurrence of the Unavoidable Delay, within ten (10) days after the notifying Party learns of the commencement of such asserted Unavoidable Delay. Otherwise, the extension of time for an Unavoidable Delay shall commence on the date of receipt of written notice of the occurrence of the Unavoidable Delay by the Parties not requesting an extension of time to perform due to such Unavoidable Delay.

8.7.2 The Parties expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of either of them that may have provided a basis for entering into this Agreement and that occur at any time after the execution of this Agreement, do not constitute an Unavoidable Delay and do not provide any Party with grounds for asserting the existence of an Unavoidable Delay in the performance of any covenant or undertaking arising under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement.

8.8 Studies and Reports. If, pursuant to Section 7.3, the Developer has terminated this Agreement and received the Liquidated Damages amount, within in ten (10) days of receipt of the Liquidated Damages amount from the City, Developer shall provide City with complete copies of all environmental, geotechnical, and soils reports or studies conducted on relating to the Property.

8.9 Real Estate Commissions. The City shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to this Agreement. The Developer shall pay any fees or commissions or other expenses related to its retention or employment of real estate brokers, agents or other professionals.

8.10 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns who, upon valid assignment of this Agreement as provided herein, shall become the Developer hereunder.

8.11 Entire Agreement.

8.11.1 This Agreement shall be executed in three (3) duplicate originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement includes __ pages (exclusive of signature pages) and __ exhibits, that constitute the entire understanding and agreement of the Parties regarding the Property, the Project, and the other subjects addressed in this Agreement.

8.11.2 This Agreement (including the exhibits attached hereto) constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof, and supersedes all negotiations or previous agreements between the Parties with respect to the Property, the Project, and the other subjects addressed in this Agreement.

8.11.3 None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Property and this Agreement shall continue in full force and effect before and after such conveyances.

8.11.4 All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of all Parties.

8.12 Execution of this Agreement. Following execution of three (3) originals of this Agreement by the authorized representative(s) of the Developer and prompt delivery of such originals, thereafter, to the City, accompanied by an official action of the governing body of the Developer authorizing the individuals executing this Agreement on behalf of the Developer to execute and perform this Agreement, in form and substance acceptable to the City, this Agreement shall be subject to the review and approval by the City Council, in their sole and absolute discretion, no later than forty-five (45) calendar days after such date of delivery to the City. If the City have not approved, executed, and delivered an original of this Agreement to the Developer within the foregoing time period, then no provision of this Agreement shall be of any force or effect for any purpose.

8.13 Survival of Indemnity Obligations. All general and specific indemnity and defense obligations of the Parties set forth in this Agreement shall survive the expiration or termination of this Agreement, the execution or recordation of the Grant Deed, and/or the issuance and recordation of any Certificate of Completion.

8.14 Time Declared to be of the Essence. As to the performance of any obligation hereunder as to which time is a component thereof, the performance of such obligation within the time provided is of the essence.

[Signatures on Following Pages]

SIGNATURE PAGE
TO
2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

CITY:

THE CITY OF SANTEE
a California charter city

Dated: _____, 2018

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
City Attorney

SIGNATURE PAGE
TO
2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

DEVELOPER:

TNTF LLC, a Texas limited liability company

Dated: _____

By: _____
Its:

By: _____
Its:

DRAFT

EXHIBIT A
TO
2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

Legal Description of the Property

DRAFT

EXHIBIT B
TO
2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

Scope of Development

Cinema Improvements. Developer plans to obtain land use entitlements from the City of Santee (the "Land Use Entitlements" or "Entitlements"), and other applicable entities, for the construction and operation of the Cinema Improvements on the Cinema Parcel. The final design and development components of the Cinema Improvements shall be established in the Land Use Entitlements. The Cinema Improvements shall consist of the following components, at a minimum: :

(a) The Cinema Improvements shall address the concepts and design standards identified in the Santee Town Center Specific Plan, and the Town Center Specific Plan Amendments (TCSPA 04-01).

(b) The Cinema Improvements shall include exterior architecture and design features that will generate street-level interest and create a center piece development to support a future Entertainment District in Santee Town Center.

(c) The Cinema Improvements shall create both design and pedestrian connectivity with adjacent uses in the Santee Town Center Specific Plan Area.

(d) Provides a full kitchen capable of serving every seat in the theater.

(e) Incorporates into the theater design an adjacent restaurant space which complements and enhances the theater uses. The restaurant component must be part of the theater complex, must provide full table service, patio seating, include restaurant access from the theater lobby, and may also integrate restaurant seating extending into the lobby area of the theater. The restaurant must be a certain quality and standard acceptable to the City.

(f) Provides at least 9 auditoriums, each ranging from 70-200 seats and premium digital projection.

Operational Features. Upon opening, the movie theater shall include certain operational features. The Parties agree and acknowledge that over time changes within the industry may warrant operational changes to remain competitive. Modifications to these operational features associated with changes in industry standards are acceptable. At opening, the Operational Features shall include:

(a) The Cinema Improvements shall include theater seats with the following components: lounge recliners with footrests, tray tables for food, electronic seat controls, and a center armrest that pulls up between the two seats.

(b) The Cinema Improvements shall provide a lobby area with reserved ticketing kiosks, full bar and lounge seating, and a guest services desk, as well as online ticketing for reserved seating.

(c) Operations of the Cinema Improvements shall provide for pre-ordered food service which could be delivered to all theater seats.

(d) Provides a food menu that includes casual dining selections and includes at least some concession items.

(e) Provides a full bar menu of mixed cocktails/beer/wine, including commonly recognized brands of spirits/wines.

(f) Provides ample concessions area with expanded selection, including but not limited to, candy bins, ice cream, coffee and craft beer.

(g) Provides auditoriums that can be adapted for multi-purposes, including but not limited to, presentations, training programs, and digital screenings of performing arts or gaming events or third party plug-in presentations.

(h) Provides a range of ticket pricing comparable to other theaters in the San Diego East County area, with discounted pricing options and special discount days.

(i) Provide a mobile application program to track customer purchases and preferences and provide rewards.

Possible Restaurant. Developer may pursue the development of a restaurant on the Cinema Parcel as part of the Cinema Project, but Developer is under no obligation to do so. If Developer pursues development of a restaurant, it may seek a related subdivision of the Cinema Parcel into a "Restaurant Lot" and a "Movie Theater Lot" and seek to sell both parcels subject to applicable use restrictions and the rights and duties that arise under this Agreement.

EXHIBIT C
TO
2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

Schedule of Performance

	Action	Date Action to be Completed By
1.	Effective Date	See Section 1.3
2.	Developer and City to open Escrow and, concurrently, Developer to deposit Earnest Money Deposit into Escrow	Within 5 days following the Effective Date
3.	Due Diligence Period commences	The date of the Escrow Opening Date
4.	Developer to apply for entitlements	Within 30 days following the Effective Date
5.	Developer to deliver Developer's Title Notice to Agency	Within 30 days following Developer's receipt of the Preliminary Report
6.	City to deliver City's Title Notice Response to Developer, if appropriate	Within 20 days following City's Receipt of Developer's Title Notice
7.	Developer to deliver Developer's Title Notice Waiver, if appropriate	Within 10 days following Developer's receipt of City's Title Notice Response
8.	Developer to deliver its Due Diligence Investigation Conclusion Notice	On or before the end of the Due Diligence Period
9.	Due Diligence Period ends	On the 90th day following the Escrow Opening Date

	Action	Date Action to be Completed By
10.	Escrow Closing Date	On the 10th day following satisfaction or waiver of conditions precedent or 90 days from end of Due Diligence Period
11.	Developer to commence construction of the Project and deliver Project Commencement Notice to City	No later than 60 days after issuance of Building Permits
12.	Project Completion Date	13 months after construction commencement
13.	Open Cinema Project for business	45 days after Project Completion date, subject to Black Out Period extension

EXHIBIT D
TO 2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

Form of Grant Deed

[Attached Behind This Page]

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

THE CITY OF SANTEE
GRANT DEED

PART ONE

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THE CITY OF SANTEE, a California charter city (“**Grantor**”),

hereby grants to

TNTF, LLC, a Texas limited liability company (“**Grantee**”),

that certain real property located in the City of Santee, County of San Diego, State of California, specifically described in Exhibit “1” attached to this Grant Deed (“**Property**”) and made a part of this Grant Deed by this reference.

PART TWO

The conveyance of the Property by the Grantor to the Grantee in Part One is subject to the community development terms, conditions, covenants and restrictions including but not limited to:

Section 1. Conveyance Subject to Terms of a Disposition and Development Agreement. The Property is conveyed subject to that certain 2018 Disposition and Development Agreement (Cinema Parcel), dated as of _____, 2018, between the Grantor and the Grantee (the “**Agreement**”). The provisions of the Agreement are incorporated into this Grant Deed by this reference and are deemed to be a part of this Grant Deed, as though fully set forth in this Grant Deed.

Section 2. Condition of Property. The Grantee acknowledges and agrees that the Property is conveyed by the Grantor to the Grantee in its “AS IS,” “WHERE IS” and “SUBJECT TO ALL FAULTS CONDITION,” as of the date of recordation of this Grant Deed, with no warranties, expressed or implied, as to the environmental or other physical condition of the Property, the presence or absence of any patent or latent environmental or other physical condition on or in the Property, or any other matters affecting the Property.

Section 3. Obligation to Refrain from Discrimination. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and or the “**Project**” (as defined in the Agreement), covenants and agrees that:

3.1 There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, religion, creed, national origin or

ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall the Grantee, itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessees or vendees of the Property. The covenant of this Section 3 shall run with the land of the Property and shall be enforceable against the Grantee and its successors and assigns in perpetuity and be a covenant in the Grant Deed and the Notice of Agreement.

3.2 The covenant of this Section 3 shall run with the land of the Property in perpetuity, shall be enforceable against the Grantee and its successors and assigns, and shall be covenants set forth in the Grant Deed.

Section 4. Form of Non-Discrimination and Non-Segregation Clauses. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that:

4.1 The Grantee, such successors and such assigns shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Property (or any portion thereof) on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All deeds, leases or contracts pertaining to the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

(a) In deeds: “The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sub-tenants, sub-lessee, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) In leases: “The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants lessees, sub-lessee, sub-tenants, or vendees in the premises herein leased.”

(c) In contracts: “There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or leased, nor shall the transferee or any

person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred.” The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

4.2 The covenants of this Section 4 shall run with the land of the Property in perpetuity, shall be enforceable against the Developer and its successors and assigns, and shall be covenants set forth in the Grant Deed.

Section 5. Covenant to Maintain Property on Tax Rolls. The Grantee for itself, its successors and assigns to all or any part or portion of the Property and/or Project, covenants and agrees that

5.1 The Property shall remain on the County secured real property tax rolls for twenty years from the date of issuance by the Grantor of a certificate of occupancy for the Project (“**Certificate of Occupancy**”).

5.2 The Grantee shall pay all property tax bills with respect to the Property and all improvements thereon on or before the last day for the timely payment of each property tax installment on each December 10 and April 10 during such time period and to timely pay all supplemental tax bills regarding the Property issued by the County. The Grantee further covenants and agrees to provide to the Grantor, on or before July 31 of each year, commencing in the calendar year following the calendar year in which the Certificate of Completion for the Project is recorded and in each calendar year, thereafter, for the full term of this covenant: (i) a true and correct copy of all property tax assessment notices, property tax bills and property tax assessment correspondence by and between the Grantee and the County regarding the Property and all improvements thereon, with respect to the preceding fiscal year of the County, and (ii) cancelled checks issued by the Grantee in payment of all property tax payments that are made to the County regarding the Property and all improvements thereon, with respect to the preceding County fiscal year.

5.3 The covenants of this Section 5 shall run with the land of the Property, shall be enforceable against the Grantee and its successors and assigns.

Section 8 Grantor Power of Termination Regarding the Property.

8.1 The City hereby reserves a power of termination pursuant to Civil Code Sections 885.010, et seq., exercisable by the City, in its sole and absolute discretion, upon thirty (30) calendar days written notice to the Developer referencing this Section 8.1, to terminate the fee interest of the Developer in the Property and/or any improvements to the Property and revert such fee title in the City and take possession of all or any portion of such real property and improvements, without compensation to the Developer, upon the occurrence of an Event of Default by the Developer following the Close of Escrow and prior to the issuance of the Certificate of Completion.

8.2 The thirty (30) calendar day written notice specified Section 8.1 shall specify the Event of Default by the Developer triggering the City’s exercise of its power of

termination. The City shall proceed with its remedy set forth in Section 8.1 only if the Developer continues in default for a period of sixty (60) calendar days following such notice or, upon commencing to cure such default, fails to diligently and continuously prosecute said cure to satisfactory conclusion.

8.3 The rights of the Grantor under this Section 8 shall be subject and subordinate to, shall be limited by and shall not defeat, render invalid or limit:

- (1) Each Lien recorded against the Property and specifically authorized by this Agreement as a Permitted Transfer;
- (2) Any leases, declarations of covenants, conditions and restrictions, easement agreements or other recorded documents or interests applicable to the Property and specifically authorized by this Agreement as a Permitted Transfer.

8.4 Upon the Grantor's exercise of the its power of Termination pursuant to this Section 8, the Grantee or its successors or assigns shall convey by grant deed to the Grantor title to the Property, as specified in the Grantor's notice pursuant to Section 8.1, and all improvements thereon, in accordance with Civil Code Section 1109, as such code section may hereafter be amended, renumbered, replaced or substituted. Such conveyance shall be duly acknowledged by the Grantee and a notary in a manner suitable for recordation. The Grantor may enforce its rights pursuant to this Section 8.4 by means of an injunctive relief or forfeiture of title action filed in any court of competent jurisdiction.

8.5 Upon the reversion in the Grantor of the Property, whether by grant deed or court decree, the Grantor shall exercise its reasonable good faith efforts to resell the Property at its then fair market value, as soon and in such manner as the Grantor shall, in its sole discretion, find feasible and consistent with the objectives of the City of Santee General Plan, to a qualified and responsible person or persons (as reasonably determined by the Grantor) who will assume the Grantee's obligations to begin and/or complete and/or operate the Project located on the Property, or such other replacement development acceptable to the Grantor, in its sole and absolute discretion. Upon any such resale of the Defaulted Portion of the Property (or any portion thereof), the proceeds to the Grantor from such sale shall be applied as follows:

- (1) First, to pay any and all amounts required to release/reconvey any Lien recorded against all or any portion of the Property; and
- (2) Second, to reimburse the Grantor on its own behalf or on behalf of the Grantor for all actual internal and third-party costs and expenses previously or currently incurred by the Grantor, or the Grantor related to the Property, the Project, or this Agreement, including, but not limited to, customary and reasonable fees or salaries to third-party personnel engaged in such actions, in connection with the recapture, management and resale of the Property or any part thereof; all taxes, assessments and utility charges paid by the Grantor and/or the Grantor or authority with

respect to the Property or portion thereof; any payment made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred by the Grantee with respect to the acquisition of the Property or the construction of the Project and amounts otherwise owing to the Grantor or authority by the Grantee or its successors or assigns pursuant to the terms of this Agreement; and

- (3) Third, to the extent that any proceeds from such resale are, thereafter, available, taking into account any prior encumbrances with a claim thereto, to reimburse the Grantee, or its successors in interest to the equal to the sum of: (1) Purchase Price; and (2) the third-party costs actually incurred and paid by the Grantee regarding the development of the Project, including, but not limited to, pro rata costs of carry, taxes, and other items as set forth in a cost certification to be made by the Grantee to the Grantor prior to any such reimbursement, which certification shall be subject to the Grantor's reasonable approval; provided, however, that the Grantee shall not be entitled to reimbursement for any expenses to the extent that such expenses relate to any loans, Liens or other encumbrances that are paid by the Grantor pursuant to the provisions of subsections (1) or (2) above.
- (4) Any portion of the proceeds from the resale of the Property remaining after the foregoing applications shall be retained by the Grantor as its sole and exclusive property.

8.6 IMMEDIATELY FOLLOWING THE THIRTY (30) DAY PERIOD SPECIFIED IN SECTION 7.6.1, ABOVE, GRANTOR, ITS EMPLOYEES AND AGENTS SHALL HAVE THE RIGHT TO REENTER AND TAKE POSSESSION OF THE PROPERTY AND ANY IMPROVEMENTS THEREON, WITHOUT FURTHER NOTICE OR COMPENSATION TO GRANTEE. BY INITIALING BELOW, THE GRANTEE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS THAT THE GRANTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 791 AND CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1162, AS THOSE STATUTES MAY BE AMENDED, REPLACED, RENUMBERED OR SUBSTITUTED, OR UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

GRANTEE'S INITIALS _____

8.7 THE GRANTEE ACKNOWLEDGES AND AGREES THAT THE GRANTOR'S EXERCISE OF THE CITY TERMINATION POWER PURSUANT TO THIS SECTION MAY WORK A FORFEITURE OF THE ESTATE IN THE PROPERTY CONVEYED TO THE GRANTEE THROUGH THE GRANT DEED. THE GRANTEE HEREBY EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL EQUITABLE AND LEGAL DEFENSES THAT THE GRANTEE MAY

HAVE TO SUCH FORFEITURE INCLUDING BUT NOT LIMITED TO THE DEFENSES OF LACHES, WAIVER, ESTOPPEL, SUBSTANTIAL PERFORMANCE OR COMPENSABLE DAMAGES. THE GRANTEE FURTHER EXPRESSLY WAIVES, TO THE MAXIMUM EXTENT ALLOWED BY LAW, ANY AND ALL RIGHTS AND DEFENSES THAT THE GRANTEE MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3275 OR ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SUBSTANTIALLY THE SAME EFFECT. THE GRANTEE ACKNOWLEDGES THAT THE TERMS AND CONDITIONS OF THE AGREEMENT REFLECT THE POSSIBILITY OF FORFEITURE BY VIRTUE OF THE EXERCISE OF THE GRANTOR'S POWER OF TERMINATION PROVIDED IN THIS SECTION 8.7 AND FURTHER ACKNOWLEDGE THAT IT HAS RECEIVED INDEPENDENT AND ADEQUATE CONSIDERATION FOR ITS WAIVER AND RELINQUISHMENT OF RIGHTS AND REMEDIES PURSUANT TO SECTION 8.6 AND THIS SECTION 8.7.

8.8. The provisions of this Section 8 shall run with the land of the Property, shall be enforceable against the Grantee and its successors and assigns, and shall terminate and expire upon Completion of Construction.

GRANTEE'S INITIALS _____

PART THREE

Section 9. Covenants Run with the Land of the Property. Each of the covenants and agreements contained in this Grant Deed, including those set forth in the Agreement but not expressly restated herein, touch and concern the Property and each of them is expressly declared to be a community development covenant that runs with the land for the benefit of the Grantor, and such covenants run with the land in favor of the Grantor for the entire period that such covenants are in full force and effect, regardless of whether the Grantor is or remains an owner of any land or interest in land to which such covenants relate. The Grantor, in the event of any breach of any such covenants, has the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in the Agreement or by law. The covenants contained in this Grant Deed are for the benefit of and are enforceable only by the Grantor and shall survive the execution and recordation of this Grantor Deed and the issuance and recordation of each and every Certificate of Completion, for the time period set forth for each covenant.

Section 10. Costs and Attorneys' Fees for Enforcement Proceeding. If legal proceedings are initiated to enforce the rights, duties or obligations of any of the covenants set forth in this Grant Deed, then the prevailing party in such proceeding shall be entitled to collect its reasonable attorney fees and costs from the other party in addition to any other damages or relief obtained in such proceedings.

Section 11. Effect of Unlawful Provision; Severability. In the event that any provision of this Grant Deed is held to be invalid or unlawful by a final judgment of a court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Grant Deed.

IN WITNESS WHEREOF, the Grantor has caused this Grant Deed to be executed by its authorized representative(s) on this ____ day of _____, 2018.

GRANTOR:

THE CITY OF SANTEE
a California charter city

By: _____
City Manager

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

DRAFT

EXHIBIT 1
TO
GRANT DEED

Property Legal Description

DRAFT

CERTIFICATE OF ACCEPTANCE OF
GRANT DEED

The undersigned hereby acknowledges acceptance by Costanzo Investments, a California limited liability company, the Grantee in the within Grant Deed, of the delivery of the subject Property described in the within Grant Deed from the City of Santee.

GRANTEE:

TNTF, a Texas limited liability company

Dated: _____

By: _____

By: _____

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

EXHIBIT E
TO
2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

Form of Notice of Agreement

[Attached Behind This Page]

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

The City of Santee
213 E. Foothill Blvd.
Santee, California 91702
Attn: City Manager

Exempt from Recording fee
pursuant to Gov't Code § 27383

NOTICE OF AGREEMENT

2018 Disposition and Development Agreement
(Cinema Parcel)

TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE that TNTF, a Texas limited liability company (the “**Developer**”) and the City of Santee, a California charter city (the “**City**”) entered into an agreement entitled 2018 Disposition and Development Agreement (Cinema Parcel), dated as of _____, 2018 (the “**Agreement**”). A copy of the Agreement is on file with the City and is available for inspection and copying by interested persons as a public record of the City at the City’s offices located at _____, Santee, California 91702, during the City’s regular business hours.

The Agreement affects the real property described in Exhibit 1 attached to this Notice of Agreement (the “**Property**”). The meaning of defined terms, indicated by initial capitalization, used in this Notice of Agreement shall be the same as the meaning ascribed to such terms in the Agreement.

PLEASE TAKE FURTHER NOTICE that the Agreement contains certain development covenants running with the land of the Property and other agreements between the Developer and the City affecting the Property including , as set forth below (all section references are to the Agreement):

- 4.1 **Developer Covenant to Undertake Project.**
- 5.1 **Covenant to Maintain Property on Tax Rolls.**
- 5.2 **Operation and Use Covenant**
- 5.3 **No Conveyance to Tax Exempt Entity.**
- 5.4 **Maintenance Condition of the Property.**
- 5.5 **Obligation to Refrain from Discrimination.**

NOTICE OF AGREEMENT

2018 Disposition and Development Agreement
(Cinema Parcel)

This NOTICE OF AGREEMENT is dated as of _____, 2018, and has been executed on behalf of the Developer and the City by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be executed in counterparts and when fully executed each counterpart shall be deemed to be one original instrument.

CITY:

THE CITY OF SANTEE
a California charter city

Dated: _____, 2018

By: _____
City Manager

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: _____
City Attorney

DEVELOPER:

TNTF LLC, a Texas limited liability company

Dated: _____

By: _____

Its: _____

By: _____

[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

DRAFT

EXHIBIT 1
TO
NOTICE OF AGREEMENT
Legal Description of Property

DRAFT

EXHIBIT F
TO
2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

Form of Official Action of Developer

CERTIFICATION OF LLC AUTHORITY

The undersigned members of TNTF LLC, a Texas limited liability company (the “LLC”), do certify that we are all of the members of the LLC and that there are no other members.

We further certify that any one (1) of the following named persons, individually:

[INSERT NAMES]

be, and they are, authorized and empowered for and on behalf of and in the name of the LLC to execute and deliver that certain 2018 Disposition and Development Agreement (Cinema Parcel), dated _____, 2018, between the City of Santee, a California charter city, (“City”) and the LLC (the “Agreement”), to purchase certain real property located in the City of Santee, California, as specifically described in the Agreement, and all other documents to be executed by the LLC in connection with the transactions contemplated in the Agreement, and to take all actions that may be considered necessary to conclude the transactions contemplated in the Agreement and perform the other obligations of the LLC pursuant to the Agreement.

The authority conferred shall be considered retroactive, and any and all acts authorized in this document that were performed before the execution of this Certificate are approved and ratified. The authority conferred shall continue in full force and effect until the City of Santee, a California charter city shall have received notice in writing from the LLC of the revocation of this Certificate.

We further certify that the activities covered by the foregoing certifications constitute duly authorized activities of the LLC; that these certifications are now in full force and effect; and that there is no provision in any document under which the LLC is organized and/or that governs the LLC’s continued existence, limiting the power of the undersigned to make the certifications set forth in this certificate, and that such certifications are in conformity with the provisions of all such documents.

LLC Members:

EXHIBIT G
TO
2018 DISPOSITION AND DEVELOPMENT AGREEMENT
(Cinema Parcel)

Form of Certificate of Completion

[Attached Behind This Page]

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attention:

Exempt from Recording fee
pursuant to Gov't Code § 27383

CITY OF SANTEE
CERTIFICATE OF COMPLETION
(Cinema Parcel)

I, _____, City Manager of the City of Santee (the "City") certify that:

By its Resolution No. _____, adopted and approved _____, _____, the
City Council resolved:

Section 1. The Project described as [_____] required to be
constructed in accordance with that certain 2018 Disposition and Development Agreement
(Cinema Parcel), dated _____, 2018 ("DDA"), between the City and TNTF LLC, a Texas
limited liability company (the "**Developer**"), on that certain real property specifically described
in the legal description(s) attached to this Certificate of Completion as **Exhibit 1** (the
"**Property**"), is complete in accordance with the provisions of the Agreement.

This Certificate of Completion constitutes conclusive evidence of the City's
determination of the Developer's satisfaction of its obligation under the Agreement to construct
and install the Project on the Property, including, without limitation, any and all buildings,
parking areas, landscaping areas and related improvements necessary to support or meet any
requirements applicable to the Project and its use and occupancy on the Project, whether or not
such improvements are located on or off the Property or on other property subject to the
Agreement. Notwithstanding any provision of this Certificate of Completion, the City may
enforce any covenant surviving this Certificate of Completion in accordance with the terms and
conditions of the Agreement and the Grant Deed by which the Property was conveyed to the
Developer by the City under the Agreement. The Agreement is an official record of the City and
a copy of the Agreement may be inspected at the City's office located at _____, Santee,
California _____, during the City's regular business hours.

DATED AND ISSUED this _____ day of _____, _____.

THE CITY OF SANTEE
a California charter city

By: _____
City Manager

DRAFT

EXHIBIT 1
TO
CERTIFICATE OF COMPLETION

Legal Description of the Property

DRAFT

DRAFT

STAFF REPORT

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTEE, CALIFORNIA, FINDING THAT THE PUBLIC INTEREST AND CONVENIENCE REQUIRE THE SALE OF CERTAIN REAL PROPERTY, DECLARING ITS INTENT TO SELL SUCH PROPERTY, AND SETTING A PUBLIC HEARING

SANTEE CITY COUNCIL MEETING OCTOBER 24, 2018

A. INTRODUCTION

City staff have been in negotiations with TNTF, LLC (“Developer”) regarding the sale of a 6.74-acre parcel adjacent to the Santee Trolley Square, generally located north of Town Center Parkway between Cuyamaca Street and Riverview Parkway in Santee, California (“Property”). The sale will be completed through a Disposition and Development Agreement (“DDA”) which calls for the development of at least 9 screens in an approximate 40,000 square foot cinema. In a future phase, the Developer may develop an adjoining restaurant.

The Property was originally acquired from the County of San Diego in 2017 and is subject to a 20-year deed restriction that requires its development and use as a movie theater with ancillary food service operations. Following the transfer of title to the City, the City has engaged in a request for proposal process to find a developer willing to develop the site consistent with the deed restriction imposed by the County. The City has pursued development with three different developers over the years. The development of the site as a movie theater has proven to be extremely difficult. The deed restriction combined with site constraints and the current condition of the site makes the cost of development very high and the first two proposers were unable or unwilling to proceed with the development. TNTF, the current proposed developer, is experienced with the development and construction of movie theater projects and believes it will be able to finance and construct the project pursuant to the terms of the DDA.

B. DISCUSSION

Government Code Sections 37420 through 37430 provide a procedure for the City to dispose of real property, which does not require the City to offer the property for sale or lease to any other entity.

Pursuant to this statutory authority the City must take the following steps:

1. Adopt a resolution finding that public interest and convenience require the sale of the property and announcing the intent to sell the property. (Gov. Code § 37421.) The resolution shall fix a time for hearing protests to the

- sale, provide for a publication of the notice of hearing, fix the time final action will be taken and contain an accurate description of the property to be sold. (Gov. Code § 37422.)
2. Following adoption of the resolution it must be published at least once in a daily newspaper published and circulated in the City. In addition, the City shall post the resolution for at least ten (10) days in at least three (3) conspicuous places upon the property. (Gov. Code § 37423.)
 3. Following the adoption of the resolution the City will accept written protests and hear oral protests at a protest hearing. (Gov. Code § 37424.) In the event that either: (a) no protests are received, or (b) the City Council votes to overrule the protest by a 4/5 majority, the City may proceed with the sale. (Gov. Code § 37425.)
 4. Prior to the close of escrow the City Council, acting as the planning body for the City, must find that the location, purpose and extent of the City's disposition of real property conforms with the General Plan. (Gov. Code § 65402.)
 5. After the public hearing to receive any protests to the sale, the City Council considers the DDA.

Tonight, the Council is being asked to consider the first step in this process and adopt the resolution finding that the public interest and convenience require the sale and declaring the intention to sell such Property ("Resolution of Intent"). The Government Code requires that the Resolution of Intent fix a time for hearing protests to the sale of the Property; provide for publication of notice of the hearing; fix the time when the City will take final action regarding the Property conveyance; and contain an accurate description of the Property to be conveyed.

In the attached Resolution of Intent, the City declares its intent to dispose of and convey the Property pursuant to the terms of the DDA (subject to a finding by the City Council acting as the planning body that the sale is in conformance with the City's General Plan), fixes a time for the hearing of any protests to the disposition, provides for publication of the notice of said hearing, and fixes the time for final action on the disposition of the Property and approval of the DDA. The Resolution of Intent also makes the findings that the public convenience and necessity require the sale of the Property because: (1) the Property is subject to a deed restriction limiting its use; (2) the City has no economically viable use for the Property at this time; (3) the sale of the Property will increase revenue for the City's General Fund and bring a needed use to the City; and (4) the sale will result in the development of an underdeveloped property eliminating a blighting influence and creating jobs within the City.

Additionally, the sale will further the economic development goals of the City by creating jobs within the City and alleviating conditions of economic and physical blight in the City, all of which benefit the health, safety and welfare of the City.

Attached to the resolution is the draft DDA. Although still being reviewed and finalized by the parties, the draft DDA sets forth the basic deal points under discussion including:

1. Buyer: TNTF, LLC, a Texas limited liability company
2. Lessor/Operator: Studio Movie Grill, an affiliate of Buyer
3. Purchase Price: Fair Market Price of \$1,000
4. Development to include
 - a. At least 9 auditoriums seating 70-200 each with premium digital projection
 - b. full kitchen capable of serving every seat in the theater
 - c. incorporated into the theater design will be an adjacent restaurant space providing full table service with patio seating
5. Close of escrow: approximately 180 days from opening of escrow or 10 days following receipt of entitlements
6. Theater opening: 13-18 months following close of escrow.

Although the deal terms are still being negotiated, the sale will be at the fair market price in light of the site constraints. The City has analyzed the economics of the deal which demonstrate that for the development of the site the land has a negative value. This analysis considered the limited uses as a result of the County deed restriction, changes in the movie theater industry (including lower attendance and increased competition from online movie rental sources) and the construction costs associated with this specific development.

C. RECOMMENDATION

That the Council adopt the Resolution Finding that the Public Interest and Convenience Require the Sale of Certain Real Property, Declaring Its Intent to Sell Such Property, and Setting a Public Hearing.