AGENDA
PROPERTY MANAGEMENT COMMITTEE MEETING
WITH BOARD OF DIRECTORS *
ORANGE COUNTY WATER DISTRICT
18700 Ward Street, Fountain Valley (714) 378-3200
Friday, October 24, 2014, 12 p.m. Conference Room C-2

* The OCWD Property Management Committee meeting is noticed as a joint meeting with the Board of Directors for the purpose of strict compliance with the Brown Act and to allow all Board members to hear the presentations and participate in the discussions. OCWD Directors receive no additional compensation or stipend as a result of simultaneously convening this Board of Directors meeting. Items recommended for approval at this meeting will be placed on the Consent Calendar at the November 5, 2014 Board meeting.

ROLL CALL

VISITOR PARTICIPATION

Members of the audience wishing to address the Committee/Board on items of interest to the public are requested to identify themselves. If the matter on which they wish to comment is an Agenda item, the visitor will be called on when that matter comes up for consideration.

ITEMS RECEIVED TOO LATE TO BE AGENDIZED

RECOMMENDATION: Determine need to take action on item(s) which arose subsequent to posting of the Agenda (Adoption of this recommendation requires two-thirds vote of the Board/Committee, or, if less than two-thirds of the members are present, a unanimous vote)

CONSENT CALENDAR (ITEM NO. 1 - 3)

1. MINUTES OF PROPERTY MANAGEMENT COMMITTEE MEETING SEPTEMBER 26, 2014

RECOMMENDATION: Approve minutes as presented

2. AMENDMENT TO LICENSE AGREEMENT WITH COUNTY OF ORANGE FOR CONTRACT EXTENSION

RECOMMENDATION: Agendize for November 5 Board meeting: Approve and authorize execution of Amendment Two to License Agreement with County of Orange that provides for an extension of the License Agreement through December 31, 2014

3. AMENDMENT TO LICENSE AGREEMENT WITH GRIFFITH COMPANY FOR CONTRACT EXTENSION

RECOMMENDATION: Agendize for November 5 Board meeting: Approve and authorize execution of Amendment Two to License Agreement with Griffith Company that that provides for an extension of the License Agreement through December 31, 2014

END OF CONSENT CALENDAR
MATTERS FOR CONSIDERATION

4. EASEMENT REQUEST FROM PANATTONI DEVELOPMENT COMPANY FOR UTILITIES AT DISTRICT PROPERTY LOCATED AT 3199 EAST LA PALMA AVENUE IN ANAHEIM

RECOMMENDATION: Agendize for November 5 Board meeting:

1. Approve and authorize execution of Amended and Restated Easement Agreement to La Palma/Miller Owners LLC for utility easements for fire, water line, electric, storm water drain, and sewer lines on District property located at 3199 E. La Palma Avenue, Anaheim, CA; and

2. Approve and authorize execution of Escrow Instructions to Release Access Road Holdback Funds to disburse $76,100 to La Palma/Miller Owner, LLC for installation of District utility lines from the $112,935 funds deposited in Escrow by the District to La Palma/Miller Owner, LLC, with the balance and interest of the District’s Escrow Deposit disbursed to the District; and to disburse the balance of the $153,233 funds deposited in Escrow by La Palma/Miller Owner, LLC and interest to La Palma/Miller Owner, LLC

5. DECERTIFICATION PROCESS FOR THE CALTRANS’ IMPERIAL HIGHWAY PROPERTIES IN ANAHEIM

RECOMMENDATION: Provide direction as appropriate

CHAIR DIRECTION AS TO WHICH ITEMS IF ANY TO BE AGENDIZED AS A MATTER FOR CONSIDERATION AT THE NOVEMBER 5 BOARD MEETING

DIRECTORS’ COMMENTS/REPORTS

GENERAL MANAGER’S COMMENTS/REPORTS

ADJOURNMENT

In accordance with the requirements of California Government Code Section 54954.2, this agenda has been posted in the main lobby of the Orange County Water District, 18700 Ward Street, Fountain Valley, CA not less than 72 hours prior to the meeting date and time above. All written materials relating to each agenda item are available for public inspection in the office of the District Secretary. Backup material for the Agenda is available at the District offices for public review and can be viewed online at the District’s website: www.ocwd.com.

Pursuant to the Americans with Disabilities Act, persons with a disability who require a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification or accommodation from the District Secretary at (714) 378-3233, by email at jdurant@ocwd.com by fax at (714) 378-3373. Notification 24 hours prior to the meeting will enable District staff to make reasonable arrangements to assure accessibility to the meeting.

As a general rule, agenda reports or other written documentation has been prepared or organized with respect to each item of business listed on the agenda, and can be reviewed at www.ocwd.com. Copies of these materials and other disclosable public records distributed to all or a majority of the members of the Board of Directors in connection with an open session agenda item are also on file with and available for inspection at the Office of the District Secretary, 18700 Ward Street, Fountain Valley, California, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday. If such writings are distributed to members of the Board of Directors on the day of a Board meeting, the writings will be available at the entrance to the Board of Directors meeting room at the Orange County Water District office.
Committee Members
Steve Sheldon, Chair
Philip Anthony, Vice Chair
Harry Sidhu
Denis Bilodeau
Roger Yoh

Alternates
Cathy Green - Alternate 1
Jan Flory - Alternate 2
Kathryn Barr - Alternate 3
Vincent Sarmiento - Alternate 4
Shawn Dewane - Alternate 5
Property Management Committee Chair Sheldon called the Property Management Committee meeting to order at 12 p.m. in Conference Room C-2. The Recording Secretary called the Roll and reported a quorum as follows.

Committee Members:
Steve Sheldon  
Philip Anthony (not present)  
Harry Sidhu (not present)  
Denis Bilodeau (arrived 12:03 p.m.)  
Roger Yoh (arrived 12:05 p.m.)

Alternates  
Cathy Green  
Jan Flory  
Kathryn Barr  
Vincent Sarmiento  
Shawn Dewane (not present)

OCWD Staff  
Mike Markus, General Manager  
Christina Fuller, Recording Secretary  
Bruce Dosier, Don Jackson, Bill Hunt

Others:  
Doug Elliott, Craig Elliot – Corona Recreation  
Pamela Galera - City of Anaheim  
Jonathan Borrego - City of Anaheim Planning

VISITOR PARTICIPATION
There were no persons wishing to address the Committee on matters not on today’s Agenda.

CONSENT CALENDAR
The Consent Calendar was approved upon motion by Director Green, seconded by Director Barr and carried [5-0] as follows.
[Yes-Sheldon, Green, Flory, Barr Sarmiento/ No - 0]

1. Minutes of the Meeting

The minutes of the Property Management Committee meeting held August 22, 2014 were approved as presented.

MATTERS FOR CONSIDERATION
Directors Bilodeau and Yoh arrived during discussion of the following matter.

2. Amendment to Lease Agreement with Corona Recreation, Inc. Modifying Lease Terms and Conditions for Operations at Warner Basin and Anaheim Lake

Director of IS/Property Bruce Dosier reported that at the Board’s direction, staff met with Corona Recreation’s President, Doug Elliott, to negotiate a revised lease with Corona Recreation, Inc. Mr. Dosier updated the Committee on the terms of the new lease. He reported the proposed lease terms as: a 5 year extension to the current Lease Agreement to September 30, 2021; a 5 year option to extend Lease Agreement with mutual written consent, subject to Board approval; setting the base rent at $6,200 per month or 5% of gross receipts, whichever is greater; modified rent for Anaheim Lake to stay the same; Annual base rent increase based on increase of gross receipts, not to exceed 10% each year; modified rent annually adjusted by the Consumer Price Index; and deletion of Paragraph 4.8 (Water) from the Lease Agreement. Mr. Elliott thanked the Committee
for the opportunity to negotiate the Lease Agreement during these difficult economic times. After a brief discussion, the Committee took the following action.

Upon motion by Director Green, seconded by Director Yoh and carried [5-0] the Committee recommended that the Board at its October 1 Board meeting: Authorize execution by the General Manager of Amendment Three to Lease Agreement with Corona Recreation, Inc. under the terms and conditions as presented in the staff report. (Table 1 Column # 3, “Corona Recreation Proposed Terms 9/17/14”)
[Yes-Sheldon, Bilodeau, Yoh, Green, Flory/ No - 0]

3. Yorba Linda Water District Request for Conceptual Approval for Proposed Water Well at Huckleberry Pond

Mr. Dosier reported that staff received a letter from the Yorba Linda Water District (YLWD) requesting the District conceptually approve YLWD’s request for a well site and pipeline easement for the proposed Well No. 22 location at Huckleberry Pond, at the south end of Fee Ana Street, Anaheim. Mr. Dosier noted that staff has discussed the project with YLWD staff and at this time has no concerns with the location of the proposed well site. After a brief discussion on the potential impacts of the proposed well on District property, the Committee took the following action.

Upon motion by Director Yoh, seconded by Director Green and carried [5-0] the Committee recommended that the Board at its October 1 Board meeting: Conceptually approve Yorba Linda Water District’s request for a well site and pipeline easement for the proposed Well No. 22; and direct staff to negotiate the lease terms and conditions and return to Committee for final review and approval.
[Yes-Sheldon, Bilodeau, Yoh, Green, Flory/ No - 0]

4. Draft Letter of Support for the Anaheim Canyon Specific Plan

Mr. Dosier reminded the Committee that the City of Anaheim (City) is making changes to the Anaheim Canyon Specific Plan (ACSP) which includes rezoning three District parcels. He advised the Committee on the specific zone changes and land use rights. Jonathan Borrego from City of Anaheim Planning Department showed the map of open space areas and District properties that will be impacted. After a discussion on the changes in land use rights, the Committee took the following action.

Upon motion by Director Flory, seconded by Director Sheldon and carried [5-0] the Committee recommended the Board at its October 1 Board meeting: Direct staff to transmit letter to the City of Anaheim regarding zoning changes to District properties within the Anaheim Canyon Specific Plan (ACSP), indicating that the District is supportive of the changes with the condition that the City include language in the ACSP and the City’s General Plan that specifically states that the Open Space/Water zoning and Water land use designation would allow various non-water development uses by right or by Conditional Use Permit (CUP) without changing the Specific Plan or the General Plan; and that the District opposes the City taking any credit for the OCWD open space land proposed in the ACSP.
[Yes- Sheldon, Bilodeau, Yoh, Green, Flory/ No - 0]

ITEMS TO BE PLACED ON CONSENT CALENDAR FOR OCTOBER 1 BOARD MEETING

The Committee determined that Items No. 2-4 be placed on the Consent Calendar for the October 1 Board meeting.
ADJOURNMENT

There being no further business, the meeting was adjourned at 12:35 p.m.

________________________________________
Stephen Sheldon, Chair
AGENDA ITEM SUBMITTAL

Meeting Date: October 24, 2014  
Budgeted: N/A  
Budgeted Amount: N/A  
To: Property Management Committee  
Board of Directors  
Cost Estimate: N/A  
Funding Source: N/A  
Program/ Line Item No. N/A  
General Counsel Approval: Required  
Engineers/Feasibility Report: N/A  
CEQA Compliance: N/A  
From: Mike Markus  
Staff Contact: B. Dosier/D. Jackson

Subject: AMENDMENT TO LICENSE AGREEMENT WITH COUNTY OF ORANGE FOR CONTRACT EXTENSION

SUMMARY

The County of Orange Public Works ("County") is in the process of widening Lincoln Avenue and the Lincoln Avenue Bridge at the Santa Ana River. On January 2, 2013 the District and County entered into a License Agreement for access purposes to construct improvements from District land to Lincoln Avenue and to the Lincoln Avenue Bridge. The original license was to expire in June 2014 but was extended by the District to October 20, 2014. As the road widening project has not been completed, the County has requested a second extension to December 31, 2014.

Attachment(s): Amendment Two to License Agreement with County of Orange.

RECOMMENDATION

Agendize for November 5 Board meeting: Approve and authorize execution of Amendment Two to License Agreement with County of Orange that provides for an extension of the License Agreement through December 31, 2014

BACKGROUND/ANALYSIS

The County of Orange is in the process of widening Lincoln Avenue and the Lincoln Avenue Bridge at the Santa Ana River, a portion of which is on District land. In order to widen Lincoln Avenue and the bridge, the County entered into a License Agreement with the District on January 2, 2013 to access Lincoln Avenue and the bridge from District land, which license expires on June 30, 2014 with a license fee of $7,000. On March 5, 2014, the License was extended to October 20, 2014 due to delays in the road widening project.

To construct the road improvements, the County awarded a contract to Griffith Company. On August 20, 2013, the District issued a Temporary License Agreement to Griffith for access to the construction area and for a laydown area for construction materials for 6 months under Board Resolution No. 86-3-19 that authorized the General Manager to execute permits (licenses) for 6 months or less. The License Fee was $550 per Board Resolution No. 92-12-213. On February 5, 2014, the District amended the
license agreement with Griffith to extend the license to October 20, 2014 as the road and bridge widening project is taking longer than the original 6 month license period. Griffith notified the District staff that they need an extension to their license to December 31, 2014 as the road widening project is not complete. The County’s license coincides with Griffith as Griffith is doing road construction for the County in those areas covered in the County’s License. The County has requested an extension of their License to December 31, 2014 to allow time to complete the road widening project and to coincide with the Griffith’s license. Staff has no objections to extending the County’s license.

PRIOR RELEVANT BOARD ACTION(S)

3/5/14, R14-3-30, Approve and authorize execution of Amendment One to License Agreement with County of Orange to extend the License Agreement to a new expiration date of October 20, 2014.

02/05/14, R14-02-11, Authorize execution of Amendment One to License Agreement with Griffith Company to extend the License Agreement to a new Expiration Date of October 20, 2014.

01/02/13, R13-1-2, Authorize execution of License Agreement with the County of Orange for a temporary construction area to construct the Lincoln Ave. Road Widening Project with an expiration date of June 30, 2014 and a license fee of $7,000.

12/2/92, M92-458, Authorizes a Fee Schedule for Right of Entry Permits of $550 to government agencies and contractors; $100 charged to homeowners.

03/2/86, R86-3-19, Authorizes the Secretary Manager or Assistant Secretary to execute temporary access permits.
AMENDMENT TWO TO LICENSE AGREEMENT  
(Lincoln Avenue at Santa Ana River)

THIS AMENDMENT is made and entered into this 5th day of November 2014 by and between the ORANGE COUNTY WATER DISTRICT, a political subdivision of the State of California (hereinafter, “OCWD”) and COUNTY OF ORANGE, a political subdivision of the State of California (hereinafter, “Licensee”):

RECITALS

WHEREAS, on January 2, 2013 OCWD and Licensee entered into a License Agreement for access purposes to construct improvements from District land to Lincoln Avenue and the Lincoln Avenue Bridge as part of the Lincoln Avenue Road Widening Project. The license expired on June 30, 2014 and the license fee was $7,000;

WHEREAS, on March 5, 2014, Licensee’s License was extended to October 20, 2014 to allow Licensee to complete the Lincoln Avenue Road Widening Project; and

WHEREAS, The Licensee has requested an extension to their License to December 31, 2014 so they may complete the Lincoln Avenue Road Widening Project.

NOW, THEREFORE, in consideration of the matters set forth in the foregoing recitals and the terms, covenants and conditions hereinafter contained, the parties do hereby agree as follows:

1. The Expiration Date in License Paragraph 1.2 (Term) is hereby extended to December 31, 2014.

2. Each and every other term, covenant and condition of the License, as amended, not herein expressly modified is hereby ratified and confirmed and shall remain in full force and effect.

[SIGNATURES ON NEXT PAGE]
IN WITNESS WHEREOF, the parties hereto have executed the Amendment to License as of the day and year first hereinabove written.

“OCWD”

ORANGE COUNTY WATER DISTRICT, a political subdivision of the State of California

By: _________________________________
    Shawn Dewane, President

By: _________________________________
    Michael R. Markus P.E., General Manager

“LICENSEE”

COUNTY OF ORANGE, a political subdivision of the State of California

By: _________________________________
    Tony Bernard, Division Manager
    OC Public Works
    Facilities and Real Estate Management

Pursuant to Section 1-4-220 of the Codified Ordinances of the County of Orange

Amendment Two Orange County (10-20-14)
AGENDA ITEM SUBMITTAL

Meeting Date: October 24, 2014
Budgeted: N/A
Budgeted Amount: N/A

to:
Property Management Committee
Board of Directors

Cost Estimate: N/A
Funding Source: N/A
Program/ Line Item No. N/A

From: Mike Markus
General Counsel Approval: Required

Staff Contact: B. Dosier/D. Jackson
Engineers/Feasibility Report: N/A
CEQA Compliance: N/A

Subject: AMENDMENT TO LICENSE AGREEMENT WITH GRIFFITH COMPANY FOR CONTRACT EXTENSION

SUMMARY

The County of Orange Public Works (“County”) is in the process of widening Lincoln Avenue and the Lincoln Avenue Bridge at the Santa Ana River. On August 20, 2013 the District entered into a License Agreement with the County’s contractor, the Griffith Company (“Griffith”), to allow Griffith to store equipment, construction materials and park vehicles in a lay-down area north of the Lincoln Avenue Bridge at Five Coves Basins and to use the access ramp into the Santa Ana River to construct the bridge pilings. Griffith’s License, as amended, will expire on October 20, 2014. Griffith has requested that the License be extended to December 31, 2014 to complete the bridge widening project.

Attachment(s): Amendment Two to License Agreement with Griffith Company

RECOMMENDATION

Agendize for November 5 Board meeting: Approve and authorize execution of Amendment Two to License Agreement with Griffith Company that that provides for an extension of the License Agreement through December 31, 2014.

BACKGROUND/ANALYSIS

The County of Orange is in the process of widening Lincoln Avenue and the Lincoln Avenue Bridge at the Santa Ana River, a portion of which is on District land. In order to widen Lincoln Avenue and the bridge, the County awarded a contract to Griffith to do the construction work. On August 20, 2013, Griffith was issued a 6 month License under Board Resolution No. 86-3-19 that authorized the General Manager to execute permits (licenses) for 6 months or less. The License Fee was $550 per Board Resolution No. 92-12-213. On February 5, 2014, the License was extended to October 20, 2014. On October 3, 2014, a representative from Griffith contacted staff to request an extension to its license until December 31, 2014 as the road and bridge widening project is taking longer than anticipated. Staff reviewed Griffith’s request and has no objections to extending the license. Griffith is in compliance with the terms of its current license.
PRIOR RELEVANT BOARD ACTION(S)

3/5/14, R14-3-30, Approve and authorize execution of Amendment One to License Agreement with County of Orange to extend the License Agreement to a new expiration date of October 20, 2014.

2/5/14, R14-2-11, Authorize execution of Amendment One to License Agreement with Griffith Company to extend the License Agreement through October 20, 2014.

01/02/13, R13-1-2, Authorize execution of License Agreement with the County of Orange for a temporary construction area to construct the Lincoln Ave. Road Widening Project with an expiration date of June 30, 2014 and a license fee of $7,000.

12/2/92, M92-458, Authorizes a Fee Schedule for Right of Entry Permits of $550 to government agencies and contractors; $100 charged to homeowners.

03/2/86, R86-3-19, Authorizes the Secretary Manager or Assistant Secretary to execute temporary access permits.
AMENDMENT TWO TO LICENSE AGREEMENT
(Lincoln Avenue at Santa Ana River)

THIS AMENDMENT is made and entered into this 5th day of November 2014 by and between the ORANGE COUNTY WATER DISTRICT, a political subdivision of the State of California (hereinafter, the “OCWD”) and GRIFFITH COMPANY, a California corporation (hereinafter, the “Licensee”):

RECITALS

WHEREAS, on August 20, 2013 OCWD and Licensee entered into a License Agreement for six months to allow Licensee to store equipment, construction materials, and park vehicles in a lay-down area for the purpose of widening the Lincoln Avenue road and bridge, in the Cities of Orange and Anaheim, CA. including the use of the southerly ramp to enter the Santa Ana River for the purpose of installing piers, pilings, and concrete supports for the Lincoln Avenue Bridge. License includes ingress to and egress from the Premises from the OCWD entrance gates on Lincoln Ave. to the Premises with an Expiration Date of February 19, 2014 and License Fee of $550;

WHEREAS, on February 5, 2014, the Board approved Amendment One to License Agreement to extended the License to October 20, 2014 to allow time for Griffith to complete the Lincoln Avenue road and bridge widening project; and

WHEREAS, on October 3, 2014, Licensee requested that its License be extended to December 31, 2014 to allow additional time to complete the Lincoln Avenue road and bridge widening project.

NOW, THEREFORE, in consideration of the matters set forth in the foregoing recitals and the terms, covenants and conditions hereinafter contained, the parties do hereby agree as follows:

1. The Expiration Date in License Paragraph 1.2 (Term) is hereby extended to December 31, 2014.

2. Each and every other term, covenant and condition of the License, as amended, not herein expressly modified is hereby ratified and confirmed and shall remain in full force and effect.

[SIGNATURES ON NEXT PAGE]
IN WITNESS WHEREOF, the parties hereto have executed the Amendment to License as of the day and year first hereinabove written.

“OCWD”

ORANGE COUNTY WATER DISTRICT, a political subdivision of the State of California

By: __________________________________
    Shawn Dewane, President

By: __________________________________
    Michael R. Markus P.E., General Manager

“LICENSEE”

GRiffith COmpany, a California corporation

By: __________________________________
    Name: ____________________________
    Title: ____________________________

By: __________________________________
    Name: ____________________________
    Title: ____________________________

Amendment Two Griffith Co. (10-8-14)
SUMMARY

On January 29, 2014, the District acquired the 17.69 acre property at 3199 East La Palma Avenue, Anaheim (Property) from La Palma/Miller Owners LLC (Panattoni) to construct the La Palma Recharge Basin (Basin). Panattoni has requested an easement for utilities across the District’s La Palma Avenue access road (see location map). In consideration of the easement, Panattoni will reconstruct the access road, at no cost to the District. Additionally, Panattoni will install the District’s water and sewer pipes under the access road with the District reimbursing Panattoni for an amount of $76,100.

Attachment(s):
- Amended and Restated Easement Agreement
- Escrow Instructions to Release Access Road Holdback Funds

RECOMMENDATION

Agendize for November 5 Board meeting:

1. Approve and authorize execution of Amended and Restated Easement Agreement to La Palma/Miller Owners LLC for utility easements for fire, water line, electric, storm water drain, and sewer lines on District property located at 3199 E. La Palma Avenue, Anaheim, CA; and

2. Approve and authorize execution of Escrow Instructions to Release Access Road Holdback Funds to disburse $76,100 to La Palma/Miller Owner, LLC for installation of District utility lines from the $112,935 funds deposited in Escrow by the District to La Palma/Miller Owner, LLC, with the balance and interest of the District’s Escrow Deposit disbursed to the District; and to disburse the balance of the $153,233 funds deposited in Escrow by La Palma/Miller Owner, LLC and interest to La Palma/Miller Owner, LLC
BACKGROUND/ANALYSIS

At the July 10, 2013 Board of Director’s meeting, the Board authorized the execution of a Purchase and Sale Agreement with La Palma/Miller Owners LLC (Panattoni) for the acquisition of the Property for construction of a recharge basin. On January 29, 2014, the District took title to the Property, which includes an access road from La Palma Avenue. As a requirement of the Purchase and Sales Agreement, Panattoni recorded a Road Access Easement Agreement in which the District and Panattoni agreed to prefund an escrow account with “Access Road Holdback funds” for the cost of the improvements of the access road, to be made after the District completes the construction of the Basin; provides for the construction specifications of the road; and divides the financial responsibilities for the ongoing maintenance and repair of the road. At the close of escrow, both the District and Panattoni deposited $112,935 and $153,233 respectively, into an escrow account for the Access Road Holdback funds. The Road Access Easement Agreement does not provide for underground utilities, nor does it provide for a deposit of funds for the installation of underground utilities within the access road.

Panattoni has continued to plan to develop their adjacent property east and west of the District’s access road and is preparing to begin construction. In order to develop their property, Panattoni needs to run a fire water line, electric, sewer, and storm water drain utilities underground across the District’s access road from their property easterly of the access road to their property westerly of the access road. Because the Road Access Easement Agreement does not include an easement for underground utilities, Panattoni requested that the Road Access Easement Agreement be amended to include utility easements.

As consideration for the District granting the underground utility easements, Panattoni proposed reconstructing the access road completely at Panattoni’s expense, with no cost to the District. As Panattoni would pay for the access road improvements, there is no need to continue to hold the District’s $112,935 Access Road Holdback funds in the escrow account, therefore, the funds would be refunded to the District, plus any accrued interest. The specifications for the access road call for a heavy-duty concrete access road, in order to minimize future maintenance costs.

District staff discussed the utility easements with Panattoni’s staff and advised Panattoni that the District plans to run its utility lines under the access road from La Palma Ave. to the Basin area for water and sewer. Because Panattoni’s utility lines would run east and west, and the District’s utility lines will run north and south, they would cross each other. In order to minimize construction activity and cost to install the District’s utility lines, Panattoni agreed to install District utility lines at the time they put in their utility lines, however, at the District’s expense. Panattoni proposed that the District pay the estimated cost of putting in the District’s utilities with the funds being deducted from the District’s share of the Access Road Holdback funds.

Panattoni’s estimate of the District’s utility installation cost is $76,100, which is consistent with District staff’s estimate. By combining the access road improvements
and the District utility installation projects, the District will be relieved of the $112,935 cost of the access road improvements as Panattoni will assume that cost. The District’s combined cost for the access road improvements and installation of the utilities would have been $189,035. By doing the project at this time, the District saves $112,935 and the utilities will be installed without expending any more funds. In addition, there is a value to the easements being granted to Panattoni. Staff’s estimate of the value of the easements to Panattoni is $38,684, and deducting the value of the easement from the $112,935 cost savings results in $74,251 in savings to the District.

As proposed by Panattoni, the $76,100 utility cost is to be deducted from the $112,935 in the District’s Access Road Holdback funds in escrow and the difference of $36,835 plus interest, will be refunded to the District. Likewise, the escrow funds of $153,233 deposited by Panattoni will be refunded back to Panattoni. After the access road improvements are completed, the District will be required to make any road repairs needed due to the District’s Basin construction activity. After the Basin is constructed and the District makes any construction-related repairs to the improved access road, if necessary, all property owners, as defined in the Amended and Restated Easement Agreement, will contribute funds on an annual basis to an account managed by a Property Management Company to maintain the access road.

PRIOR BOARD ACTION(S)

8/23/13 CS-13-8-1 Authorize negotiation and execution of Amendments to the Purchase Agreement with Panattoni Development for property located at 3199 E. La Palma, Anaheim based on the terms and conditions discussed with Panattoni that include: $500,000 reduction in the Purchase Price of the property in return for extending groundwater indemnification provisions and expanding the testing for groundwater and soil contamination.

7/10/13 R13-7-84 - Find and determine that changes or additions to the Final Program Environmental Impact Report for OCWD Application to Appropriate Santa Ana River Water are necessary and approving Addendum No. 2; Receive and file Engineer’s Report and determine the project feasible, necessary and beneficial to the District; establish a total project budget in the amount of $34,900,000; Authorize execution of property Purchase Agreement and Escrow Instructions for a purchase price of $28,899,775; Utilize the Commercial Paper program and State Loans to fund the project; Authorize an amount not to exceed $300,000 for the purchase of pollution liability insurance; and, Authorize and direct staff to file CEQA notice of determination on the acquisition of the property.

1/16/13, R13-1-4 Authorizing Environmental Site Assessment for property located at 3199 East La Palma Avenue, Anaheim

12/12/12, CS, Closed session discussion regarding negotiations of the Property and providing direction to staff.
Location Map
3199 E. La Palma Avenue, Anaheim
AMENDED AND RESTATED EASEMENT AGREEMENT

THIS AMENDED AND RESTATED EASEMENT AGREEMENT (this "Agreement") is entered into as of November __, 2014, by LA PALMA/MILLER OWNER, LLC, a Delaware limited liability company ("La Palma"), ORANGE COUNTY WATER DISTRICT, a special governmental district organized and operating under Chapter 924 of the California Statutes of 1933, as amended ("OCWD"), and TRESTLE PROPERTY & ASSOCIATION MANAGEMENT, INC., a California corporation ("Manager") with reference to the following Recitals:

A. La Palma is the owner of that real property located in the City of Anaheim, County of Orange, State of California (the "LPM Property"), which LPM Property is more particularly described in Exhibit A-1 attached hereto.

B. The LPM Property is currently comprised of three separate parcels as described in Exhibit A-1 attached hereto and shown on Exhibit B attached hereto: Lot A ("Lot A"); Lot 1 ("Lot 1"); and Lot 3 ("Lot 3"). La Palma is redeveloping the LPM Property and Lot 3 will be subdivided and configured as shown in Exhibit B-1 attached hereto. Upon recordation of a parcel map effecting such subdivision (the "LPM Parcel Map"), the LPM Property will be comprised of seven (7) separate parcels: Lot A, Lot 1, Parcel 1 ("Parcel 1"), Parcel 2 ("Parcel 2"), Parcel 3 ("Parcel 3"), Parcel 4 ("Parcel 4") and Parcel 5 ("Parcel 5").

C. OCWD is the successor in interest to La Palma as owner of that certain real property located in the City of Anaheim, County of Orange, State of California commonly known as Lot 2 ("Lot 2"), and more particularly described in Exhibit A-2 attached hereto. The LPM Property and Lot 2 are sometimes hereinafter collectively referred to as the "Property" and each of Lot A, Lot 1, Lot 2 and Lot 3 (or after the recordation of the LPM Parcel Map, Parcel 1, Parcel 2, Parcel 3, Parcel 4 and Parcel 5) are sometimes hereinafter referred to collectively as the "Parcels" and individually as a "Parcel."

D. The Property is encumbered by that certain Access Easement Agreement dated as of January 27, 2014 (the "Original Agreement") and recorded January 29, 2014 as Instrument No. 2014-000373718 in the Office of the County Recorder for Orange County, California (the "Official Records"), wherein a vehicular ingress and egress access easement over the Access Road (as
hereinafter defined) located on a portion of Lot 2 more particularly described in Exhibit C-1 and shown on Exhibit B attached hereto (the "Access Easement Area") was created for the benefit of Lot A, Lot 1 and Lot 3 and provisions for the use, operation, maintenance, repair, and replacement of the Access Road and the Access Easement Area were established, upon the terms and conditions contained in the Original Agreement.

E. La Palma and OCWD are the current owners of all of the Parcels and Manager is the Manager under the Original Agreement, and the parties have the power and desire to amend and restate the Original Agreement in its entirety, inter alia, (1) to add underground utility easements (the "Utility Easements") in, across and under portions of the Access Easement Area, (2) to modify the obligation to improve the Access Road and certain other terms and conditions of the Original Agreement, and (3) to provide for the construction and installation of one domestic water line, one irrigation line and one sewer line (collectively, the "OCWD Utility Facilities", which OCWD Utility Facilities are further described below) in, across and under portions of the Access Easement Area, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals (which are incorporated herein by this reference), the mutual covenants and promises contained herein, the parties hereto hereby agree to amend and restate the Original Agreement in its entirety as follows:

1. **Definitions.** The following initially capitalized terms shall have the following meanings when used herein:

   1.1 "Access Road" shall mean that portion of that certain forty (40) foot width access road located in the Access Easement Area as shown on Exhibit B currently existing and to be improved and maintained in accordance with the Approved Specification (hereinafter defined), which Access Road provides vehicular ingress and egress access from the signalized intersection at La Palma Avenue to Lot A, Lot 1, Lot 2 and Lot 3.

   1.2 "Access Road Easement" shall have the meaning provided therefor in Section 2.1.

   1.3 "Access Easement Area" shall mean that portion of Lot 2 more particularly described in Exhibit C-1 and shown on Exhibit B attached hereto.

   1.4 "Approved Specification" shall mean the initial specification attached hereto as Exhibit D and any modification thereto hereafter approved by all of the Parcel Owners (other than the Parcel Owner of Lot A) for the maintenance and improvement of the Access Road.

   1.5 "Construction Period" shall mean the period commencing on the date hereof and continuing until the date when the development of the Lot 2 is complete and a Notice of Completion with respect to the construction of a recharge basin on Lot 2 is accepted by the Parcel Owner of Lot 2. Notwithstanding anything to the contrary contained in this Agreement, nothing contained herein shall be deemed or construed as removing any restrictions regarding the construction or use of the Property as a recharge basin contained in that certain Declaration of Special Land Use Restrictions and Environmental Restrictions dated as of June 30, 2011 (the "Original Declaration") and recorded June 30, 2011 as Instrument No. 2011-000320857 in the
Official Records of Orange County, California (the "Official Records"), or granting any approval for such construction or use required thereunder.

1.6 "Dispute" shall have the meaning provided therefor in Section 10.19.

1.7 "Easement Areas" shall mean the Access Easement Area and the Utility Easement Areas.

1.8 "Easements" shall mean the Access Road Easement and the Utility Easements.

1.9 "Expense Share" shall have the meaning provided therefor in Section 8.1.

1.10 "JAMS" shall have the meaning provided therefor in Section 10.19.

1.11 "Lot A" shall have the meaning provided therefor in the Recitals.

1.12 "Lot 1" shall have the meaning provided therefor in the Recitals.

1.13 "Lot 2" shall have the meaning provided therefor in the Recitals.

1.14 "Lot 3" shall have the meaning provided therefor in the Recitals. From and after the recordation of the LPM Parcel Map, references to Lot 3 in this Agreement shall be deemed to refer to Parcel 1, Parcel 2, Parcel 3, Parcel 4 and Parcel 5.

1.15 "LPM Utility Facilities" shall have the meaning provided therefor in Section 2.2 hereof.

1.16 "Manager" shall mean a qualified, independent third-party manager engaged by the Performing Owner on behalf of the Parcel Owners on or before the Improvement Completion Date to manage the operation, maintenance and repair of the Access Road, prepare Annual Budgets, Amended Budgets and collect Expense Billings from the Parcel Owners. Manager shall initially be Trestle Property & Association Management, Inc., a California corporation, whose address is 151 Kalmus Drive, Suite D210, Costa Mesa, California 92626 Attention: Luke Rutherford. The unanimous consent of all of the Parcel Owners (other than the Parcel Owner of Lot A) shall be required to discharge any Manager and to select any successor Manager. By written Notice to each of the Parcel Owners, a Manager may resign from its duties and obligations under this Agreement, which resignation shall be effective upon the appointment of a successor Manager in accordance with this Agreement and the transfer of all books, records and funds then held by such Manager under this Agreement to the successor Manager. The replacement and appointment of any successor Manager shall be reflected in a recorded amendment to this Agreement.

1.17 "OCWD Utility Facilities" shall have the meaning set forth in the Recitals and be as more particularly described in Section 6.2 hereof.

1.18 "Parcel" shall mean each of Lot A, Lot 1, Lot 2 or Lot 3, and all of such Lots shall sometimes be hereinafter collectively referred to as the "Parcels." From and after the
recordation of the LPM Parcel Map, in lieu of Lot 3, "Parcels" shall include Parcel 1, Parcel 2, Parcel 3, Parcel 4 and Parcel 5.

1.19 "Parcel Owner" shall mean the person or entity that holds record title to fee simple interest in each of the Parcels during the period such Parcel Owner owns its respective Parcel.

1.20 "Performing Owner" shall mean La Palma (or its successor-in-interest as owner of the LPM Property). On or before the Improvement Completion Date, the Performing Owner shall, on behalf of all of the Parcel Owners, retain Manager to perform the improvement, maintenance, repair and replacement of the Access Road. Without limiting the generality of the foregoing, in accordance with Section 4.2 below, the Association (as hereinafter defined) may become the Performing Owner.

1.21 "Utility Easements" shall have the meaning provided therefor in Section 2.2.

1.22 "Utility Easement Areas" shall have the meaning provided therefor in Section 2.2 hereof.

2. Establishment of the Easements.

2.1 Access Road Easement. In the Original Agreement, La Palma, as then Parcel Owner of Lot 2, granted, conveyed and established in favor of La Palma, as Parcel Owner of Lot A, Lot 1, and Lot 3 a non-exclusive, perpetual vehicular ingress and egress access easement in, to, over, and across the Access Easement Area located on Lot 2 for the use, maintenance, repair, replacement, improvement, reconstruction and/or restoration of the Access Road, in accordance with the Approved Specification (the "Access Road Easement"). Without limiting the generality of the foregoing, the Performing Owner and Manager (and/or a Curing Party) are specifically granted all access rights to the Access Easement Area as are reasonably necessary or desirable in order to perform Performing Owner's (and/or Manager's) obligations hereunder. OCWD hereby confirms the grant, conveyance and establishment of the Access Road Easement. The Access Road Easement shall be used by Parcel Owners of Lot A, Lot 1 and Lot 3 and their respective successors, assigns, tenants, guests and invitees (and such successors' and assigns' respective tenants, guests and invitees) for the uses expressly granted herein and no other.

2.2 Utility Easements. Pursuant to this Agreement, OCWD, as Parcel Owner of Lot 2, hereby grants, conveys and establishes in favor of La Palma, as Parcel Owner of Lot A, Lot 1, and Lot 3 those certain non-exclusive, perpetual easements for underground utility and telecommunication purposes (the "Utility Easements") in, to, under and across portions of the Access Easement Area located on Lot 2 (the "Utility Easement Areas", which Utility Easement Areas are more particularly described in Exhibit C-2 attached hereto and are shown on Exhibit B-2 attached hereto) to construct, reconstruct, install, replace, reconfigure, operate, maintain, repair, relocate, remove, inspect, observe, and study underground utility and telecommunications lines, pipelines, conduits, facilities, equipment, and related appurtenances (including, without limitation, electrical, telecommunications, data, storm drain, sewer and fire water lines and related facilities, hereinafter collectively referred to as "LPM Utility Facilities"), which Utility Easements includes the right to utilize the surface of the Access Easement Area for ingress and egress to enter onto and exit the Access Easement Area with such vehicles, machinery, and equipment as may be necessary.
or convenient to the construction, reconstruction, installation, replacement, reconfiguration, operation, maintenance, repair, relocation, removal, inspection, observation, and study of the LPM Utility Facilities, all upon the terms and conditions set forth in this Agreement. Without limiting the generality of the foregoing, the Performing Owner and Manager (and/or a Curing Party) are specifically granted all access rights to the Utility Easement Area as are reasonably necessary or desirable in order to perform Performing Owner's (and/or Manager's) obligations hereunder. The Utility Easement shall be used by Parcel Owners of Lot A, Lot 1 and Lot 3 and their respective successors, assigns, and tenants (and such successors' and assigns' respective tenants) for the uses expressly granted herein and no other.

3. **Use of the Access Easement Area.**

3.1 **During the Construction Period.** The Access Easement Area is currently improved with the Access Road. During the Construction Period, La Palma acknowledges and agrees it is anticipated that the Access Road will be used by the Parcel Owner of Lot 2 as the primary access route for trucks removing excavated soils from Lot 2 in connection with the development of Lot 2 and for the mobilization and de-mobilization of heavy equipment. During the Construction Period, the Access Road and the Access Road Easement may be used by such trucks and heavy equipment; **provided, however,** the Parcel Owner of Lot 2 (a) shall be responsible for complying with all applicable requirements regarding soils excavation, dirt removal and dust suppression with respect to such excavation, and transportation of such excavated soils (collectively, the "**Soil Removal**"), and (b) shall use commercially reasonable efforts to minimize the impact caused by the Parcel Owner of Lot 2 to the Access Road and the other Parcels from such Soil Removal. To the extent that the Access Road is used by La Palma or Parcel Owners other than the Parcel Owner of Lot 2 for Soil Removal during the Construction Period, then La Palma or such other Parcel Owner shall similarly (x) be responsible for complying with all applicable requirements regarding soils excavation, dirt removal and dust suppression with respect to such Soil Removal activities and (y) use commercially reasonable efforts to minimize the impact caused by La Palma or such other Parcel Owner to the Access Road and the other Parcels from such Soil Removal activities.

3.2 **Post-Construction Period.** From and after the Construction Period, the Access Road and the Access Road Easement shall be used primarily for ingress and egress of motor vehicles having only two (2) axles, together with only periodic use for ingress and egress of motor vehicles having more than two (2) axles; **provided, however,** any damage to the Access Road caused by such non-two (2) axle motor vehicles shall be specifically allocated to the Parcel Owner using the Access Road for ingress and egress of such non-two (2) axle motor vehicles in accordance with Section 6.4 below.

3.3 **Generally.** Under no circumstances shall the Access Road, the Access Road Easement or the Access Easement Area be used for the parking of vehicles. Except as set forth under Section 6, ingress and egress on such Access Road and over the Access Easement Area shall not be blocked or impaired. Each Parcel Owner, on behalf of themselves, and their respective successors, assigns, tenants, guests and invitees hereby authorizes Manager and each of the other Parcel Owners to tow, at such vehicle owner's cost and expense, any vehicle belonging to any of them parked on the Access Road or the Access Easement Area in violation of this Agreement.

4.1 Dominant and Servient Estates. For the purposes of the Easements herein granted, the Parcels benefited by the Easements (i.e., Lot A, Lot 1 and Lot 3) shall constitute the dominant estate, and the Parcel burdened by the Easements (i.e., Lot 2) shall constitute the servient estate. The parties expressly acknowledge and agree that the Parcel Owners of Lot A, Lot 1 and Lot 3 shall have the right to grant rights to the Utility Easements to (a) third party service providers for the Utility Facilities, and/or (b) to an association formed for the benefit of Lot A, Lot 1 and Lot 3 that is charged with the obligation to maintain, repair and replace the LPM Utility Facilities (the "Association"). The Lot 2 Parcel Owner, the servient estate holder, expressly reserves all of its rights which are not inconsistent with the use and enjoyment of the Easements, the Easement Areas and Access Road on its Parcel by Parcel Owners of Lot A, Lot 1 and Lot 3 (the dominant tenant holders), and their respective tenants, guests and invitees, including without limitation, the right to grant concurrent nonexclusive easements to third parties.

4.2 Perpetual and Appurtenant. The Easements granted in this Agreement are non-exclusive, perpetual, and shall be appurtenant to Lot A, Lot 1 and Lot 3, inure to the use and benefit of the Parcel Owners of Lot A, Lot 1 and Lot 3, and be binding upon the Lot 2 Parcel Owner and the Lot 2 Parcel Owner's successors and assigns, and subject to transfers to service providers or the Association pursuant to Section 4.1, the Easements may not be held, transferred, assigned and/or encumbered except as an appurtenance to Lot A, Lot 1 and Lot 3; provided, however, to the extent that the Association is formed and the Association assumes the obligations of the Parcel Owners of Lot A, Lot 1 and Lot 3 under this Agreement with respect to the Access Road, the Easement Areas and the Easements, then the obligations of such Parcel Owners and rights under this Agreement with respect to the Access Road, the Easement Areas and the Easements may be assigned to the Association.

4.3 Subject to Matters of Record. The Easements established pursuant to this Agreement are established, declared and granted subject to all covenants, restrictions, easements and other matters of record.

5. Access Road Specifications; Modification of Specifications.

5.1 Initial Approved Specification. The initial Approved Specification for the maintenance, improvement, repair and replacement of the Access Road is attached hereto as Exhibit D. The Approved Specification attached to the Original Agreement is hereby deleted in its entirety and superseded by Exhibit D attached hereto.

5.2 Governmentally Mandated Modifications. Such Approved Specification shall be subject to modification by any requirements mandated by any governmental agency (other than Orange County Water District) with jurisdiction over the Access Road. Any Parcel Owner receiving notice of such governmentally mandated requirements shall promptly deliver written Notice (as provided below) thereof to the Performing Owner, Manager and the other Parcel Owners. Any Parcel Owner may, at its own cost and expense, challenge the application of such governmentally mandated requirements by delivering written Notice to the Performing Owner, Manager and the other Parcel Owners; provided, however, such governmentally mandated requirements shall be implemented during such challenge period if failure to so implement such
requirements would subject any of the Parcel Owners or any of the Parcels to any fines or penalties. If such Parcel Owner is unsuccessful in its challenge, or if no Parcel Owner timely challenges the application of such governmentally mandated requirements, then the Approved Specification shall be deemed modified by such governmentally mandated requirements.

5.3 **Modifications Requested by the Parcel Owners.** If any Parcel Owner desires to modify the Approved Specification, such Parcel Owner shall deliver written Notice to Manager, the Performing Owner and the other Parcel Owners requesting such modification (a "Modification Request"), together with a reasonably detailed estimate of the timing and cost to implement such modification and any plans or specifications required in connection with such modification. Within thirty (30) days of delivery of any Modification Request, the other Parcel Owners (other than Parcel Owner of Lot A) shall approve or disapprove such Modification Request in writing delivered to the Performing Owner, Manager and the Parcel Owners, which approval shall not be unreasonably withheld, conditioned or delayed. If disapproved, such disapproval shall specify the reasons therefor with particularity. The failure of a Parcel Owner to approve or disapprove of the Modification Request in writing within such thirty (30) day period shall be deemed to be an approval of the Modification Request.

6. **Improvement, Maintenance, Repair and Replacement of Access Road.**

6.1 **During the Construction Period.** During the Construction Period until the date of the Improvement Commencement Notice (hereinafter defined), Parcel Owner for Lot 2 shall take all commercially reasonable actions as may be necessary or desirable to maintain and repair the Access Road in substantially the condition that exists as of the date of this Agreement, free from debris, potholes and other damaged areas so as to allow the free and unobstructed passage of vehicles over and across the Access Road, and subject to Section 6.4, the cost and expense of such maintenance and repair shall be borne by the Parcel Owner of Lot 2. From the date of the Improvement Commencement Notice and continuing until the Improvement Completion Date (hereinafter defined), the Performing Owner shall take all commercially reasonable actions as may be necessary or desirable to maintain and repair the Access Road in substantially the condition that exists as of the date of this Agreement, free from debris, potholes and other damaged areas so as to allow the free and unobstructed passage of vehicles over and across the Access Road, and subject to Section 6.4, the cost and expense of such maintenance and repair shall be borne by the Performing Owner. From and after the Improvement Completion Date for the remainder of the Construction Period, if any, Manager shall take all commercially reasonable actions as may be necessary or desirable to maintain and repair the Access Road in substantially the condition that exists as of the Improvement Completion Date, free from debris, potholes and other damaged areas so as to allow the free and unobstructed passage of vehicles over and across the Access Road, and subject to Section 6.4, the cost and expense of such maintenance and repair shall be borne by the Parcel Owner of Lot 2.

6.2 **New Access Road; Installation of LPM Utility Facilities and OCWD Utility Facilities.**

6.2.1 **Improvement Obligation; Improvement Completion Date.** Subject to force majeure, on or before March 31, 2016 (the "Improvement Completion Date"), the Performing Owner shall, at the cost and expense of the Parcel Owners of the LPM Property, (a)
complete the replacement of the existing Access Road with an Access Road complying with the requirements of the Approved Specification, (b) complete the installation of the LPM Utility Facilities in the Utility Easement Areas, and (c) complete the installation of the OCWD Utility Facilities in the Access Easement Area in the approximate location shown on Exhibit B-3 attached hereto (the "OCWD Utility Areas", which areas shall be finalized in connection with the City Approved Final Plans), all in accordance with all applicable requirements and the requirements of Section 6.5 hereof; provided, however, the parties acknowledge and agree that the estimated cost of the installation of the OCWD Utility Facilities (including, without limitation, the cost of permits and fees related thereto) is being funded to La Palma concurrently with the execution of this Agreement based upon a written estimate delivered by La Palma to OCWD (the "Estimate") out of funds previously set aside by OCWD for the improvement of the Access Road. For purposes of this Agreement, the "OCWD Utility Facilities" shall mean (a) one (1) domestic water line not in excess of two (2) inches in diameter, (b) one (1) irrigation water line not in excess of two (2) inches in diameter, and (c) one (1) forced sewer line not in excess of two (2) inches in diameter, all installed in accordance with all applicable requirements including the requirements of Section 6.5 and the City Approved Final Plans (hereinafter defined). The OCWD Utility Facilities shall extend from the point of connection in La Palma Avenue to a point five (5) feet beyond the northern boundary of the Access Easement Area.

6.2.2 Delivery of City Approved Final Plans. On or before 5:00 p.m. (California time) on February 2, 2015, OCWD shall deliver to the Performing Owner City of Anaheim approved final engineered plans and specifications for the OCWD Utility Facilities (the "City Approved Final Plans"). If OCWD timely delivers the City Approved Final Plans, the Performing Owner shall be responsible for any difference between the Estimate and the actual cost of construction and installation of the OCWD Utility Facilities (the "Differential"). If OCWD fails to timely deliver the City Approved Final Plans, then OCWD shall be responsible for the Differential. provided, further, if OCWD has not delivered City Approved Final Plans to the Performing Owner before 5:00 p.m. (California time) on May 1, 2015, the Performing Owner shall be released from its obligation to install the OCWD Utility Facilities under Section 6.2.1 hereof and, on or before May 15, 2015, the Performing Owner shall disburse to OCWD funds in the amount of the Estimate to refund the amounts previously funded by OCWD.

6.2.3 Improvement Commencement Notice. The Performing Owner shall deliver to each of the other Parcel Owners not less than ten (10) days' prior written notice (an "Improvement Commencement Notice") setting forth the date that the Performing Owner intends to commence the improvements described in Section 6.2.1 above.

6.3 After the Construction Period. From and after the Construction Period, Manager shall maintain, repair, and replace the Access Road in accordance with the Approved Specification; provided, however, the cost of such maintenance, repair and replacement of the Access Road (including any necessary day-to-day maintenance) shall be allocated by Manager amongst the Parcel Owners in accordance with each such Parcel Owner's Expense Share (as set forth in Exhibit E attached hereto) and paid or reimbursed by the Parcel Owners in accordance with Section 8 below. Notwithstanding anything to the contrary contained herein, subject to Section 6.4, the cost and expense of maintaining, repairing and replacing the LPM Utility Facilities shall be borne by the Parcel Owners of Lot A, Lot 1 and Lot 3, and the cost and expense of maintaining, repairing and replacing the OCWD Utility Facilities shall be borne by the Parcel Owner of Lot 2.
6.4 **Damage Caused by a Parcel Owner.** Notwithstanding anything to the contrary contained in Sections 6.1, 6.2 or 6.3 above, if repair or replacement of the Access Road or the Utility Facilities is necessitated as a result of damage thereto caused by any Parcel Owner, or its respective employees, tenants, contractors, invitees, guests, agents or representatives (collectively, a "Parcel Owner's Parties"), then the cost of such repair or replacement shall be specifically allocated by Manager to the responsible Parcel Owner. To the extent the Performing Owner or Manager reasonably determines that such Parcel Owner-caused damage has occurred, the Performing Owner or Manager shall deliver written Notice of such determination to the responsible Parcel Owner, together with an estimate of the cost to repair such damage and such amount shall be due and payable within thirty (30) days of delivery of such Notice and estimate. Any dispute as to the attribution of any Parcel Owner-caused damage shall be resolved in accordance with Section 10.19 below.

6.5 **Generally.** All improvement, maintenance, repair, and replacement of the Access Road and the Utility Facilities shall be performed in a manner which preserves to the greatest extent possible the rights of ingress and egress of the Parcel Owners. In furtherance of the foregoing, the Performing Owner, Manager (and/or La Palma (with respect to its obligations under Section 6.2 or as Parcel Owner of Lot A, Lot 1 and Lot 3, with respect to the LPM Utility Facilities) or OCWD, as Parcel Owner of Lot 2, with respect to the OCWD Utility Facilities) shall use commercially reasonable efforts to cause such improvement, maintenance, repair and replacement activities to be performed in Off Hours (as defined below) or in segments so that at all times during non-Off Hours at least one lane of the Access Road and access points to the other Parcels remain unobstructed. For purposes of this Agreement, "Off Hours" shall mean before 8:00 am (California time) or after 6:00 pm (California time) on Monday through Friday, as may be allowed by the City of Anaheim, or anytime, as may be allowed by the City of Anaheim, on Saturdays, Sundays or legal holidays. All such improvement, maintenance, repair and replacement shall be performed in a good and workmanlike manner, in compliance with all applicable laws (and with respect to the Access Road, in accordance with the Approved Specification). The Performing Owner and/or Manager may use third party contractors, employees or other agents to perform such improvement, maintenance, repair, or replacement. Notwithstanding anything to the contrary contained herein, all other costs of ownership of the Access Easement Area (except as expressly set forth in this Agreement) shall continue to be the responsibility of the Parcel Owner of Lot 2. Without limiting the generality of the immediately preceding sentence, the Parcel Owner of Lot 2 shall be solely responsible for paying all real property taxes and assessments for the Easement Area, if any, and for obtaining and maintaining property insurance for Lot 2; **provided, however,** commercial general liability insurance shall be obtained by Manager in accordance with Section 9 below.

7. **Breach or Defaults under this Agreement; Cure Rights.**

7.1 **Default Notice.** In the event that the Performing Owner, Manager (or any Parcel Owner) fails to commence, adequately pursue or complete any of the Performing Owner's, Manager's (or any Parcel Owner's) obligations contemplated under this Agreement (such failing party sometimes hereinafter referred to as a "Defaulting Party"), then the Performing Owner or Manager (with respect to defaults by any Parcel Owner, or any Parcel Owner (if Manager is Defaulting Party) shall have the right to deliver written Notice of such failure to Defaulting Party (a "Default Notice"), which Default Notice shall specify with reasonable particularity the nature of such failure and the actions necessary to remedy the same, and which Default Notice shall be copied
to Manager and each of the other Parcel Owners. Such Defaulting Party shall promptly commence a
cure of such failure and shall use commercially reasonable efforts to diligently pursue such cure to
collection within thirty (30) days following the delivery of a Default Notice (or if such cure cannot
reasonably be cured within thirty (30) days, then such cure shall be completed within a reasonable
time); provided, however, any failure which consists of a blocking or impairment of ingress and
egress of the Access Road must be remedied within two (2) business days. If a Defaulting Party
does not promptly commence or complete such cure within the time specified under this Section,
then the Performing Owner or Manager (or if Manager is the Defaulting Party, any Parcel Owner;
referred to herein, as a "Curing Party") shall have the right, exercisable after written Notice to the
Defaulting Party and the other Parcel Owners to take over and prosecute the cure of such failure and
shall have the payment and reimbursement rights under Section 8 below with respect to all costs and
expenses associated with curing such failure.

8. **Annual Budget; Expense Share; Expense Billings and Lien Rights.**

8.1 **Annual Maintenance Budget.** Promptly following the Improvement
Completion Date, and prior to December 1st of each calendar year thereafter, Manager shall prepare
and distribute to each of the Parcel Owners an estimated annual budget (the "Annual Budget") for
the maintenance, repair and replacement costs of the Access Road allocated amongst all of the Parcel
Owners in accordance with their respective Expense Shares pursuant to Section 6 above, the cost of
the insurance maintained by Manager as required herein and the annual fees for Manager for
performing its obligations under this Agreement. The Annual Budget may include reserves as
reasonably determined by Manager in accordance with its good faith business judgment. With each
Annual Budget, Manager shall indicate each Parcel Owner's allocable share of such costs (each
Parcel Owner's "Expense Share"), which shall be calculated in accordance with the percentages set
forth in Exhibit E attached hereto (unless such amount relates to a cost specifically allocated to a
Parcel Owner in accordance with this Agreement), a reconciliation of estimated amounts paid and
actual costs incurred and a statement of the existing (past due and current) and current estimated
amounts due from each Parcel Owner. The Annual Budget shall be approved or disapproved by the
Parcel Owners (other than the Parcel Owner of Lot A) within thirty (30) days of receipt thereof
(which approval shall not be unreasonably withheld, conditioned or delayed); failure to approve or
disapprove the Annual Budget within such thirty (30) day period shall be deemed approval thereof.
To the extent an Annual Budget is not approved within such thirty (30) day period, then the Annual
Budget then in effect shall continue in full force and effect until modified by a new Annual Budget
approved by the Parcel Owners (other than the Parcel Owner of Lot A). If at any time during a
calendar year, it is anticipated that the costs of maintenance, repair and replacement of the Access
Road will exceed the amount set forth in the Annual Budget for such calendar year by more than ten
percent (10%), then Manager shall prepare and distribute to each of the Parcel Owners an amended
annual budget (an "Amended Budget") together with reasonably detailed information regarding the
reason such amounts are in excess of the previous Annual Budget. The Amended Budget shall be
approved or disapproved by the Parcel Owners (other than the Parcel Owner for Lot A) within thirty
(30) days of receipt thereof (which approval shall not be unreasonably withheld, conditioned or
delayed); failure to approve or disapprove an Amended Budget within such thirty (30) day period
shall be deemed approval thereof. To the extent an Amended Budget is not approved within such
thirty (30) day period, then the Annual Budget then in effect shall continue in full force and effect
until modified by a new Amended Budget or Annual Budget approved by the Parcel Owners (other
than the Parcel Owner of Lot A). Any disputes regarding the Annual Budget or any Amended
Budget shall be resolved in accordance with Section 10.19 below; provided, however, pending the resolution of any such dispute, any amounts due and payable shall be paid under protest, or the remedies under Sections 8.2 and 8.3 shall be available with respect to any past due or delinquent amounts. Notwithstanding the foregoing, in the event of an emergency which blocks or impairs the ingress and egress rights granted under this Agreement, Manager shall have the authority to proceed with any required repair so long as reasonably prompt subsequent Notice and submission of an Amended Budget, if required, is given to the other Parcel Owners.

8.2 Expense Billings; Payment. Promptly following the delivery of an approved Annual Budget (or an approved Amended Budget or incurring any cost or expense associated with an unbudgeted emergency repair or curing the default of a Defaulting Party), but no more frequently than once a month, Manager (or a Curing Party, if Manager is the Defaulting Party) may submit an invoice (an "Expense Billing") for the estimated costs set forth in such Annual Budget (Amended Budget or an invoice for an emergency repair incurred by Manager, together with reasonably detailed back up for such costs incurred and evidence of payment thereof) indicating each Parcel Owner's Expense Share. The Performing Owner may also deliver Expense Billings with respect to any Parcel Owner-caused damage under Section 6.4. Each Parcel Owner shall pay to the Performing Owner, Manager or the Curing Party, as applicable, the Parcel Owner's Expense Share of the amount so billed within thirty (30) days of delivery of an Expense Billing (the "Due Date"). The amounts set forth in such Expense Billing shall bear interest at the lesser of fifteen percent (15%) or maximum permissible rate allowable under applicable law from the Due Date until the date paid.

8.3 Lien Rights for Failure to Fund. In the event that any Parcel Owner fails to pay its Expense Share under any Expense Billing by the applicable Due Date (such Parcel Owner being sometimes hereinafter referred to as a "Delinquent Parcel Owner"), then the Performing Owner, Manager or the Curing Party, as applicable, shall provide a written Notice to such Delinquent Parcel Owner of its failure to make such a payment (a "Non-Payment Notice"). If such Delinquent Parcel Owner does not make such payment (plus interest accrued thereon) within ten (10) days following its receipt of such Non-Payment Notice, the Performing Owner, Manager or the Curing Party shall have all rights and remedies available at law or in equity, including, damages, injunctive relief and specific performance as follows:

8.3.1 With respect to any Delinquent Parcel Owner that is not a governmental entity, such rights shall specifically include the right to a lien against such Delinquent Parcel Owner's Parcel for the payment thereof. Upon a default for failure to timely pay in full any amounts due hereunder, such amounts not timely paid (plus interest accrued thereon), together with all costs incurred by the Performing Owner, Manager or the Curing Party, as applicable, in the collection of such amounts, including reasonable attorneys' fees, shall be included in any lien against the Delinquent Parcel Owner's Parcel recorded in accordance herewith. Amounts due and payable hereunder shall be a lien. Such lien shall be effective from the date notice thereof is recorded against a Delinquent Parcel Owner's Parcel until such amounts are paid, forecloseable judicially or by advertisement in the same manner as a deed of trust in the State of California with the Performing Owner, Manager or Curing Party, as applicable, being deemed the beneficiary hereunder and the Delinquent Parcel Owner hereby granting the Performing Owner, Manager or Curing Party, as applicable, a power of sale.
8.3.2 With respect to any Parcel Owner that is a governmental entity, no act of enforcement shall result in the creation or enforcement of any lien against any such Parcel Owner's property except for such liens as may attach upon the entry of a judgment under California law.

Notwithstanding the foregoing, the lien of any independent party first mortgagee of any Delinquent Parcel Owner shall have priority over any lien hereunder, regardless of the date or order of recording of such liens so long as a Parcel Owner has given written Notice (as hereinafter defined) of such mortgagee and such mortgage to the other Parcel Owners pursuant to Section 10.4 below.

9. **Insurance.** The Performing Owner (for the period from the date of the Improvement Commencement Notice through the Improvement Completion Date) and thereafter Manager, for the benefit of each Parcel Owner, shall procure and maintain, comprehensive general liability insurance covering the Access Road and the Access Road Easement and insuring against the risks of bodily injury, property damage, personal injury and contractual liability occurring or arising during the policy period, the cost of which shall be includable in the cost allocated amongst the Parcel Owners and reimbursed in accordance with Section 8 above. The insurance required to be maintained under this Section 9 shall have a minimum combined single limit of liability of Two Million and No/100 Dollars ($2,000,000.00) and a general aggregate limit of at least Four Million and No/100 Dollars ($4,000,000.00). Each policy shall designate Manager and each Parcel Owner as additional insureds, shall provide that the insurance is primary and noncontributory, shall provide for severability of interests, and shall provide that an act or omission by an insured party or any additional insured does not void or reduce coverage afforded the insured party or any additional insured. The insurance company shall be licensed by the State of California and rated not less than A/VIII by Best's Insurance Guide. The policies of insurance required hereunder shall contain a waiver of subrogation and shall provide that such policies of insurance shall not be terminated or materially modified without at least thirty (30) days' prior written Notice.

10. **Miscellaneous.**

10.1 **Easements and Covenants Running with the Land.** Each and every provision of this Agreement shall bind the respective Parcel affected and shall bind each Parcel Owner and every other person having any fee, leasehold or other interest in any portion of such Parcel, at any time and from time to time, to the extent that such portion of such Parcel is affected or bound by the provisions in question, or that such provisions contain covenants that are to be performed thereon, shall inure to the benefit of the other Parcel Owners and their respective Parcel and shall run with the land. Each provision and the covenants and easements therein shall constitute equitable servitudes and covenants running with the land under applicable law, including, without limitation, California Civil Code Section 1468 and any successor thereto.

10.2 **Dominant and Servient Estates.** With respect to the various covenants (whether affirmative or negative) on the part of each respective Parcel Owner contained in this Agreement, which affect or bind, or are to be performed on portions of the Parcel of any Parcel Owner, the Parcel benefited by such covenant shall, during the term of this Agreement, be the dominant estate, and the Parcel of the covenanting Parcel Owner, (or if the particular covenant affects, binds, or is to be performed on less than the whole of such Parcel, then with respect to the particular covenant, such portion thereof as is affected by, or bound by the particular covenant, or on
which the particular covenant is to be performed), shall, during the term of this Agreement, be the servient estate.

10.3 **Successors and Assigns.** The rights and obligations of the Parcel Owners shall be binding upon and inure to the benefit of each of such Parcel Owner's respective successors and assigns; provided, however, in connection with any transfer of a Parcel, (a) such transferring Parcel Owner shall deliver concurrent Notice to the other Parcel Owners and Manager upon the transfer of its Parcel (a "Transfer Notice") in accordance with Section 10.4 below, and (b) such Transfer Notice shall contain the address, facsimile number, telephone number and email for Notices hereunder of such new Parcel Owner. If at any time a Parcel is owned by more than one entity, then each such entity shall be jointly and severally liable for the obligations of Parcel Owner of such Parcel and the Transfer Notice designating such entities shall designate a single entity that shall act as Parcel Owners for such entities (the "Designated Representative") and Manager and the other Parcel Owners shall be entitled to rely on all communications, Notices and deemed approvals of such Designated Representative. The rights and obligations of Manager shall be binding upon and inure to the benefit of a successor Manager appointed in accordance with this Agreement.

10.4 **Notices.** All notices required or permitted hereunder ("Notices") shall be in writing and shall be served on Manager and the Parcel Owners at the addresses designated under this Agreement or set forth a Transfer Notice. Any such Notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case Notice shall be deemed delivered one business day after deposit with such courier, (b) sent by email or facsimile, with written confirmation by overnight or first class mail, in which case Notice shall be deemed delivered upon receipt of confirmation of transmission of such email or facsimile notice, or (c) sent by personal delivery, in which case Notice shall be deemed delivered upon receipt. Any Notice sent by email, facsimile or personal delivery and delivered after 5:00 p.m. (California time) shall be deemed received on the next business day. A party's address may be changed by written Notice to the other party; provided, however, that no Notice of a change of address shall be effective until actual receipt of such Notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. The address for Notices for La Palma and Manager are set forth below their respective signatures.

10.5 **Amendment and Restatement of the Original Agreement.** This Agreement amends and restates the Original Agreement in its entirety and from and after the recordation of this Agreement, the Original Agreement is superseded in its entirety by this Agreement.

10.6 **Indemnification of Manager.** Each of the Parcel Owners hereby agrees to indemnify, defend and hold Manager harmless from and against and all actions, causes of action, charges, claims, controversies, costs, damages (including, without limitation, actual and consequential damages), debts, demands, expenses (including, without limitation, reasonable attorneys' fees, costs of court and expenses incurred and expert and consultant fees), fines, judgments, liabilities, liens, losses, obligations, proceedings (legal or administrative), penalties and taxes of every kind and nature whatsoever (collectively, "Claims") arising out of Manager's performance of its obligations hereunder excluding however any Claims to the extent arising from Manager's negligence or willful misconduct. Manager hereby agrees to indemnify, defend, and hold
each Parcel Owner from any and all Claims to the extent arising from Manager's negligence or willful misconduct.

10.7 **Amendment.** This Agreement may be modified or amended, in whole or in part, only by an agreement in writing, executed and acknowledged by all of the Parcel Owners, and accepted by Manager (which acceptance shall not be unreasonably withheld, conditioned or delayed; *provided, however,* the acceptance of a Manager being discharged is not required for any amendment discharging such Manager and appointing such Manager's successor), duly recorded in the Official Records; any amendment of this Agreement shall be void unless recorded in the Official Records. Any amendments or modifications hereof (including any extensions and renewals hereof), whenever made, shall be superior to any and all liens, to the same extent as this Agreement as if such amendments or modifications had been executed concurrently herewith. If a Parcel Owner has a mortgage which requires the mortgagee's consent to any amendment of this Agreement, the consent in writing of such mortgagee to any proposed amendment, which consent shall not be unreasonably withheld, conditioned or delayed, must be obtained in order for such amendment to be enforceable against or binding upon such mortgagee. Nothing herein contained shall constitute an agreement by any Parcel Owner that the Agreement cannot be amended without the prior approval of another Party's mortgagee. This Agreement shall not be modified, amended, subordinated, diminished, extinguished, terminated or canceled without the agreement of all Parcel Owners, the acceptance by Manager (which shall not be unreasonably withheld, conditioned or delayed) and the approval of all mortgagees (if any), which agreement shall be effective only upon recordation of a written memorandum thereof, signed by all Parcel Owners, accepted by Manager and approved by all mortgagees (if any) and all governmental or quasi-governmental authorities whose approval may be required; *provided, however,* the agreement of the Parcel Owner of Lot A shall only be required with respect to amendments which affect the rights and obligations of the Parcel Owner of Lot A hereunder; *provided, further,* the agreement of the Parcel Owner of Lot A shall not be required in connection with any amendment adding any new party or Parcel to this Agreement. Notwithstanding anything to the contrary contained in this Agreement, for so long as La Palma (or any affiliate of La Palma) is the Parcel Owner of Lot 3, to the extent that La Palma (or any affiliate of La Palma), in its capacity as Parcel Owner of Lot 3 or any legal lot comprising a portion of Lot 3 (an "**Excluded Lot**"), desires to waive, relinquish and abandon its rights to use the Access Road and other rights under this Agreement with respect to any Excluded Lot, then La Palma (or such affiliate of La Palma) shall have the right to amend this Agreement upon delivery of prior written notice to Manager and the Parcel Owners (but without the approval of any other party) and thereafter La Palma (or such affiliate) shall execute (without the approval, or signature required, of any other party) and record an amendment to this Agreement, wherein (a) La Palma (or such affiliate), as Parcel Owner of such Excluded Lot, shall (i) abandon its rights under this Agreement and (ii) be released from any obligations under this Agreement arising from and after the date of such recordation (the "**Exclusion Date**"), (b) effective as of the Exclusion Date, this Agreement shall no longer benefit or burden the Excluded Lot, and (c) effective as of the Exclusion Date, the Expense Shares of the remaining Parcel Owners shall be recalculated (*provided, however,* in no event shall Lot A be allocated an Expense Share); *provided, however,* La Palma (or such affiliate), as Parcel Owner of such Excluded Lot, shall have no right to be reimbursed with respect to any amounts previously paid under this Agreement (including, without limitation, any amounts prefunded in connection with the improvement of the Access Road prior to the Improvement Completion Date) or to be released from any amounts due and payable under this Agreement for the period prior to the Exclusion Date. Promptly following the Exclusion Date, La Palma (or such affiliate) shall deliver to
Manager and the remaining Parcel Owners a copy of such recorded amendment. With respect to any amendments of this Agreement, OCWD, by its execution and delivery of this Agreement, hereby authorizes its General Manager (i) to grant any consent or approval required to be granted by OCWD under this Agreement, (ii) to execute any and all Notices under and amendments to this Agreement to be given by or executed by OCWD, and hereby represents that OCWD's General Manager has authority to bind OCWD to any such consent, approval, Notice or amendment. With the exception of the execution of this Agreement, the signature of, or approval or consent from, OCWD's General Manager shall for all purposes be deemed and construed to be the signature of, or approval or consent from OCWD, and the Performing Owner, Manager, and any Parcel Owner shall be entitled to rely for all purposes on OCWD's General Manager's signature on any document, approval, consent or amendment from OCWD's General Manager as conclusive evidence the OCWD signed such document, approved or consented such matter or executed such amendment.

10.8 **Merger Shall Not Terminate this Agreement.** This Agreement and the Easements established pursuant to this Agreement is created and shall continue in full force and effect and shall not be extinguished by the present or future vesting of rights to the dominant estate and rights to the servient estate in the same person or entity, but shall only be terminated by a recorded instrument expressly terminating the Easements and the rights of the dominant tenant holders, signed by all of the then current Parcel Owners and approved by all mortgagees (if any) and all governmental or quasi-governmental authorities whose approval may be required.

10.9 **Not a Public Dedication.** Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Parcels to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parcel Owners that this Agreement shall be strictly limited to and for the purposes herein expressed and strictly for the benefit of the Parcel Owners.

10.10 **Entire Agreement.** Except as otherwise set forth in this Agreement, this Agreement and the exhibits hereto contain the entire agreement among the Parcel Owners with respect to the subject matter hereof. Any prior correspondence, memoranda or other agreements are superseded in their entirety by this Agreement and the exhibits hereto. This Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Parcel Owner.

10.11 **Severability.** If any term in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10.12 **Further Acts and Documents.** The Parcel Owners shall cooperate with each other in good faith and shall execute such further documents and shall perform such further acts as may be reasonably necessary or appropriate to carry out and accomplish the intent of this Agreement.

10.13 **Injunctive Relief.** If there is any violation or threatened violation by any Party of any of the terms, covenants or conditions of this Agreement, any of the Parcel Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.
10.14 **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

10.15 **Breach Shall Not Permit Termination.** No breach or default of this Agreement shall entitle any Parcel Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other right or remedies which the Parcel Owners may have by reason of any breach or default of this Agreement.

10.16 **Captions.** The captions of the Sections and Articles of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

10.17 **Time of Essence.** Time is of the essence in this Agreement.

10.18 **Consents and Approvals.** Whenever a Parcel Owner's consent, approval, acceptance or satisfaction is required under this Agreement, such consent, approval, acceptance or satisfaction shall not be unreasonably withheld, conditioned or delayed by such Parcel Owner's unless such provision expressly provides otherwise. Except as expressly provided otherwise herein, whenever the approval of the Parcel Owners is required under this Agreement, such approval shall require the unanimous approval of all Parcel Owners.

10.19 **Attorneys' Fees.** In the event that any action or other proceeding is commenced to seek enforcement of this Agreement or to interpret or declare rights hereunder, the prevailing party in such action or proceeding shall be entitled to recover its reasonable attorneys' fees, costs, and expenses incurred in connection with that action or proceeding and the enforcement of any judgment therein.

10.20 **Dispute Resolution.** Any dispute, controversy or claim arising out of or relating to this Agreement ("Dispute") which the Parcel Owners are unable to resolve within a reasonable time after good faith negotiation (which good faith negotiation shall include a meeting between the Performing Owner or Manager and the Parcel Owners) shall be submitted to binding arbitration in accordance with the provisions of applicable laws of the State of California (including all available discovery rights under the such laws, which the parties hereby expressly reserve), as from time to time amended. Arbitration proceedings, including the selection of an arbitrator, shall be conducted pursuant to the rules, regulations and procedures from time to time in effect as promulgated by the Judicial Arbitration and Mediation Service ("JAMS"), or if JAMS is no longer in existence, under the applicable rules (and through the offices of) the American Arbitration Association. Prior written Notice of application by the Performing Owner, Manager or any Parcel Owner for arbitration shall be given to the Performing Owner, Manager and the other Parcel Owners at least ten (10) days before submission of the application to the JAMS office in Orange County, California. The arbitrator shall hear the Performing Owner, Manager, the Parcel Owners and their evidence. The decision of the arbitrator shall be binding and conclusive, and judgment upon the aware or decision of the arbitrator may be entered in the appropriate court of law. The costs and expenses of each arbitration hereunder and their apportionment between the parties shall be determined by the arbitrator in the arbitral award or decision.

[Signatures on next page]
IN WITNESS WHEREOF, La Palma has caused its duly authorized representative to execute this Agreement as of the date first above written.

LA PALMA: LA PALMA/MILLER OWNER, LLC,  
a Delaware limited liability company
By: LA PALMA/MILLER JV, LLC,  
a Delaware limited liability company,  
Its Sole Member
By: LA PALMA & MILLER SB/PI, LLC,  
a California limited liability company,  
Administrative Member
By: PDC OC/IE LLC,  
a Delaware limited liability company,  
Its Manager
By: __________________________  
Stephen M. Batcheller  
Local Partner

Notice Address for La Palma: La Palma/Miller Owner, LLC,  
a Delaware limited liability company  
c/o Panattoni Development Company, Inc.  
20411 SW Birch Street  
Suite 200  
Newport Beach, California 92660  
Attention: Stephen M. Batcheller  
Telephone: (949) 296-2922  
Facsimile: (916) 868-6142  
Email: sbatcheller@panattoni.com
OCWD

ORANGE COUNTY WATER DISTRICT,
a special governmental district organized and
operating under Chapter 924 of the California
Statutes of 1933, as amended

By: ____________________________
Shawn Dewane,
President

By: ____________________________
Michael R. Markus, P.E.,
General Manager

APPROVED AS TO FORM:

By: ____________________________
Joel Kuperberg,
General Counsel,
Orange County Water District

Notice Address for La Palma:
Orange County Water District
Attention: Bruce Dosier
18700 Ward Street
Fountain Valley, California 92708
Telephone: (714) 378-3200
Facsimile: (714) 372-3373
Email: bdosier@ocwd.com
ACCEPTANCE BY MANAGER

The undersigned hereby accepts its appointment as "Manager" under this Agreement and the amendment and restatement of the Original Agreement effected by this Agreement and agrees to be bound to the terms and conditions of this Agreement.

MANAGER: TRESTLE PROPERTY & ASSOCIATION MANAGEMENT, INC.,
a California corporation

By: ___________________________
Name: _____________________
Its: _____________________

Notice Address for Manager: Trestle Property & Association Management, Inc.
151 Kalmus Drive
Suite D210
Costa Mesa, California  92626
Attention:  Luke Rutherford
Telephone:   (714) 617-9987
Facsimile:    (714) 699-2820
Email:          luke@trestleproperty.com
EXHIBIT A-1

Legal Description of the LPM Property and Lot A, Lot 1 and Lot 3

That certain real property located in the City of Anaheim, County of Orange, State of California, more particularly described as follows:

LOT A:


LOT 1:


LOT 3:

EXHIBIT A-2

Legal Description of Lot 2

That certain real property located in the City of Anaheim, County of Orange, State of California, more particularly described as follows:

LOT 2:

EXHIBIT B

Site Plan

EXHIBIT "B"
ACCESS EASEMENT AREA

LEGEND:
INDICATES 40' WIDE EASEMENT.
CONTAINS: 12,902 SQ. FT.
0.296 ACRES ±

RECORD OF SURVEY NO. 2014–1011
R.S.B. 272 / 46–48

LOT LINE ADJUSTMENT
NO. LLA100000697
RECORDED 06/03/13 AS
INST. NO. 2013000335748, O.R.

EXISTING LOT LINES

PORTION OF LOT 15
BLOCK "A"
KRAMER TRACT
M.R. I.A. CO. 12/87–88

LOT 1
SEE DETAIL ON SHEET 2

LOT A

LOT 2
LOT 3

SCALE: 1" = 200'

LA PALMA
C/L SHEPARD ST.

AVENUE

SHEET 1 OF 2
EXHIBIT B-1

Post Subdivision Site Plan
EXHIBIT B-2

Depiction of Utility Easement Areas
EXHIBIT "B-2"
UTILITY EASEMENT AREAS

DETAIL OF STRIP NO. 4 AND STRIP NO. 5

SCALE: 1" = 10'

P.O.B. STRIP NO. 4

STRIP NO. 5

N 74°05'11" E 40.00'

NOTE:
STRIP NO. 4 AND STRIP NO. 5 ARE THE SAME SIZE.

LOT LINE ADJUSTMENT
NO. LLA-0000697
RECORDED 06/03/13 AS
INST. NO. 2013000335748, O.R.

RECORD OF SURVEY NO. 2014-1011
R.S.B. 272 / 46-48

LEGEND:

INDICATES UTILITY EASEMENT AREAS.

STRIP NO. 1 CONTAINS: 400 SQ. FT.
STRIP NO. 2 CONTAINS: 400 SQ. FT.
STRIP NO. 3 CONTAINS: 400 SQ. FT.
STRIP NO. 4 CONTAINS: 436 SQ. FT.
STRIP NO. 5 CONTAINS: 436 SQ. FT.

TOTAL CONTAINS: 2,072 SQ. FT.
0.048 ACRES ±

SURVEYOR:

PREPARED UNDER THE SUPERVISION OF:

PREPARED BY:

Thienes Engineering, Inc.
CIVIL ENGINEERING - LAND SURVEYING
114349 FIRESTONE BOULEVARD
LA MIRADA, CALIFORNIA 90638
PH: (574) 311-4511 FAX: (574) 311-4513

38820.020-2083527

B-2-2
EXHIBIT B-3

Approximate Location of OCWD Utility Facilities

Last Updated 10/13/14

NOTE:
OCWD Utility Facilities contain:
2" PVC Domestic Water,
2" PVC Irrigation Line,
4" PVC Sewer Line.

PREPARED BY:
Thienes Engineering, Inc.
Civil Engineering • Land Surveying
14348 Firestone Boulevard
La Mirada, California 90638
Ph: (714) 321-4811 FAX: (714) 321-4173

38820.020-2083527

B-3-1
EXHIBIT C

Legal Description – Access Easement Area

LEGAL DESCRIPTION:

A STRIP OF LAND 40.00 FEET WIDE, SITUATED IN THAT PORTION OF LOT 2 OF LOT LINE
ADJUSTMENT NO. LL-A-0000697, IN THE CITY OF ANAHEIM, COUNTY OF ORANGE, STATE OF
CALIFORNIA, AS PER DOCUMENT RECORDED JUNE 3, 2013 AS INSTRUMENT NO.
2013000335748, OF OFFICIAL RECORDS OF SAID COUNTY AND SHOWN ON RECORD OF SURVEY
NO. 2014-1011, AS PER MAP RECORDED IN BOOK 272, PAGES 46 THROUGH 48 INCLUSIVE
OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY,
DESCRIBED AS FOLLOWS:

BEING THE NORTHERLY 322.56 FEET OF THE SOUTHERLY 382.56 FEET, MEASURED AT RIGHT
ANGLES FROM THE MOST SOUTHERLY LINE OF SAID LOT 2, SAID MOST SOUTHERLY LINE ALSO
BEING THE CENTERLINE OF LA PALMA AVENUE AS SHOWN ON SAID RECORD OF SURVEY.

CONTAINING: 12,902 SQUARE FEET OR 0.296 ACRES MORE OR LESS.

AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

SURVEYOR:

PREPARED UNDER THE SUPERVISION OF:

THIENES ENGINEERING, INC.

BRIAN L. THIENES
P.L.S. NO. 5750
REG. EXP. DEC. 31, 2015
EXHIBIT "C-2"
UTILITY EASEMENT AREAS


STRIP NO. 1:

BEING THE NORTHERLY 10.00 FEET OF THE SOUTHERLY 201.11 FEET, MEASURED AT RIGHT ANGLES FROM THE MOST SOUTHERLY LINE OF SAID LOT 2, SAID MOST SOUTHERLY LINE ALSO BEING THE CENTERLINE OF LA PALMA AVENUE AS SHOWN ON SAID RECORD OF SURVEY.

STRIP NO. 1 CONTAINING: 400 SQUARE FEET.

STRIP NO. 2:

BEING THE NORTHERLY 10.00 FEET OF THE SOUTHERLY 226.56 FEET, MEASURED AT RIGHT ANGLES FROM THE MOST SOUTHERLY LINE OF SAID LOT 2, SAID MOST SOUTHERLY LINE ALSO BEING THE CENTERLINE OF LA PALMA AVENUE AS SHOWN ON SAID RECORD OF SURVEY.

STRIP NO. 2 CONTAINING: 400 SQUARE FEET.

STRIP NO. 3:

BEING THE NORTHERLY 10.00 FEET OF THE SOUTHERLY 354.96 FEET, MEASURED AT RIGHT ANGLES FROM THE MOST SOUTHERLY LINE OF SAID LOT 2, SAID MOST SOUTHERLY LINE ALSO BEING THE CENTERLINE OF LA PALMA AVENUE AS SHOWN ON SAID RECORD OF SURVEY.

STRIP NO. 3 CONTAINING: 400 SQUARE FEET.
EXHIBIT "C-2"
UTILITY EASEMENT AREAS

STRIP NO. 4:
BEGINNING AT THE INTERSECTION OF THE MOST WESTERLY LINE OF LOT 3 OF SAID LOT LINE ADJUSTMENT WITH A LINE PARALLEL WITH AND DISTANT 235.56 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE MOST SOUTHERLY LINE OF SAID LOT 2, SAID MOST SOUTHERLY LINE ALSO BEING THE CENTERLINE OF LA PALMA AVENUE AS SHOWN ON SAID RECORD OF SURVEY;
THENCE ALONG SAID MOST WESTERLY LINE OF LOT 3, SOUTH 15° 54' 49" EAST, 10.00 FEET;
THENCE AT RIGHT ANGLES TO SAID MOST WESTERLY LINE, SOUTH 74° 05' 11" WEST, 31.46 FEET;
THENCE SOUTH 29° 05' 11" WEST, 12.07 FEET TO THE EASTERNLY LINE OF LOT 1 OF SAID LOT LINE ADJUSTMENT;
THENCE ALONG SAID EASTERNLY LINE, NORTH 15° 54' 49" WEST, 18.54 FEET TO THE NORTHEAST CORNER OF SAID LOT 1;
THENCE NORTH 74° 05' 11" EAST, 40.00 FEET TO THE POINT OF BEGINNING.
STRIP NO. 4 CONTAINING: 436 SQUARE FEET.

STRIP NO. 5:
BEGINNING AT THE WESERLY TERMINUS OF THAT CERTAIN NORTHERLY LINE OF LOT 3 OF SAID LOT LINE ADJUSTMENT SHOWN AS HAVING A BEARING AND DISTANCE OF "NORTH 74° 05' 11" EAST, 297.58 FEET" ON SAID RECORD OF SURVEY;
THENCE ALONG THE MOST WESERLY LINE OF SAID LOT 3, SOUTH 15° 54' 49" EAST, 10.00 FEET;
THENCE AT RIGHT ANGLES TO SAID MOST WESERLY LINE, SOUTH 74° 05' 11" WEST, 31.46 FEET;
THENCE SOUTH 29° 05' 11" WEST, 12.07 FEET TO THE EASTERNLY LINE OF LOT 1 OF SAID LOT LINE ADJUSTMENT;
THENCE ALONG SAID EASTERNLY LINE, NORTH 15° 54' 49" WEST, 18.54 FEET TO A LINE BEARING NORTH 74° 05' 11" WEST WHICH PASSES THROUGH THE POINT OF BEGINNING;
THENCE NORTH 74° 05' 11" EAST, 40.00 FEET TO THE POINT OF BEGINNING.
STRIP NO. 5 CONTAINING: 436 SQUARE FEET.

STRIP NO'S 1 THROUGH 5 CONTAINING: 2,072 SQUARE FEET OR 0.048 ACRES MORE OR LESS.

SURVEYOR:
PREPARED UNDER THE SUPERVISION OF:

Thienes Engineering, Inc.
CIVIL ENGINEERING - LAND SURVEYING
14340 FIRESTONE BOULEVARD
LA MIRADA, CALIFORNIA 90638
P H (714) 521-4911 FAX (714) 521-4173

PREPARED BY:
BRIAN L. THIENES
P.L.S. NO. 5750
REG. EXP. DEC. 31, 2015

DATE: 10/13/14

PROFESSIONAL LAND SURVEYOR
STATE OF CALIFORNIA

D-3820.020-2083527
EXHIBIT D

Approved Specification
EXHIBIT D

Approved Specification

GENERAL CONSTRUCTION & MAINTENANCE, REPAIR AND REPLACEMENT SPECIFICATIONS FOR ACCESS ROAD AND ACCESS EASEMENT AREA UNDER AMENDED AND RESTATED EASEMENT AGREEMENT DATED AS OF NOVEMBER __, 2014
This is the Approved Specification (as defined in that certain Amended and Restated Easement Agreement dated as of November __, 2014 (the "Agreement"), by and among LA PALMA/MILLER OWNER, LLC, a Delaware limited liability company ("La Palma"), ORANGE COUNTY WATER DISTRICT, a special governmental district organized and operating under Chapter 924 of the California Statutes of 1933, as amended ("OCWD"), and TRESTLE PROPERTY & ASSOCIATION MANAGEMENT, INC., a California corporation ("Manager"), and may only be modified as provided in Article 5 of the Agreement. All initially-capitalized terms not otherwise defined in this Approved Specification shall have the meanings set forth in the Agreement, unless the context clearly indicates otherwise.

A. IMPROVEMENT OF THE ACCESS EASEMENT AREA AND THE ACCESS ROAD ON OR BEFORE THE IMPROVEMENT COMPLETION DATE PURSUANT TO SECTION 6.2.1 OF THE AGREEMENT

DIVISION 1: GENERAL REQUIREMENTS

1.10 LAWS, ORDINANCES, RULES & REGULATIONS
   All applicable laws, ordinances, rules and regulations shall comply with the State of California and the City of Anaheim. Design to be in compliance with:
   • 2013 California Building Code (CBC)
   • Local zoning ordinances

1.21 TESTING
   A registered professional geotechnical engineer shall be retained to provide geotechnical recommendations as well as testing for the soil compaction of the Access Easement Area.

1.40 IMPACT, PERMIT & CONNECTION FEES
   All applicable plan check and permit fees shall be paid as required in connection with the Work required under this Approved Specification.

DIVISION 2: SITEWORK

2.15 DEMOLITION
   Demolition of existing asphalt as shown on Annex 1 attached hereto and incorporated herein by this reference.

2.30 GRADING & EXCAVATION
   Rough grade the site with compaction to meet or exceed the recommendations of Southern California Geotechnical, Inc. as set forth in that certain letter dated October 9, 2014, from Southern California Geotechnical, Inc. to Panattoni Development re Project No. 14G154-3 – Additional Pavement Design Recommendations – La Palma Access Road, Anaheim Concourse – Phase III (a copy of which is attached hereto as Annex 2 and incorporated herein by this reference (the "Geotechnical Recommendations").
   All utility trenches are to be backfilled and compacted pursuant to applicable requirements. During construction, General Contractor will comply with all City of Anaheim dust control requirements.
2.40 **FINE GRADE**
Fine grade for curbs and all site areas to be paved. Compaction at all locations to be in accordance with the Geotechnical Recommendations.

2.50 **UNDERGROUND UTILITIES**
All items shall be installed to meet state and local requirements.

- **Domestic Water**: Install one (1) 2” PVC domestic water line in the OCWD Utility Area for the benefit of OCWD tied to the local water system in La Palma Avenue and brought to a point 5 feet north of the Access Road and capped. The approximate location of this OCWD Utility Facility is depicted in Exhibit B-3.

- **Fire Water**: Install fire water facilities in the Utility Easement Area as shown for the benefit of La Palma. This LPM Utility Facility is depicted in Exhibit B-2.

- **Irrigation**: Install one (1) 2” PVC irrigation water line in the OCWD Utility Area for the benefit of OCWD tied to the local water system in La Palma Avenue and brought to a point 5 feet north of the Access Road and capped. The approximate location of this OCWD Utility Facility is depicted in Exhibit B-3.

- **Sewer**: Install one (1) 2” PVC sewer line in the OCWD Utility Area for the benefit of OCWD tied to the local sewer system in La Palma Avenue and brought to a point 5 feet north of the Access Road and capped. The approximate location of this OCWD Utility Facility is depicted in Exhibit B-3. Install one (1) sewer line in the Utility Easement Area as shown for the benefit of La Palma. This LPM Utility Facility is depicted in Exhibit B-2.

- **Storm Drain**: Install storm drain facilities in the Utility Easement Area as shown for the benefit of La Palma. This LPM Utility Facility is depicted in Exhibit B-2.

- **Electrical/Data**: Install electrical/data facilities in the Utility Easement Areas as shown for the benefit of La Palma. These LPM Utility Facilities are depicted in Exhibit B-2.

All utility cleanouts/access points located within the Access Road are to have traffic-rated lids.

2.60 **CONCRETE PAVING**
Install 8” non-reinforced minimum 3,000 PSI Portland Cement Concrete pavement over 12” compacted subgrade (95% minimum compaction) as shown on Annex 1. All paving sections shall be in accordance with the Geotechnical Recommendations. Joint spacing shall be in accordance with the Geotechnical Recommendations.

2.65 **SITE CONCRETE**
Install curb and curb & gutter as shown on Annex 1.
DIVISION 10: SPECIALTIES

10.10 SIGNAGE

Install all required ADA, fire department, and pavement markings as required per local minimum standards.

B. MAINTENANCE OF THE ACCESS EASEMENT AREA AND THE ACCESS ROAD AFTER THE IMPROVEMENT COMPLETION DATE IN ACCORDANCE WITH SECTIONS 6.1 AND 6.3 OF THE AGREEMENT.

- Inspect Access Easement Area, Access Road and related improvements not less than quarterly or more frequently as requested by any Parcel Owner or upon any report of damage thereto.
- Repair and replace any damaged areas of the Access Road and related improvements or other areas of the Access Road and related improvements requiring repair and replacement in a manner consistent with Section A of this Approved Specification.
- Re-apply pavement markings at Access Road as required.
- Access Road to be kept free from debris and swept on a regular basis.
ANNEX 2 TO EXHIBIT D

October 9, 2014
Panattoni Development
20+11 SW Birch Street, Suite 200
Newport Beach, California 92660

Attention: Mr. Mark Lewis, Development Manager

Project No.: 14G154-3

Subject: Additional Pavement Design Recommendations
La Palma Access Road
Anaheim Concourse – Phase III
La Palma Avenue, West of Ocean Circle
Anaheim, California


Gentlemen:

This letter has been prepared in order to provide additional pavement design recommendations for the La Palma Access Road at the project site. Truck traffic information has been provided by OCWD to Panattoni. This truck traffic data is equivalent to a TI (traffic index) of 8.5 for 6 days per year for a 20 year design life.

Asphaltic Concrete

Presented below are the recommended thicknesses for new flexible pavement structures consisting of asphaltic concrete over a granular base. The pavement designs are based on the traffic indices (TIs) indicated. The client and/or civil engineer should verify that these TIs are representative of the anticipated traffic volumes. If the client and/or civil engineer determine that the expected traffic volume will exceed the applicable traffic index, we should be contacted for supplementary recommendations. For the purpose of the traffic volumes indicated above, a truck is defined as a 5-axle tractor trailer unit with one 8-kip axle and two 32-kip tandem axles. All of the traffic indices allow for 1,000 automobiles per day.

<table>
<thead>
<tr>
<th>ASPHALT PAVEMENTS</th>
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<tr>
<td><strong>Materials</strong></td>
</tr>
<tr>
<td>Asphalt Concrete</td>
</tr>
<tr>
<td>Aggregate Base</td>
</tr>
<tr>
<td>Compacted Subgrade (90% minimum compaction)</td>
</tr>
</tbody>
</table>

22885 Savi Ranch Parkway -suite E  Yorba Linda  California  92887
voice: (714) 685-1115  fax: (714) 685-1118  www.socalgeo.com
The aggregate base course should be compacted to at least 95 percent of the ASTM D-1557 maximum dry density. The asphaltic concrete should be compacted to at least 95 percent of the Marshall maximum density, as determined by ASTM D-2726. The aggregate base course may consist of crushed aggregate base (CAB) or crushed miscellaneous base (CMB), which is a recycled gravel, asphalt and concrete material. The gradation, R-Value, Sand Equivalent, and Percentage Wear of the CAB or CMB should comply with appropriate specifications contained in the current edition of the “Greenbook” Standard Specifications for Public Works Construction.

Portland Cement Concrete

The preparation of the subgrade soils within concrete pavement areas should be performed as previously described for proposed asphalt pavement areas. The minimum recommended thicknesses for the Portland Cement Concrete pavement sections are as follows:

<table>
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<th>Materials</th>
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<tr>
<td>PCC</td>
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<tr>
<td>Compacted Subgrade (95% minimum compaction)</td>
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The concrete should have a 28-day compressive strength of at least 3,000 psi. The maximum joint spacing within all of the PCC pavements is recommended to be equal to or less than 30 times the pavement thickness.

Closure

We appreciate the opportunity of providing geotechnical services on this project. If you have any questions regarding this information, please contact our office at your convenience.

Respectfully Submitted,

SOUTHERN CALIFORNIA GOTECHNICAL, INC.

John A. Seminara, GE 2294
Principal Engineer

Distribution: (1) Addressee
EXHIBIT E

Expense Shares Prior to Improvement Completion Date

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<tr>
<td>Lot 2</td>
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<td>Lot 3</td>
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Expense Shares After Improvement Completion Date

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<tr>
<td>Lot A</td>
<td>--</td>
<td>0%</td>
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<tr>
<td>Lot 1</td>
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<td>Total</td>
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<td>100.00%</td>
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STATE OF CALIFORNIA  
     )                 ss  
COUNTY OF ORANGE  
     )

On November __, 2014, before me, ____________________________, a Notary Public, personally appeared Stephen M. Batcheller, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____________________________  
Notary Public
STATE OF CALIFORNIA 

) ss

COUNTY OF ORANGE 

On November __, 2014, before me, ____________________________, a Notary Public, personally appeared _________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____________________________
Notary Public
STATE OF CALIFORNIA  )
COUNTY OF ORANGE    ) ss

On November __, 2014, before me, ____________________________, a Notary Public, personally
appeared Luke Rutherford, who proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

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

WITNESS my hand and official seal.

_____________________________
Notary Public
VIA MESSENGER

Natalie DuBois
Sr. Commercial Escrow Officer – Vice President
Fidelity National Title
1300 Dove Street
Suite 310
Newport Beach, CA 92660

Re: Escrow No. 26020569
Anaheim Concourse – Phase III
Anaheim, California
Instructions to Release Access Road Holdback Funds

Dear Natalie,

In connection with the above-referenced escrow (the “Escrow”) escrow, we hereby deliver on behalf of LA PALMA/MILLER OWNER, LLC, a Delaware limited liability company (“La Palma”), this letter, which shall constitute instructions relating to funds held back (the “Access Road Holdback”) at the closing of the sale of that certain property owned by Seller, commonly known as Lot 2 of Anaheim Concourse – Phase III, Anaheim, California (the “Property”), to ORANGE COUNTY WATER DISTRICT, a special government district organized and operating under Chapter 924 of the California Statutes of 1933, as amended (“OCWD”). The Access Road Holdback was retained in Escrow to fund the improvement of an access road (the “Access Road”) over a portion of the Property (the “Access Easement Area”) in accordance with that certain Access Easement Agreement dated as of January 27, 2014 (the “Original Agreement”) and recorded January 29, 2014 as Instrument No. 2014-000037318 in the Office of the County Recorder for Orange County, California (the “Official Records”). Concurrently herewith, La Palma and OCWD are entering into that certain Amended and Restated Easement Agreement (the “Agreement”), wherein, inter alia, the obligation to improve the Access Road is transferred to La Palma and La Palma is undertaking to construct and install certain utility facilities (the “OCWD Utility Facilities”) for the benefit of OCWD. This letter shall constitute letter instructions to modify the disbursement of the Access Road Holdback consistent with the Agreement. All initially-capitalized terms not otherwise defined in this letter shall have the meanings set forth in the Agreement, unless the context clearly indicates otherwise.

The Access Road Holdback is initially totaled $266,169 (the “Initial Funding Amount”), of which $153,233.49 was funded by La Palma (the “La Palma Portion”), and $112,935.51 was funded by OCWD (the “OCWD Portion”). To date, $_____ of interest has accrued on the Initial Funding Amount (all interest accrued on the Initial Funding Amount (“Interest”) shall be disbursed in accordance with this letter, 57.57% to La Palma, and 42.43% to OCWD.

In accordance with the Agreement, La Palma is required to deliver an estimate of the cost of the construction and installation of the OCWD Utility Facilities (the “Estimate”) to OCWD, which Estimate is
attached hereto as Exhibit A. OCWD hereby approves the Estimate. In accordance with the Agreement, the amount of the Estimate is to be disbursed to La Palma from the OCWD Portion concurrently with the recordation of the Agreement from the OCWD Portion. In addition, concurrently with the recordation of the Agreement, (a) the La Palma Portion and La Palma’s share of Interest is also to be disbursed to La Palma, and (b) the balance of the OCWD Portion (i.e., the OCWD Portion, less the amount of the Estimate) plus OCWD’s share of Interest is to be disbursed to OCWD.

Accordingly, Escrow Agent is hereby instructed as follows:

1. Upon receipt of a fully executed and acknowledged original of the Agreement in the form of Exhibit B attached hereto, to record the same in the Official Records as soon as possible. Upon such recordation, distribute a copy of the recorded Agreement to the undersigned, La Palma and OCWD, showing the time, date and recording information.

2. Upon confirmation of such recordation, disburse by wire transfer to La Palma in accordance with the wire transfer instructions attached hereto as Exhibit C, the La Palma Portion, the amount of the Estimate and La Palma’s share of the Interest. Upon the initiation of such wire, please send the wire transfer number to the undersigned.

3. Upon confirmation of such recordation, disburse by wire transfer to OCWD in accordance with the wire transfer instructions attached hereto as Exhibit D, the balance of the OCWD Portion (i.e., the OCWD Portion less the amount of the Estimate) and OCWD’s share of the Interest. Upon the initiation of such wire, please send the wire transfer number to OCWD.

Please indicate your receipt and acceptance of the escrow instructions by signing and returning via email a copy of this letter.

Sincerely,

LINER LLP,
a California limited liability partnership

By: STARK LAW GROUP, P.C.,
a California professional corporation, as Partner

By: ________________________________
   Todd Evan Stark, President
ACKNOWLEDGED, AGREED AND CONSENTED TO:
On ________ ___, 2014

Orange County Water District,
a special governmental district organized and operating under Chapter 924 of the California Statutes of 1933, as amended

By: _______________________
    Shawn Dewane,
    President

By: _______________________
    Michael R. Markus, P.E.,
    General Manager

RECEIVED AND ACCEPTED on November __, 2014

FIDELITY NATIONAL TITLE

By: _______________________
    Natlie DuBois, Escrow Officer

cc:  Stephen M. Batcheller
     Jacob LeBlanc
     Mark Lewis
     Mitchell C. Regenstreif, Esq.
### OCWD Utility Facilities

**Building Size SF**

**TOTAL COST $76,160**

**COST PER SQUARE FOOT**

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**Total Estimate**

76,160
Proposal for:
OCWD Utility Lines
From
Kana Pipeline, Inc.
1639 E. Miraloma Ave., Placentia, CA 92870
L.N. 461487 Type: A
Phone: (714) 986-1400 Fax: (714) 986-1417

Alston

Attn: Elan.

The following is our proposal for new water services and sewer from La Palma Ave. to the OCWD easement as shown on the sketch from Mark.

This work will include two each new water services in La Palma Ave w/ 2" RP Backflows for each service and 2" PVC pipe through the easement. These new services will be installed just east of the intersection and then routed to the paved area between Building A and B. We will terminate these 5' beyond your property line to the north and cap them off. We will test chlorinate and flush both of these lines. We will also give you an add alternate for two different size meters as we do not know what size they will want.

The sewer will be a connection out in La Palma w/ 4" clay pipe (this is the minimum size the City will allow) to property line with a cleanout at property line. This work will also take place a little east of the intersection. We will run a 2" force main PVC line from the cleanout at property line to 5' beyond the north property line.

We will also give you an alternate add in lieu of the the 2" PVC Force Main and install 4" PVC pipe with cleanouts at angle points and 100LF intervals. We will install 4" PVC pipe from the cleanout and then route it to the paved area between Building A and B and run it as deep as possible by gravity flow.

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<tr>
<th>Item</th>
<th>Description</th>
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<th>Unit</th>
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<td>160.00SQFT</td>
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Total: 39,992.00

Attachment Enclosed

Estimator: Mike Skalla
Proposal for:  
OCWD Utility Lines  
From  
Kana Pipeline, Inc.  
1639 E. Miraloma Ave., Placentia, CA 92870   LN: 461487 
Type: A  
Phone: (714) 986-1400  
Fax: (714) 986-1417

Aiston

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<td>5</td>
<td>4&quot; Cleanout @ Property Line</td>
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<td>7</td>
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**Total:** 26,920.00

**Total For Water:** 39,992.00  
**Total For Sewer:** 26,920.00  
**Total:** 66,912.00

Alternate Add:

- 2" water meter $1,075.00 each
- 1 1/2" water meter $800.00 each

Install 4" PVC pipe and cleanouts in lieu of 2" LS $13,000.00

Attachment Enclosed

Estimator: Mike Skalla
Kana Pipeline, Inc.

Job Conditions - Attachment 'A'

Includes: (To be an Exhibit in all contracts)

1. Bedding and shading of pipe as needed, but not to exceed Specs.
2. Backfill with native soil from trench excavation.
3. Excavated spoil spread at trench side. All street spoils to be stockpiled onsite.
4. Compaction to 90% relative density.
5. Sawcutting of asphalt or concrete up to 5" thickness and haul-off of same.
6. Temporary patch back of AC & PCC. Not to be maintained by Kana Pipeline, Inc.
7. Open cut trenching only- NO BORING INCLUDED! Unless specified in proposal.
8. Traffic control per Watch book.
9. Final adjustments of newly constructed work only. Final adjustments to grade and required painting and concrete pads to be completed at one time. No second raises to grade or added mobilizations for raises to grade are included.
10. Price is based on (1) one move in only and award of all work quoted. Added move ins at $2,500.00 each.
      B. $1 MILL Auto & 1 MILL WComp.
12. All work bid as Non Prevailing Wage.
13. Proposal price is guaranteed for thirty (30) days only.

Excludes: (To be an Exhibit in all contracts)

2. Engineering, staking and compaction testing.
3. Concrete. asphalt or landscape replacements.
4. Construction water and meter. (Min. 2" service line required)
5. Fireline. landscape. irrigation or domestic meters unless specified in our bid proposal.
7. Slurry. concrete backfill or encasements unless specified in our bid proposal.
8. Traffic loops. striping or raised pavement markers.
9. Tie-ins to building pipes unless specified.
10. Rock. hardpan. excessively hard ground excavation. or screening of backfill.
11. Imported backfill or drying of trench excavated material that has over optimum moisture content.
12. Backside taps or offsets due to underground obstruction
14. Demo of existing onsite improvements unless specified in our bid proposal.
15. Erosion Control and SW/PP.
16. Conduit & wiring for fireline system.
17. Trench drains. parkway drains. curb drains or perforated drains. unless specified.
18. Tunneling of existing utilities not shown on plans.
19. PVC lining or poly coating of manholes is excluded. unless specified.
20. Adjusting of brick sewer manholes to grade unless specified (requires reconstruction)
EXHIBIT B

Form of the Agreement
EXHIBIT C

La Palma Wire Instructions

LA PALMA’s Wire Transfer Instructions:

Bank:

ABA/Routing:

Credit:

Account #:

Fax #:

Voice #:

With telephonic advice to Chris Wilson at (949) 296-2930.
EXHIBIT D

OCWD Wire Instructions

OCWD’s Wire Transfer Instructions:

Bank:

ABA/Routing:

Credit:

Account #:

Fax #:

Voice #: 
**AGENDA ITEM SUBMITTAL**

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<td>From:</td>
<td>Mike Markus</td>
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<tr>
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<td>B. Dosier/D. Jackson</td>
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**Subject:** DECERTIFICATION PROCESS FOR THE CALTRANS’ IMPERIAL HIGHWAY PROPERTIES IN ANAHEIM

**SUMMARY**

On October 3, 2012, the Board approved making an initial deposit of $25,000 with Caltrans to initiate the decertification process and possible sale of the Caltrans properties east of the District’s 19 acre parcel at Imperial Highway and the 91 Freeway. On September 30, 2014, Caltrans notified staff that to continue the decertification process, an additional $25,000 deposit is required. Staff will report on the status of the project.

**RECOMMENDATION**

Provide direction as appropriate

**BACKGROUND/ANALYSIS**

On October 3, 2012, the Board approved an initial deposit of $25,000 with Caltrans to start the decertification process to conduct a Feasibility Study to determine if the property rights are not presently, nor in the future, necessary for a Caltrans project or any other public project (Caltrans must “certify” the need for a property, hence the word “decertify” is used to allow the disposal of a property).

Following the decertification process, an appraisal is obtained to determine the market value of the subject property or property rights. Caltrans is required to offer property of “notable environmental value” that qualifies for park or recreational use to local agencies before offering the property to the general public. If the property has access to a public street, it will be offered via competitive bid to the general public. If it does not have access to a public street (landlocked), it will be offered at market value to the adjoining property owners. Therefore, unless the property is landlocked, there is no guarantee that if Caltrans were to approve the decertification of the property, that Caltrans would sell the property to the District. Caltrans also advises that the entire process may last anywhere from six months to several years.

The parcels Caltrans identified as a result of the Feasibility Study are smaller in size than the properties requested by the District, and do not have access to Imperial Highway, which is a major goal of the District’s potential acquisition. In addition and as stated above, unless the property is landlocked there is no guarantee that the District
would be able to purchase the properties after they are decertified, however, as the requestor, the District would pay the cost for the decertification process.

On September 30, 2014, Caltrans advised staff the survey work is complete and the mapping should be completed by the end of this week. The initial decertification deposit has been depleted by the design, survey, and engineering work. Caltrans is requesting an additional deposit of $25,000 to complete the functional clearance reviews, environmental study, and appraisal work. Additional deposits may be required depending on the complexity of the work.

Staff has requested that Caltrans provide a detailed list of the expenditure of the initial $25,000 and an estimate of the proposed expenditures of the additional $25,000 deposit requested. Caltrans is working on the detailed list, but has not been able to finish the list prior to the Committee meeting.

PRIOR BOARD ACTION(S) N/A

10/3/12, M12-155, Approving directions to staff in connection with easements for CalTrans westbound State Route 91 lane extension and auxiliary lane reconstruction in the City of Anaheim.

8/1/12, R12-8-96, Authorize the General Manager to transmit a letter Concurring with the CalTrans memorandum; De Minimis Section 4(f) – revaluation for the CalTrans Westbound State Route 91 lane extension and auxiliary lane reconstruction in the City of Anaheim.

5/2/12, R12-5-46, Authorizing Addendum No. 2 to Permit to Enter to CalTrans to conduct geotechnical investigations at Warner Basin and the Santa Ana River.

4/20/11, R11-4-61, Authorize transmittal of the Section 4(f) De Minimis Concurrence Letter for CalTrans Westbound State Route 91 Lane Extension and Auxiliary Lane Construction Project.

12/7/11, R11-12-173, Approve and execute Permit to Enter with State of California Department of Transportation to conduct a Geotechnical Investigation at Warner Basin and the Santa Ana River.